

(2011) 06 CAL CK 0031

Calcutta High Court

Case No: A.C.O. No 127 of 2010 and A.P.O.T. No. 466 of 2010

Assambrook Ltd.

APPELLANT

Vs

Manju Devi Singhanian and
Others

RESPONDENT

Date of Decision: June 21, 2011

Acts Referred:

- Companies Act, 1956 - Section 58A, 58A(9)

Citation: (2011) 5 CHN 628 : (2011) 166 CompCas 7

Hon'ble Judges: I.P. Mukerji, J

Bench: Single Bench

Advocate: R. Bhattacharyya, U.S. Menon and Rajeev Kumar Jain, for the Appellant; S.N. Mookherjee, Ratnanko Banerjee, T. Aich and D. Mitra, for the Respondent

Judgement

I.P. Mukerji J.

1. Section 58A of the Companies Act, 1956 is with regard to deposits that may be invited or accepted by a company. Section 58A(9) has become important in this appeal. It provides that if a company fails to repay any deposit or any part of it, the Company Law Board may order repayment on terms set by it upon an application being made to it, inter alia, by a depositor.

2. The appellant is one such company which invited public deposits and was, without dispute, unable to repay them. Several depositors filed applications before the Company Law Board u/s 58A(9) of the Act seeking repayment. The Company Law Board disposed of all these applications by a common order on September 24, 2002, inter alia, directing the company to make repayment of all deposits on the terms mentioned in the order with interest at 10 per cent. per annum "beyond the date of maturity".

3. The appellant-company made another application to the Company Law Board for extension of the time period fixed by the order dated September 24, 2002, to make repayment of the deposits. The company said that according to the order dated September 24, 2002, it had paid Rs. 85 lakhs. Rs. 1.81 crores was to be paid. As the conditions in the tea industry were adverse, it had suffered loss around that period of time. Time may be extended till March, 2008 to repay the deposits. The Company Law Board did not grant time till March, 2008 but did so till 2007, by its order dated January 31, 2005.

4. Another application was made before the Board by the appellant-company for further extension of time. That application came up for hearing before the Board on June 12, 2008. The Board noted that the company had repaid by then a sum of Rs. 1.62 crores. The balance to be repaid as noted by the Board was Rs. 1.04 crores. The appellant-company urged the selfsame point before the Board that there was recession in the tea industry and that time should be extended. The Board by this order dated June 30, 2008, extended the time till May 31, 2009, for payment of the entire outstanding amount. However, it clarified that the rate of interest would continue to be the same.

5. An application was made before the Board by the respondent depositors which was heard by the Board on February 12, 2009. The applicants before the Board were the legal heirs of Som Prakash Singhania who died on January 5, 2009. Som Prakash Singhania was a depositor with the appellant-company. It appears that the appellant-company raised some objections in making payment to the respondents on the ground that they were unable to produce the required succession documents.

6. On February 12, 2009, the Board passed an order providing for the deposits to be paid to the respondents provided they produced indemnity bonds and affidavits. The payment was to be made in terms of the order dated June 30, 2008. Now, this order of June 30, retained the payment of interest at 10 per cent. per annum.

7. This order was appealed against by the company, in this court. The appeal was numbered as A.C.O. No. 29 of 2009 and A.P.O.T. No. 141 of 2009. The appeal was dismissed by an order made on May 12, 2009, by brother Maharaj Sinha J., I read the material part of the order :

... Having considered the order in question, I am of the opinion that the order of the Company Law Board should not be interfered with as the same has not affected or rather does not affect the interests of the appellant to any extent whatsoever. Merely because the Board did not ask for the production of a succession certificate it cannot possibly be said that it affects the interests of the appellant as the appellant will implement the order of the Board as the order of the Board and, therefore, the interests of the appellant are fully protected by the said order itself.

Thus the appeal is dismissed.

There will be no order as to costs.

8. All the disputes now between the parties are with regard to another application filed by the appellant-company before the Board itself, was heard on April 23, 2009. The respondent-depositors submit that this application was entertained by the Company Law Board without any notice to them. This could not be disputed by the appellant-company. In that application an order was passed on May 18, 2009 by the Board reducing the rate of interest from 10 per cent. to 7 per cent. per annum.

9. Mr. S.N. Mookerjee, the learned senior advocate for the respondent-depositors brings in the doctrine of merger at this point of time. He cites the case of [Gojer Bros. \(Pvt.\) Ltd. Vs. Shri Ratan Lal Singh](#), He relies on paragraphs 16, 17 and 18 of the report which are reproduced below (page 1384) :

16. An application of this very principle yields the result that if the court of appeal confirms, varies or reverses the decree of the lower court, the decree of the appellate court is the only decree that can be amended *Brij Narain v. Tejbai Bikram Bahadur* (1910) 37 Ind. App 70 (PC), or that the limitation for executing a decree runs from the date of the decree capable of execution and that is the decree of the appellate court which supersedes that of the court of AIR 1926 93 (Privy Council) or that if mesne profits are ordered from the date of suit until the expiry of three years after the date of the decree, the decree to be considered is the decree capable of execution so that if the decree of the trial court is confirmed in appeal three years will begin to run from the date of the appellate decree *Bhup Index Bahadur v. Bijai Bahadur* (1900) 27 Ind. App 209 (PC).

17. The decree, therefore, which section 17D empowers the court to set aside is the decree which is capable of execution which, in this case, is the decree passed by the High Court on January 8, 1969.

18. The fundamental reason of the rule that where there has been an appeal, the decree to be executed is the decree of the appellate court is that in such cases the decree of the trial court is merged in the decree of the appellate court. In course of time, this concept which was originally restricted to appellate decrees on the ground that an appeal is a continuation of the suit, came to be gradually extended to other proceedings like revisions and even to proceedings before quasi-judicial and executive authorities.

10. The ratio of this decision was truly applicable to this case, it was submitted on behalf of the respondents. The appeal was dismissed with some observations made by this hon"ble court. So it could be truly said that the orders of the Company Law Board dated June 30, 2008 and February 12, 2009, merged with the order of this court dated May 12, 2009.

11. The benefit which learned counsel for the respondents seeks to derive from this order is this. There is a stipulation in the order dated June 30, 2008, that the interest

rate would continue to be 10 per cent., inter alia, in terms of which the order dated February 12, 2009, was made. These stipulations necessarily merged with the order of our court dated May 12, 2009.

12. Now, comes the core of the dispute. The respondents made an application before the Company Law Board being C. A. No. 116 (634A) of 2009 for enforcement of the said order dated February 12, 2009.

13. The respondents make the following submissions. The Company Law Board had no jurisdiction to make the order dated May 18, 2009, reducing the rate of interest to 7 per cent. without giving notice to them. Secondly, that order was a nullity because it was subsequent to the order of this court dated May 12, 2009 and in variance of it. In these circumstances the rate could not be reduced to 7 per cent. The Company Law Board by its order dated June 30, 2010 (Manju Devi Singhania v. Assambrook Ltd. (2011) 161 Comp Cas 24), allowed the application of the respondents by ordering execution.

14. The company has preferred the instant appeal from that order.

15. The grounds taken by the appellant-company to oppose the application before the Company Law Board as is available in the impugned order dated June 30, 2010, were these. The Board by its order dated May 18, 2009, reduced the rate of interest to 7 per cent. and that the appellant-company was obliged to pay interest accordingly. That order was subject to the condition that the fixed deposit receipts had to be surrendered in accordance with the terms of deposit. Otherwise the appellant-company was not obliged to pay any amount. Succession certificate was required to be filed by the respondents. An additional ground was taken in this appeal that interest in terms of the orders of the Company Law Board would accrue only from the date of filing of the above documents.

16. It was also submitted that calculating interest at 7 per cent. per annum and from the date of submission of the above documents, the entire amount payable was paid to the respondents.

Discussion and findings

17. The order of the Company Law Board made on February 12, 2009, said that the deposits had to be repaid according to its order dated June 30, 2008. That order stipulated interest at 10 per cent. per annum from the date of maturity of the deposits. The order dated February 12, 2009, also provided that the deposits had to be repaid on the strength of indemnity bonds and affidavits filed by the respondents. The above appeal against that order was dismissed by this court by its order dated May 12, 2009.

18. I am plainly of the view that there was merger of the order dated February 12, 2009, of the Company Law Board with the order in appeal dated May 12, 2009, of this High Court following the principles laid down in [Gojer Bros. \(Pvt.\) Ltd. Vs. Shri](#)

[Ratan Lal Singh](#), Since there was no challenge to the order of the High Court, the order of the Company Law Board attained finally.

19. Now, if that order of the Company Law Board dated February 12, 2009, read with the order dated June 30, 2008, attained finality, the Board had no jurisdiction to pass the subsequent order on May 18, 2009, varying the terms of those orders. This is true irrespective of the fact whether the respondents were noticed while passing the order dated May 18, 2009. The impugned order of the Company Law Board dated June 30, 2010, refusing to follow the order dated May 18, 2009, was according to law. By those orders which attained finality, the appellant-company was to repay the deposits at 10 per cent. per annum from the date of maturity upon acceptance of indemnity bonds, affidavits, etc. There was no scope for any contention that interest was to be paid at a lesser rate or from a later point of time or upon furnishing of succession certificate, surrender of fixed deposit receipts and so on. Those issues were no longer res integra. Therefore, the Company Law Board by its impugned order rightly came to the conclusion that the deposits had to be repaid strictly according to the orders of the Board dated June 30, 2008 and February 12, 2009.

20. Therefore, I find no infirmity in the impugned order of the Company Law Board dated June 30, 2010. Considering the submissions on behalf of the appellant-company, I only suspend its operation for a period of two years to enable it to repay the above deposits together with interest to the respondents in 24 equal monthly instalments commencing from July, 2011 and payable by the 10th of the month. As payments are made, interest will be calculated on reducing the balance principal. In default of payment of any one instalment, the impugned order of the Company Law Board will become operational, on appropriate leave being granted by the Company Law Board and may be executed forthwith. I make it absolutely clear that interest will continue to run at 10 per cent. per annum simple interest from the date of maturity of the deposits until the entire dues are paid off.

21. The existing bank guarantee will be kept renewed by the appellant-company and will abide by the orders to be passed by the Company Law Board in this behalf.

22. This appeal is, accordingly, disposed of. Any stay application, if not disposed of, is also disposed of in terms of this order.

23. Learned counsel for the appellant prays for stay of operation of this order. Such prayer is considered and refused.

24. Urgent certified photocopy of this judgment and order, if applied for, to be provided upon complying with all formalities.