

**(1993) 06 CAL CK 0007**

**Calcutta High Court**

**Case No:** Appeal No. 6 of 1985

Central Bank of India

APPELLANT

Vs

Rai Bahadur Hurdutray Motilal  
Jute Mills Private Limited and  
Others

RESPONDENT

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**Date of Decision:** June 10, 1993

**Acts Referred:**

- Jute Companies (Nationalisation) Act, 1980 - Section 24, 5(1)

**Citation:** (1994) 1 CALLT 448

**Hon'ble Judges:** Baboo Lall Jain, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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### **Judgement**

Baboo Lall Jain, J.

This is an appeal u/s 20(7) of the Jute Companies Nationalisation Act, 1980. The appellant Central Bank of India filed a claim before the Commissioner of Payment appointed under the said Act. The appellant Bank was a creditor of R.B.H.M. Jute Mills Pvt. Ltd. (herein-after also referred to as "the said company"). The undertaking of the said company was nationalised with effect from 20.12.80 which was the appointed day. The appellant bank is one of the secured creditors of the said company ranking in category 2 of the Part-I to the 2nd Schedule of the said Act. There is no dispute that the total amount due to the appellant as on the appointed day i.e. 20.12.80 was Rs. 16,50,109.20p. The appellant filed the claim with the Commissioner on or about February 28, 1982 and the claimant/appellant claimed further interest for the period from 20.12.80 onwards upto the date of the filing of the claim amounting to Rs. 3,78,551.7lp. in addition to the dues as on 20.12.80, which was Rs. 16,50,109.20p. Thus the total claim of the appellant including interest for the period from the appointed day upto the date of filing of the claim aggregated to Rs. 20,28,660.09p. The Commissioner of Payments allowed the claim

of the appellant for principal and for interest upto the appointed day i.e. 20.12. 80 amounting to Rs. 16,50,109.20p. According to the Commissioner, the interest beyond the date of nationalisation i.e. the appointed day is not admissible under the provision of The Nationalisation Act.

2. The only question to be determined in this appeal is whether the appellant bank could claim the interest that accrued to it in terms of the instrument of loan being the letter of hypothecation dated 1.1.79, which provides that as per the said instrument the bank will be entitled to claim interest upto the date of payment.

3. Mr. H.M. Dutt the learned counsel appearing on behalf of the appellant bank placed various sections of the said Act and submitted that the term "loan" as used in Category 2 of Part-I of the Second Schedule of the said Act included loan along with interest thereon. That the word "loan" and/or the word "secured loan" included interest payable in accordance with the agreement of loan could hardly be disputed under ordinary circumstances. When there is a question of repayment of any liability, on account of any loan arises, it naturally would include the interest payable on such loan. However, so far as this statute is concerned, this is a statute which has been given overriding effect by virtue of Section 24 of the said Act. The said section reads as follows :-

"The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law, other than this Act, or in any decree or order of any Court, tribunal or other authority."

4. The effect of the said section is that the Act overrides any instrument having effect by virtue of any law other than the said Act or even any decree or order of any Court, tribunal or other authorities.

5. Section 5(1) and 5(2) of the said Act provide as follows :-

"5(1)-Every liability, other than the liability specified in sub-section(2), of a jute company in respect of any period prior to the appointed day, shall be the liability of that company and shall be enforceable against it, and not against the Central Government, or, when the undertakings of the jute company vest in the Jute Manufacturers Corporation, against that Corporation.

5(2)-Any liability arising in respect of loans advanced by the Central Government or any State Government, or both, to a jute company (together with interest due thereon) after the management of the undertakings of the said jute company had been taken over by the Central Government shall, on and from the appointed day, be the liability of the Central Government and shall be discharged by that Government or by the Jute Manufacturers Corporation as and when repayment of such loans becomes due and payable."

6. The said Section 5(1) provides that every liability of a Jute Company other than those specified in sub-section (2) of Section 5 in respect of any period prior to the appointed day shall be the liability of the company and shall be enforceable against it and not against Central Government or the Jute Manufacturers Corporation. It is to be noted that on and from the 20.12.80 all the assets of the said company were taken over by the Central Government. A provision is made in this Act with regard to the liabilities of the Jute Company in respect of any period prior to the appointed day and those liabilities shall be the liability of the Jute Company. It follows from the said provision, that the Jute Company will not be liable, in respect of any period subsequent to the appointed day and the amount that was payable by the Central Government to the Jute Company as on the appointed day in terms of the said Act was to be deposited in a deposit account opened by the Central Government in favour of the Commissioner. All the claims were to be filed before the Commissioner u/s 17 of the said Act. The claims against the Jute Co. which could be filed before the Commissioner of Payment could be the claims for which the liability is of the Jute Co. u/s 5(1) of the said Act. The liability for interest accrues from month to month or from year to year as may be agreed between the parties or under law. Since the liability of the Jute Co. in respect of the period prior to the appointed day is to be the liability of the Jute Co. as per the said Section 5(1) then naturally it follows that the liability for subsequent period is not the liability of the jute company. In my opinion, the Jute Co. cannot be foisted with liability for subsequent period which falls after the appointed day. Let us take an example for this purpose. Supposing the Jute Co. had taken on rent a particular premises, the rent for the period upto the appointed day is liability of the Jute Co. and the rent subsequent to the appointed day will be liability of the person taking over the assets. Similar is the case with regard to the loans. It is to be noted that all the assets including cash, book debts etc. had all been taken over by the Central Govt. The assets which were the subject-matter of security had also been taken by the Central Govt. or the National Jute Manufacturers Corpn. through the Central Government. If all the benefits of the cash or the assets into which the loan taken, was converted, was to be enjoyed by the Central Govt. for all subsequent periods on and from the appointed day then it was only in consonance with reason that the Act provided only for liabilities upto the appointed day to be payable by the Jute Company. The written agreements with the appellant stood over-ridden by the provisions of the Act. The Act provided for creation of a definite fund in the hands of the Commissioner of Payment, which was to be utilised for payment of the liabilities of the Jute Company for the period upto the appointed day. It does not appear from the provisions of the Act, that there was any valuation of the assets of the jute company or that the amount paid by the Central Govt. was by way of value or price of the assets taken over. That apart if full interest as per agreement is allowed to one type of preferential creditor and since the fund created is limited, then such interest for the period after the appointed day, could seriously affect the rights in the fund of the subsequently ranking preferential or ordinary creditors. Such intention can not be imputed to the legislation when there is no

specific provision for, subsequent interest in the statute. The only reasonable provision could be that a particular class of creditor, being entitled to any payment from out of the fund created will also be entitled to the benefit of the interest earned by the Commissioner from the amount the said portion of the amount coming into the hands of the Commissioner, However the statute does not provide so and it is not for this Court to legislate.

7. In my opinion, so far as the liability of the Jute Co. is concerned that is fixed by Section 5(1) of the said Act and that is only in respect of the period prior to the appointed day. In my opinion, the Commissioner of Payments was right in allowing the claim of the appellant on account of the principal and for interest only upto the appointed day. So far as the Jute Co. is concerned, the liability of the Jute Co. in terms of the statute, payable from out of the fund created could only be for the loan and the interest upto the appointed day. I do not express any opinion as to whether or if at all the appellant is entitled to pursue its claim for subsequent interest after the appointed day against the Central Govt. or the Jute Manufacturers Corporation, who took over all the assets of the jute mill company, or from any other funds or assets of the jute Company other than the funds in the hands of the Commissioner of Payments and the said questions are left open.

This appeal, therefore, fails and the same is dismissed.