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

\+ W.P.(C) 9102/2015

M/S RUNEECHA TEXTILES LTD. ..... Petitioner

Through Mr.S.L.Gupta with Mr. Gaurav Khatana, Advocates

versus

UCO BANK & ORS ..... Respondents

Through Mr. Sarfaraz Khan with Mr. Khairul Hussain, Mr. Ataur Rahman, Advocates for respondent No.1/UCO Bank
Mr. Amit Kumar Singh, Adv. for respondents No.2 & 3
Mr. Simranjeet Singh, Adv. for respondent No.6

CORAM:
HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

O R D E R

% 10.02.2017

This writ petition is directed against an order dated 16.7.2015 passed by the learned Judge, Debt Recovery Appellate Tribunal, New Delhi in Misc. Appeal No. 200/2015 as also an order dated 30.4.2015 passed by the learned Debt Recovery Tribunal-II, New Delhi dismissing an application of the petitioner for recall of the order dated 19.12.2014 and the recovery certificate issued pursuant thereto.

The petitioner is a company within the meaning of the Companies Act, 1956. The petitioner company is a Public Limited

Company. It is stated that the Company is listed with the Bombay Stock Exchange as well as the Calcutta Stock Exchange. Counsel appearing on behalf of the respondent bank submits that no document have been furnished to show that the company is listed in the Bombay Stock Exchange or the Calcutta Stock Exchange.

The respondent Nos. 2 & 3 are the major shareholders of the petitioner company. The respondent Nos. 4 & 5 who appear to be sister concerns of the petitioner company also hold some shares in the petitioner company.

The respondent Nos. 2 & 3, being the shareholders of the petitioner company applied to the respondent no.1, hereinafter referred to as the respondent bank for loan of Rs. 250 lacs against the security of the shares held by respondents nos.2 & 3 in the petitioner company.

The respondents No.2 & 3 also mortgaged their property to the respondent bank by way of security for the aforesaid loan. It is stated in the petition that the respondent bank has a pari passu charge on the said properties alongwith Bank of India impleaded respondent No.6 and also SIDBI Venture Capital Limited.

It appears that the loan granted by the respondent bank to the respondent Nos. 2 & 3 was repayable in instalments. Moratoriums were from time to time granted to the petitioner.

It is not in dispute that the petitioner company is neither a borrower nor the guarantor of the loan granted by the respondent bank to the respondent Nos. 2 & 3. It is contended on behalf of the respondent bank that the loan was obtained by the respondent Nos. 2 & 3 for the benefit of the petitioner company for use as working capital. According to the petitioner company, the respondent Nos. 2 & 3 purchased shares in the petitioner company with finance obtained from the respondent bank. The shares of the respondent Nos. 2 & 3 in the petitioner company were pledged with the respondent bank.

The respondent bank initiated proceedings in the Debt Recovery Tribunal-II, Delhi for recovery of the loan. The respondent Nos. 2 & 3 as also the petitioner company and its sister concerns, namely, M/s Runeecha Fabrics Pvt. Ltd, respondent No.4 and the M/s Runeecha Polymers (P) Ltd., respondent No. 5), were impleaded as respondents in the aforesaid proceedings.

The petitioner company filed an application before the Debt Recovery Tribunal –II, for deletion of its name from the array of respondents on the contention that the petitioner company was neither a borrower nor guarantor and, therefore, not liable for repayment of the loan in any manner whatsoever.

It is argued that the petitioner company is a distinct juristic entity independent of its shareholders including the respondent Nos. 2 & 3. It is also submitted that being a public company limited by shares, the petitioner company has shareholders other than the respondent nos. 2 & 3 and the respondent Nos. 4 & 5. It was emphatically argued that the shares of the petitioner company were listed in the Bombay Stock Exchange as also the Calcutta Stock Exchange.

The application of the petitioner for deletion of its name from the array of respondents in the proceedings before the Debt Recovery Tribunal-II, New Delhi was not decided. While the proceedings were pending, there were talks between the respondent Nos. 2 & 3 being the majority shareholders of the petitioner company, who were the borrowers of the respondent bank and the respondent bank for a One

Time Settlement.

On 19.12.2014 the application of the respondent bank was listed before the Debt Recovery Tribunal, Delhi. From the order dated 19.12.2014 it appears that the respondent bank being the applicant was represented by its counsel Sh. Vimal Gupta and the respondent nos. 1, 2, 4 & 5 were represented by Sh. N.Raja, Senior Counsel. Proxy counsel appeared for the respondent no.3 i.e. the petitioner company.

Counsel appearing on behalf of the petitioner company submits that the petitioner company was unrepresented. Counsel appearing on behalf of the petitioner company submits that no proxy counsel appeared on behalf of the petitioner company and in any case the name of the proxy counsel is not recorded in the order dated 19.12.2014.

We need not go into the question of whether the petitioner company was represented by any proxy counsel or not. We have to proceed on the basis of the recordings in the order. The fact remains that the petitioner was not represented by any regular counsel engaged on behalf of the petitioner company. It appears that a submission was made on that day that OTS (One Time Settlement) had been arrived at, which was accepted by the defendants. The learned Tribunal directed that there would be a recovery certificate in terms of the OTS. The application of the respondent bank was allowed in terms of the settlement.

Soon thereafter the petitioner company made an application for recalling of the order dated 19.12.2014 in so far as the same recorded that OTS had been arrived at which was accepted by the defendants. It was contended that the petitioner company neither had no liability nor was party to the OTS and was not liable in terms of the OTS. The application was, however, rejected.

The petitioner company appealed, but the appeal was also rejected. Being aggrieved, the petitioner company filed this writ petition.

The short question involved in this writ petition is whether a recovery certificate in terms of the OTS could be issued against the petitioner company, which was neither borrower nor guarantor nor party to the OTS. The order dated 19.12.2014 impugned records that the petitioner company was not represented by any counsel engaged by the petitioner company. A proxy counsel had appeared.

It is well settled that a company is a distinct juristic person, independent of its shareholders as argued by counsel. In this case, the petitioner company is a public company limited by shares. There are shareholders other than sister concerns and the respondent Nos. 2 & 3 even though the shareholders may be in a minority.

It is true that in certain cases of mismanagement of companies, it is permissible to lift the corporate vein to find out who are the actual persons behind a company, particularly in cases of economic offences, violation of statutory provisions and the like. However, it is impermissible in law to recover the dues of an individual shareholder from a company and that too a company in which there are shareholders other than the debtors.

It is the case of the respondent bank that the loan was for the benefit of the petitioner company. However, the Debt Recovery Tribunal-II did not adjudicate the issue of the extent to which the loan was taken for the benefit of the company.

On behalf of the respondent bank, it is submitted that the entire loan was credited to the account of the company. The respondent

Nos.2 & 3 being the new promoters of the company obtained the loan for infusion of capital into working capital into the company against pledge of the shares issued to them in the company. However, as observed above, the recovery certificate has been issued to recover dues in terms of an OTS to which the petitioner company was not a party.

The question is whether recovery can be affected from the petitioner company without first attempting recovery from the borrowers i.e. respondents No.2 & 3 and without first proceeding against the pledged shares and the other assets of the respondent Nos.2 & 3 mortgaged in favour of the respondent bank.

In our view, the petitioner company not being a signatory to the OTS no recovery certificate could have been issued against the petitioner company in terms of the OTS. Recovery would have to be made from the respondent Nos.2 & 3. It would also be open to the respondent bank to deal with the pledged shares. However, after recovery from respondent Nos.2 & 3 and after realisation from the pledged shares, it may be open to the respondent bank to proceed against the petitioner company for the balance, if any.

The Appellate order dismissing appeal of the petitioner is set aside. The order dated 19.12.2014 is set aside only to the extent that it records that OTS has been arrived at by all the defendants. The recovery certificate is also set aside only to the extent that the petitioner company has been made a certificate debtor in terms thereof. A fresh certificate may be issued against the respondent Nos.2 & 3 and/or alternatively, the recovery certificate shall stand modified by deletion of the name of the petitioner company. Recovery certificate may be executed against the signatories of the OTS.

The writ petition is disposed of.

INDIRA BANERJEE, J

ANIL KUMAR CHAWLA, J

FEBRUARY 10, 2017
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