

Bharat Steel Tubes Ltd. and another

v.

Official Liquidator and Another

(Supreme Court Of India)

HON'BLE DR. JUSTICE B.S. CHAUHAN HON'BLE MR. JUSTICE J.
CHELAMESWAR

Interlocutory Application No. 6 Of 2014 In Slp(C) No. 27304 Of 2012 | 07-04-
2014

1. The first applicant Company was directed to be wound up by an order dated 14.8.2003 of the Delhi High Court in Company Petition No.55/2000 and CA Nos.1 168/2002 & 343/2003 pursuant to the recommendations¹ of the Board for Industrial & Financial Reconstruction, New Delhi.

2. By an order dated 03.09.2012 a Division Bench of the Delhi High Court upheld the order of winding-up passed by the learned Company Judge. Aggrieved by the same, Special Leave Petition (Civil) No.27304 of 2012 is carried to this Court.

3. This Court while issuing notice on 13.09.2012 directed the parties to maintain status-quo regarding the assets of the petitioner Company during the pendency of the Special Leave Petition. Subsequently, various orders came to be passed by this Court, the details of which may not be necessary for the present purpose.

4. Proceedings under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 came to be initiated against the first petitioner Company in the year 2009. The petitioner filed an application registered as SA No.370 of 2010 invoking Section 17 of the above mentioned Act. While entertaining the application, the Debts Recovery Tribunal 1 Under Section 20 (I) of the Sick Industrial Companies (Special Provisions) Act, 1985 passed certain interim orders. Aggrieved by the same the second respondent Bank (creditor of the company) herein filed a Writ Petition (Civil) No.6652 of 2010 before the High Court of Delhi seeking various reliefs

including a prayer for permission to proceed with the sale of the secured assets of the petitioner Company. The Delhi High Court allowed such a prayer.

5. Aggrieved by the said order, a Special Leave Petition (Civil) No.29421 of 2010 was brought to this Court. The said Special Leave Petition was disposed of by an order dated 30.11.2010 by giving various directions. This led to further litigation, the details of which may not be necessary for the present purpose.

6. In the meanwhile, the application (SA No.370 of 2010) originally filed by the petitioner before the Debts Recovery Tribunal came up for hearing in which orders dated 11.03.2014 and 27.03.2014 came to be passed, in substance, holding that in view of the winding-up order passed against the petitioner Company only the Official Liquidator is entitled to represent the Company in the said proceedings and former management of the Company cannot represent the Company in the said proceedings.

7. We do not propose to go into the details of the various pending proceedings in various fora including this Court. We only take note of the fact that the order by which the first petitioner Company was wound-up has not attained finality in view of the pendency of the Special Leave Petition against the said order before this Court, leaving it open always for possibility (at least in theory) of the winding up order being reversed.

8. In such circumstances, preventing the ex-management from placing the appropriate material before the Debts Recovery Tribunal, regarding the claim of the second respondent Bank against the petitioner Company on the ground that after the winding-up order is passed by the Company Court it is only the Official Liquidator who can represent the Company may eventually lead to denial of an opportunity to the ex-management of the Company to place such facts as they deem appropriate to resist the claim of the Bank.

9. We, therefore, deem it appropriate that the Debts Recovery Tribunal should also hear the ex-management of the Company apart from hearing the Official Liquidator before passing any final order in the application SA No.370 of 2010.

10. The IA stands disposed of accordingly.