

THE HONB'E SRI JUSTICE CHALLA KODANDARAM

COMPANY APPLICATION No.744 OF 2010

ORDER:

The Company Application is filed praying the Court to recall the order dated 22.04.2010 passed by this Court in Company Petition No.74 of 2006.

The respondent company became a sick company within the meaning of the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 (for short, "the Act") and the Board for Industrial and Financial Reconstruction by order dated 11.06.2002 recommended winding up of the respondent company. During the pendency of the Company Petition before this Court, the respondent company proposed a scheme of compromise with its creditors both secured and unsecured by filing C.P.No.74 of 2006. The said C.P was allowed by this Court by an order dated 22.04.2010 approving the scheme of arrangement. The present Company Application No.744 of 2010 is filed invoking the Order 9 Rule 9 of Company Courts Rules and praying the Court to recall the order dated 22.04.2010 and review the same and modify the operative portion of the order by directing the respondent company to pay the interest at P.L.R rate of the respective banks on the one time settlement amount from 01.04.2007 till the date of full and final payment.

Pending disposal of Company Application No.744 of 2006, this Court vide its order dated 31.07.2015, passed an interim order noting the offer made by the respondent company for payment of Rs.30,00,000/- as a measure of full and final settlement of all pending disputes with the applicant banks.

Sri Deepak Bhattacharjee, learned counsel appearing for the applicant banks while drawing the attention of this Court to the consortium meeting dated 10.02.2010, submits that the respondent company had accepted to pay the interest at 11% p.a on the compromise amount if the O.T.S amount is not paid within a period of three months from the date of conveying the sanction by all the banks. He also points out that the Chairman and Managing Director of the Company had also stated in the consortium meeting to pay interest from 1.4.2007 if their application on the scheme of arrangement is not disposed of by this Court by 31.03.2007. Inasmuch as the scheme came to be approved only on 22.04.2010, the respondent company is liable to pay interest in terms of the agreement which the Managing Director had undertaken in the consortium meeting. He also drew the attention of this Court to the order dated 22.04.2010 passed by this Court in C.P.No.74 of 2006, wherein the learned counsel for the respondent company had submitted that a sum of Rs.355.76 lakhs has been paid and a sum of Rs.44.39 lakhs was due and payable together with interest thereon. In other words, it is submitted by the learned counsel for the applicant-Banks that the operative portion of the order had recognized the fact that the respondent company is liable to pay the interest and agreed to pay the interest on Rs.44.39 lakhs which was due and payable as on the date of the order passed by this Court.

On the other hand, learned counsel for the respondent company submits that taking into consideration of the application filed by the petitioner, as a matter of abundant caution, the respondent company had come forward to make the payment of Rs.30,00,000/- which was

received by the applicant banks though, as a matter of fact, in terms of the impugned order of this Court sanctioning the scheme, there was no liability on the part of the respondent company. On instructions, the learned counsel also further submits that as the payment was made voluntarily, his client is not interested in making any claim against the applicant banks with respect to the amount of Rs.30.00 lakhs which has been paid pending disposal of the Company Application No.744 of 2010.

Having considered the respective submissions, the question which falls for consideration as to whether the order dated 22.04.2010 is liable to be recalled and as to whether there is any error on the face of record warranting review of the impugned order.

The facts are not in dispute. The compromise scheme was proposed by the respondent company invoking the provisions of Sections 391 and 394 of the Companies Act wherein the respondent company offered to compromise by way of a settlement to settle the dues and this compromise application was made in the year 2006 and for various reasons, the same came to be dismissed in the year 2010. In the interregnum period without waiting for the final orders to be passed in the Company Petition and without waiting for the sanction of the scheme by this Court, as a matter of fact, the respondent company had paid a sum of Rs.355.76 lakhs leaving a balance of Rs.44.39 lakhs. Finally, this Court sanctioned the scheme on 22.04.2010. Clause 3.02 of the scheme reads as under:

“3.02 Upon the sanctioning of the Scheme, the amounts to be paid to the respective Banks shall be in terms of this Scheme of Arrangement. The Company shall pay interest @ 11% p.a on the balance amount

to be paid till the date of final payment in case the payment is not within three months from the date of approval of the scheme by this Court. However, the overall time for payment of compromise amount together with interest shall not exceed six months from the date of approval of the scheme by this Court.”

In terms of the proposed scheme, the company proposed to pay the dues to its creditors in three months time from the date of sanctioning of the scheme. If the payment is not made within a period of three months from the date of sanctioning of the scheme, the respondent company is liable to pay the interest at 11% p.a. If it is beyond the period of eleven months, the entire compromise amount shall be paid with interest within outer limit of eleven months from the date of approval of the scheme by this Court. It is not in dispute that even by the time of sanctioning of the scheme an amount of Rs.355.76 lakhs was already paid leaving a sum of Rs.44.39 lakhs to be paid. This Court taking into consideration of that aspect has directed the balance amount of Rs.44.39 lakhs to be paid on or before 15.06.2010. It is not in dispute that the respondent company had complied with the said direction. However, the scheme came to be approved as proposed by the respondent company by this Court by its order dated 22.04.2010. Technically even assuming for argument sake in consortium meeting, it was agreed on behalf of the respondent company to pay interest at 11% p.a on account of the fact that the scheme which was propounded by the respondent company sanctioned by the Court finally what remained is only an approved scheme. It is not that the applicant had invoked the Section 392(2) of the Act on the ground that the scheme had become unworkable or the scheme is not being adhered to by the respondent company. Coupled

with the fact that there being no application seeking modification of the scheme as sanctioned by this Court it is also may be noted that this Court taking into consideration of the submissions made across the Bar had granted time for payment of the balance amount of Rs.44.39 lakhs for which interest is being sought in the present application, as a matter of fact, was also paid by 15.6.2010.

So far as the amount of Rs.30.00 lakhs which has been paid by the respondent company pursuant to the submissions made and recorded by this Court on 31.7.2015 is concerned, inasmuch as the same has been offered voluntarily by the respondent company as a measure of full and final settlement of all pending disputes with the applicant banks, the respondent company shall not be entitled to seek refund of the same. It may also be noted that though the amount has been paid during the pendency of the application in C.A.No.744 of 2010, the payment of the said amount would have been made outside the operation of the scheme for the reasons as set out by the learned counsel for the respondent company as a measure of full and final settlement of all the disputes with the applicant banks. Inasmuch as the order dated 22.04.2010 sanctioning the scheme does not call for any interference as there are no grounds made out by the applicant-Banks for reviewing or recalling the said order.

Accordingly, the Company Application is dismissed.

CHALLA KODANDA RAM,J

Date:21.09.2016
Gk.

THE HONB'E SRI JUSTICE CHALLA KODANDARAM



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