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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision : 29th September, 2011

+ CO.APP. 6/2011

SICOM

..... Appellant

Through: Mr.Jay Savla with Ms.Meenakshi
Ogra and Ms.Kanika Sharma,
Advocates

versus

CEYLON BISCUITS LTD & ORS. Respondents

Through: Mr.C.A.Sundaram, Senior Advocate
With Mr.P.C.Sen, Advocate for R-1
Mr.Abhinit Das, Advocate for R-4

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SUNIL GAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. SICOM Limited is aggrieved by the order dated 20.12.2010 passed by the learned Company Judge disposing of CA No.900/2008, CA No.1767/2010 and CA No.495/2010 filed by Ceylon Biscuits Ltd.; the erstwhile management of the company in liquidation i.e. Bakemans Industries Pvt. Ltd. and the Official Liquidator respectively.

2. The grievance is to the directions issued requiring financial institutions to refund ₹8.5 crores to Ceylon Biscuits

Ltd. which has been simultaneously directed to reinstall line 5 and 6 and other equipments removed by it from the property which was sold in execution; being the property of Bakemans Industries Pvt. Ltd. The learned Company Judge has also held that Ceylon Biscuits Ltd. would be entitled to interest @5% per annum on the sum of ₹12.5 crores for the period specified in the order impugned i.e. from 15.9.2008 till the amount is refunded.

3. As observed by the learned Company Judge, in para 16 of the order impugned, the Company Judge had passed the order to implement directions issued in paras 77 to 81 of the decision reported as (2008) 15 SCC 1 Bakemans Industries Pvt. Ltd. Vs. New Cawnpore Flour Mills & Ors.

4. Relevant facts to be noted by us would be that Bakemans Industries Pvt. Ltd. defaulted in making payments to its creditors, a few of which were secured creditors, and in respect whereof an Award dated 16.8.2003 came to be passed against the company which was put into execution. When said execution proceedings were pending various creditors filed petitions seeking winding up of Bakemans Industries Pvt. Ltd. In CP.No.2004/2003 filed by New Cawnpore Flour Mills an order was passed on 6.4.2004 admitting the petitions seeking winding up of Bakemans Industries Pvt. Ltd. Citations were directed to be issued. Official Liquidator attached to the Delhi High Court was appointed as the Provisional Liquidator to take over the assets, properties and books of accounts of the company in liquidation. In the execution proceedings to enforce the Award dated 16.8.2003, bids were invited for sale of the plant and machinery of the company in liquidation and the highest bid in sum of ₹12.5 crores made by Ceylon Biscuits

Ltd. was accepted by the learned Company Judge on 17.7.2004. Appeals filed before a Division Bench of this Court came to be dismissed. Leave to Appeal was granted by the Supreme Court. There being no stay, on 3.3.2005 Ceylon Biscuits Ltd. was handed over possession of the auctioned property but on a clear understanding that the same would be subject to such orders as may be passed by the Supreme Court. On 6.7.2007 the learned Company Judge passed an order directing that a Sale Certificate be issued incorporating therein that the certificate is subject to orders which may be passed by the Supreme Court. On 29.10.2007, the Sale Certificate was issued.

5. Ceylon Biscuits Ltd. which had taken over possession of the auctioned property on 3.3.2005 spent money to commission the plant and machinery and claims that as per report of the statutory auditors it had spent ₹1.18 crores to commission the plant and machinery. It claimed losses in operating the plant.

6. Vide decision dated 15.9.2008, reported as per citation in para 3 above, the Supreme Court set aside the auction and held that till the property was re-auctioned, Ceylon Biscuits Ltd. would be in possession of the property sold not as an auction purchaser but as a receiver. With respect to ₹12.5 crores paid by Ceylon Biscuits Ltd. while purchasing the assets of the company in liquidation the Supreme Court left the matter open to be decided by the learned Company Judge and suffice would it be to highlight that in para 81 of its decision the Supreme Court categorically held that all options would be available before the learned Company Judge in terms of the provisions of the Companies

Act including adjustment of equities amongst the parties while passing further orders.

7. Evincing no interest to participate in the fresh auction proceedings, Ceylon Biscuits Ltd. stopped operations immediately after the Supreme Court pronounced its decision and requires ₹12.5 crores paid by it as auction purchaser to be refunded. Needless to state said amount has to be refunded, but upon the company bringing back and reinstalling line No.5 and 6 in the factory, for the reason after it had been handed over possession of the assets which were sold, Ceylon Biscuits Ltd. had removed 2 lines and had shipped the same to Sri Lanka.

8. The problem faced by the company is that till it gets back its money and repatriates the same to Sri Lanka, the Government there would not permit it to re-export the 2 lines which the company had imported into Sri Lanka. Obviously, equities had to be worked out. It was a catch-22 situation. Compelling the company to bring back the plant and machinery without refunding any money to it was creating a problem inasmuch as Ceylon Biscuits Ltd. had no finances. On the other hand, if bid amount was directed to be refunded, where was the guarantee that Ceylon Biscuits Ltd. which had no other assets in India would bring back the 2 lines or alternatively recompense the company in liquidation.

9. It not being in dispute that the value of the 2 lines removed to Sri Lanka is not more than ₹4 crores, the learned Company Judge has rightly retained said sum and has directed only ₹8.5 crores to be refunded.

10. Indeed, the appellant can have no grievance for ₹8.5 crores to be refunded forthwith and balance ₹4 crores when

the 2 lines are brought back and reinstalled to the satisfaction of the learned Company Judge. We highlight that the Supreme Court had observed that as a result of the sale being set aside, pertaining to the bid amount the learned Company Judge can pass orders taking into account equities.

11. The only issue seriously argued before us is the direction to pay interest on ₹12.5 crores.

12. We note that the learned Company Judge has declined any interest till 15.9.2008 and has given good reasons to deny the same. The reason is that Ceylon Biscuits Ltd. had used the asset sold.

13. Interest has been paid @5% per annum on the entire sum by working out equities. The equities are that Ceylon Biscuits Ltd. was out of pocket in sum of ₹12.5 crores and the financial institutions were the beneficiary of the said amount. Initially the amount was kept in a fixed deposit and later on part of it was paid over to the secured creditors, who have now to refund the same. The learned Single Judge, though not expressly having so stated, has taken into account that if interest were to be denied on sum of ₹4 crores which equal the value of the 2 lines which were removed to Sri Lanka, a higher rate of interest could be granted on the sum of ₹8.5 crores.

14. Let us highlight. If interest, which appellant concedes is payable to Ceylon Biscuits Ltd. on the sum of ₹8.5 crores is to be awarded at a reasonable rate, the same cannot be less than 8% per annum, for the reason during the relevant period nationalized banks were offering said rate of interest on fixed deposits. Thus, @8% per annum on the sum of ₹8.5 crores, the interest would come to ₹68,00,000/- per annum. Interest @5% per annum on the sum of ₹12.5 crores comes to

₹62,50,000/-.

15. Thus, we find no infirmity in the impugned order vis-à-vis the grievance of the appellant pertaining to the directions issued qua the auction purchaser.

16. At this stage we may note that ₹8.5 crores has since been refunded and we take on record the assurance on behalf of Ceylon Biscuits Ltd. that within 8 weeks the 2 lines would be brought back and reinstalled in the factory since Ceylon Biscuits Ltd. has now repatriated the money to Sri Lanka and is in a position to bring back the 2 lines.

17. Pertaining to the directions issued in para 44 of the impugned decision qua the benefit to the company in liquidation we see no reason to differ with the learned Single Judge that the benefit of the differential rate of interest would be to the benefit of the company in liquidation. The reason is obvious. The financial institutions had got with them the sale proceeds and since they were paying interest only @5% per annum to the auction purchaser, vis-à-vis the agreed rate of interest on which the loans were secured, the financial institutions were only entitled to their pound of flesh but without any blood.

18. The appeal is dismissed.

19. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(SUNIL GAUR)
JUDGE

SEPTEMBER 29, 2011
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