

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: 17th February, 2011*
Judgment Delivered on: 7th March, 2011

+ **W.P.(C) 852/2011**

SAND PLAST (INDIA) LTD. Petitioner
Through: Mr.Abhinav Vashisht, Senior Advocate
with Mr.Dheeraj Malhotra and
Mr.Sanyam Saxena, Advocates.

versus

PUNJAB NATIONAL BANK & ANR. Respondents
Through: Mr.M.U.Khan, Advocate for R-1.
Mr.Ashok Jain & Mr.Amit Kasera,
Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

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. The writ petitioner, M/s.Sand Plast (India) Ltd. has challenged the order dated 24.1.2011 passed by the Debt Recovery Appellate Tribunal in Misc.Appeal No.137/2010, in which Appeal order dated 9.3.2010 passed by the Debt Recovery Tribunal was challenged.

2. Order dated 9.3.2010, is an interim order passed by the Debt Recovery Tribunal in an appeal filed by the petitioner under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (hereinafter referred to as 'Act No.54 of 2002'), in which appeal challenge is to action initiated by PNB as per notice dated 11.1.2008 to proceed under Section 13 of Act No.54 of 2002. By and under the order dated 9.3.2010 the Debt Recovery Tribunal has prima facie recorded that the recovery of the dues by the two secured creditors before it i.e. PNB and HUDCO approximates about ₹70 crores and that even the petitioner was admitting liability approximating about ₹10 crores. It has thus been directed that the petitioner would pay ₹5 crores each to PNB and HUDCO by 31st March 2010 and thereafter would deposit ₹50 lakhs per month with PNB and HUDCO as a condition of the stay of the notices issued by PNB under Section 13 of Act No.54 of 2002. The order in appeal has resulted in partial success to the petitioner. The condition of ₹50 lakhs per month being deposited with PNB and HUDCO has been waived. The requirement to deposit ₹5 crores each with PNB and HUDCO has been maintained.

3. Relevant facts are that the petitioner company availed a term loan from HUDCO in sum of about ₹3.95 crores in the year 1990 and availed a credit of ₹1.09 crores from PNB in the year 1992. Right from the inception, the petitioner company defaulted and by 31.3.1994 debts were classified in the category of 'Non Performing Assets'. On 22.4.1994 PNB recalled the credit and by said date amount due to PNB was approximately ₹2.45 crores. HUDCO recalled the credit on 5.9.1994 and by said date the amount due to it was approximately ₹5.88 crores.

4. In the year 1995, PNB initiated action for recovery of its dues by moving an Original Application before the Debt Recovery Tribunal under the Recovery of Debts Due to Banks and Financial W.P.(C) No.852/2011

Institutions Act 1993 and laid a claim to a decree in its favour in sum of ₹2.94 crores with pendente-lite interest as per the agreement between the parties. HUDCO initiated similar action before the Debt Recovery Tribunal in the year 1997 and sought a decree in sum of ₹8.51 crores together with pendente lite interest as per the agreement between the parties.

5. Unfortunately, the two proceedings initiated in the year 1995 and 1997 respectively remained pending for over a decade, when in the year 2008, as noted herein above, PNB took resort to an action under Section 13 of Act No.54 of 2002.

6. In between, the petitioner company took recourse remedy under the Sick Industrial Companies (Special Provisions) Act 1985. On 14.11.2002 the petitioner was declared a Sick Industrial Company and PNB was appointed as an Operating Agency.

7. It is unfortunate that proceedings under Sick Industrial Companies (Special Provisions) Act 1985, which commenced in the year 2001 have meandered aimlessly and till date we do not have either an order sanctioning a scheme for the rehabilitation of the petitioner, nor do we have an order requiring the company to be wound up.

8. We wonder whether Tribunalization and constitution of specialized Tribunals has served any purpose? But since the issue before us is not to render an opinion on the efficacy of Tribunalization, we leave the question unanswered.

9. Reverting to the facts, it may be noted that a memorandum of understanding was arrived at on 12.12.2004 between the existing promoters of the petitioner company and two persons named Dr.Ram S.Garg and Mr.Rajesh Gupta, as per which the latter two, agreed to bring in ₹8 crores to prop up the petitioner and bring it on rails. For reasons best known to these two gentlemen and the existing promoters of the company, these two gentlemen shrouded the MOU with the cloak of secrecy and

never brought forth the same before any forum i.e. neither before DRT nor before BIFR. Its existence was not even brought to the notice of the creditors.

10. What was being brewed under cover of the MOU between the existing promoters and these two gentlemen is not known to us and indeed would never see the light of the day, but apparently the existing promoters and these two gentlemen fell foul and we are informed that the two groups are in inter-se litigation. It was only in the year 2007 that before BIFR, the new promoters were recognized as having a stake in the matter.

11. The credits had become sticky. The assets securing the credits had apparently fallen in value. It made sense for the secured creditors to seek a one-time settlement, and which PNB did when on 1.8.2007 it accepted petitioner's one-time settlement proposal to receive ₹2.75 crores in full and final settlement of its dues, payable in instalments as per schedule set out in the letter of acceptance dated 1.8.2007. Suffice would it be to state the petitioner defaulted and did not even deposit the sum of ₹15 lakhs required to be deposited within 15 days of acceptance of the proposal; the first instalment as also the second in sum of ₹31.25 lakhs were not paid.

12. It can thus safely be said that by offering to settle the claim of PNB, the petitioner had accepted liability in sum of ₹2.75 crores. Qua PNB it cannot be said that it accepted its entitlement limited to ₹2.75 crores, for the reason PNB was giving a concession and the sum agreed to be accepted by it was the discounted value of the debt due to it. On 9.10.2007, intimating defaults committed by the petitioner the one-time settlement accepted by PNB was withdrawn.

13. It was under these circumstances PNB proceeded under Section 13 of Act No.54 of 2002.

14. Three issues were raised before us during arguments in the writ petition. It was firstly urged that the mortgage of the

immovable property of the petitioner, which asset is being proceeded against under Section 13 of Act No.54 of 2002 was created in the year 1992 in favour of PNB as the second charge-holder and the first charge in favour of HUDCO was created in the year 1990 and hence the action initiated by PNB under Section 13 in the year 2008 was barred by limitation. It was highlighted that the action was initiated beyond 12 years of the mortgage i.e. beyond the period prescribed as per the law of limitation.

15. The argument has prima facie no force and no legs to stand on, for the obvious reason, PNB took recourse to action for recovery of the debt by moving the Debt Recovery Tribunal in the year 1995 and HUDCO followed in the year 1997. The cause of action had accrued to PNB on 22.4.1994 when the credit was recalled, and to HUDCO on 5.9.1994, when the credit was recalled by HUDCO. The right was enforced well within limitation by filing Original Applications before the Debt Recovery Tribunal well within three years of the facility being recalled and prima facie the question of the debts being time barred would not arise; nor would the enforceability of the right under Section 13 of Act No.54 of 2002.

16. It has to be noted that the issue pertaining to a secured asset being proceeded against by a secured creditor under Act No.54 of 2002 during pendency of proceedings under the Recovery of Debts Due to Banks and Financial Institutions Act 1993 was a subject matter of consideration before the Supreme Court in various appeals filed in the year 2006 against decisions of the Madras High Court pronounced in the year 2005 and the issue attained finality when the decision reported as 2008 (1) SCC 125 Transcor vs. UOI & Anr. was pronounced. View taken was that a secured creditor had an independent remedy under Act No.54 of 2002. Thus, none can blame PNB and HUDCO not to proceed under Act No.54 of 2002 till the year 2008.

17. Prima facie, it has to be held that the proceedings initiated by PNB are within limitation and we express no conclusive opinion on the point for the reason, a final decision on the said issue has to be taken by the DRT and we do not intend to speak a language which is conclusive of the issue, lest we are accused of opining finally while exercising a jurisdiction which is to settle an interim situation.

18. The second plea urged was that proceedings under the Sick Industrial Companies (Special Provisions) Act 1985 are still pending and if the secured asset is permitted to be sold, the right of the petitioner company under Sick Industrial Companies (Special Provisions) Act 1985 would be rendered otiose.

19. The plea takes us nowhere for the simple reason it is settled law that secured creditors representing more than 75% of the secured debt can take recourse to Section 13 of Act No.54 of 2002 notwithstanding any proceeding pending before BIFR.

20. Third plea urged was that there was no material to prima-facie establish that PNB had the consent of HUDCO to proceed under Section 13 of Act No.54 of 2002 and since the debt due to PNB was not representing 3/4th in value of the secured debt, action initiated by PNB was void.

21. We note that this issue has yet to be decided by the DRT, but would note that as per HUDCO, it had granted the necessary consent.

22. It is settled law that an appeal under Section 17 of Act No.54 of 2002 by a party aggrieved against a measure taken by a secured creditor under Section 13(4) of the said Act, inheres in DRT power to pass interim directions and the Tribunal would be empowered to pass such orders as it may consider appropriate and necessary in relation to the recourse taken by the secured creditors under sub-section 4 of Section 13 of the Act. This power of the Tribunal to pass interlocutory orders is no longer res integra and is well settled by the decision of the Supreme Court

reported as 2004 (4) SCC 311 Mardia Chemicals Ltd. vs. UOI wherein the Supreme Court observed that the Tribunal in exercise of its ancillary powers shall have jurisdiction to pass any stay/interim order subject to such condition as it may deem fit and proper to impose. Needless to state, appeal filed to the DRAT under Section 18 of Act No.54 of 2002 would include an appeal against an interim order passed by DRT and the Appellate Tribunal would likewise have, in exercise of its ancillary powers, the jurisdiction to pass such interim orders and subject to such conditions as it may deem fit and proper to impose.

23. We find that the DRT has exercised an interim jurisdiction and the same has been premised on a consideration of prima facie facts and so has been done by the Appellate Tribunal.

24. The main fulcrum of the issue debated was on the issue of limitation and prima facie the view has to be in favour of PNB. The other jurisdictional plea of PNB not having the requisite authority in the absence of a consent by HUDCO is prima facie negated in view of the stand taken by HUDCO and considering the claim of PNB and HUDCO, which as per the original agreements would today be in the vicinity of ₹70 crores, we see no scope to interdict the interim measure directed by the DRAT of maintaining status quo but upon the condition of the petitioner depositing ₹5 crores each with PNB and HUDCO. Suffice would it be to state that the discretion has been exercised within the ambit of the discretionary power and our job under Article 226 of the Constitution of India is limited to ensure that the procedure prescribed by the Tribunal was adhered to and that the Tribunal has confined itself within the bounds of its jurisdiction. Merits of the decision has not to be gone into by us.

25. While dismissing the writ petition we extend time for the petitioner to comply with the directions issued by DRAT and for which we fix the date 30th April 2011 as the last date by which

petitioner should comply with the interim directions issued by
DRAT.

26. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

MARCH 07, 2010
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