NATIONAL TEXTILE CORPORATION (GUJARAT) • A

v.

STATE BANK OF INDIA AND ORS.

AUGUST 8, 2006

[S.B. SINHA AND P.P. NAOLEKAR, JJ.] B

Sick Textile Undertakings (Nationalisation) Act, 1974—Sections 5, 21 and 22; Second Schedule—Bombay Relief Undertaking (Special Provision) Act, 1958—Section 4—Industries (Development and Regulation) Act, 1951— C *Section 18(1)—Takeover of management of a sick textile company—Claims by Banks before Commissioner of Payments for compensation for the various credit facilities extended to the company in pre and post takeover period—Commissioner admitted only part of the claims under Categories I and IV of the Second Schedule and disallowed the remaining claims—Trial Court dismissed the claims by the Banks but upheld by High Court—Correctness* D *of—Held, on facts, continuing of credit facilities by the banks would not amount to a fresh agreement—Loan taken for revival of business for the purpose of trade and manufacturing operations fall under Category I of the second Scheduled and thus eligible for compensation under the Act—Liability of erstwhile owner continues even during the post-takeover period but* E *guarantees furnished by State or statutory authority in post-management period would not bind the owner—Liberty to Bank to file appropriate suits or proceedings before appropriate forums for recovery of remaining amount.*

The management of a sick textile company was taken over under the provisions of the Industries (Development and Regulation) Act, 1951, F **in 1969. An Authorised Controller was appointed for the management of the company. The period of takeover was extended upto 31.3.1974. The Sick Textile Undertakings (Nationalisation) Act, 1974 came into effect from 1.4.1974, whereby the right, title and interest of the company came to be vested absolutely with the Central Government. Respondent-Banks granted various credit facilities before and after the Authorised Controller** G **took over the management of the company. The Banks made various claims before Commissioner of Payments for awarding compensation amount under the Act. The Commissioner admitted only a part of the claims under Categories I and IV of the Second Schedule to the Act and**

 H

A disallowed the remaining claims. The Banks filed appeals before trial Court. The trial Court dismissed the appeals holding that certain claims are not covered in any of the Categories in the Schedule for payment; and that the credit given by the Banks after the Appointed day under the Act are not eligible for payment as they were non-existent on the Appointed day. Special Civil Application filed by the Banks before High Court were B allowed. The High Court held that the loans advanced by the Banks in pre-takeover period, guaranteed by the Authorised Controller and by the State Government and guaranteed for the post-takeover period would fail under Category I and not under Category IV of the Schedule.

C Appellant contended that the loan advanced by the Banks during post-takeover period are not entitled for priority claim under Category I of the Schedule; that the undertaking given by the Controller for continuing to obtain the credit facilities would not make the claim fall under Category I entitling priority under the Act; that the facility was given by the Bank to continue to avail the credit facilities; that there is a D difference between a loan and liability and that the principal amount would come within the purview of priority claim and the claim of interest would not.

The respondent Banks contended that the extension of credit facilities would amount to a new loan as it has been extended on the guarantees E issued by the Authorised Controller and the State; that the credit facilities were given for the survival of the mills and hence the appellant cannot contend that the loan advanced by the Bank would not be disbursed on a priority basis; that the deferred payment guarantee should be treated as an advance given during post-management period and thus would come F within the purview of Category I of the Second Schedule to the Act; and that any amount payable as on 31.3.1974 including interest would come within the purview of the expression 'loan'.

Allowing the appeals, the Court

G HELD: 1.1. The claim of every claimant was required to be determined by the Commissioner of Payments strictly in terms of the provisions of the Sick Textile Undertakings (Nationalisation) Act, 1974. For the purpose of enabling it to disburse his claim from the amount deposited with it by the Central Government, priorities were to be accorded to the specified category of claim in terms of the Second Schedule H to the Act. The Commissioner of Payments, as a statutory authority, was

to act within the four corners under the Act. Under the Act, the liability of the erstwhile owner has not ceased to run. The entire claim of the Bank, if not capable of being disbursed from the amount deposited by the Central Government, would abate. The claimants, therefore, are entitled to realise their remaining claims from the owners. [422-C-E] A

1.2. Continuing the credit facilities given by the banks to the owner would not amount to a fresh agreement. For the purpose of attracting the provisions of the Second Schedule of the Act, the amount mentioned in Category I must be confined to loans advanced by the banks or other financial institutions or any other loan or any credit availed of for the purpose of trade or manufacturing operations. A distinction, therefore, exists between a loan given to the Controller and availing of the credit facilities which were available to the owner of the textile mills so as to enable it to carry on the manufacture operation thereof after its take over. The textile undertakings were sick ones. The managements of such mills were taken over for the purpose of revival thereof. If in that process, the Authorized Controller was required to raise loan either from a bank or from a financial institution other than a bank or from any other person or availed any other credit, the same would come within the purview of Category-I liability being a post-takeover management period. Such loan would not be renewal of pre-takeover loan. [423-C-F] B C D

1.3. The liability of the owner continues even during the post takeover period. That would not mean that any act done by the statutory authority or the State would be binding on the owner. The guarantees furnished by the State Corporation or the State would be enforceable against them and not against the owner. [427-G-H; 428-A-B] E

State Bank of Indore v. *Commissioner of Payments and Ors.*, [2004] 11 SCC 516; *Commissioner of Income Tax, Lucknow* v. *The Bazpur Co-operative Sugar Factory Ltd.*, AIR (1989) SC 1866; *Industrial Finance Corporation of India Ltd.* v. *Cannanore Spinning and Weaving Mills Ltd. and Ors.*, [2002] 5 SCC 54; *Punjab National Bank* v. *State of U.P. and Ors.*, [2002] 5 SCC 80 and *Rashtriya Mill Mazdoor Sangh* v. *National Textile Corporation (South Maharashtra) Ltd. and Ors.*, [1996] 1 SCC 313, referred to. F G

Jiwanlal Achariya v. *Rameshwar Lal Agarwalla,* AIR (1967) SC 1118, distinguished.

2.1. The provisions of the Bombay Relief Undertaking (Special H

Provision) Act, 1958 do not bar adjustment of any account. What was suspended was a declaration of relief undertaking and suspension of any remedy for the enforcement thereof. What was stayed the proceedings pending before any court, tribunal, officer or authority, but the same had nothing to do with the adjustment of accounts in terms of the provisions of the Indian Contract Act, 1872. If the High Court was not correct in holding that the Authorized Controller had renewed the loan taken by the owner, the facilities continued and in that view of the matter Sections 60 and 61 of the Contract Act would become applicable. Thus, the remedies available to the Banks under the Indian Contract Act would continue to remain available to the Banks even if the 1958 Act applies. The Banks are at liberty to file appropriate suits or proceedings before appropriate forums for recovery or remaining amount. [428-E-G; 429-G-H; 430-A-B]

Union of India **v.** *Kishorilal Gupta and Bros.*, **AIR [1960] SCR 493 and** *Lalit Mohan Pandey* **v.** *Pooran Singh and Ors.*, **[2004] 6 SCC 626, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2314 of 2000.

From the Judgment and Order dated 25.8.1999 of the High Court of Gujarat at Ahmedabad in Special Civil Application No. 3396/1981.

WITH

C.A. Nos. 2315, 2316, 2317, 2318, 2319 and 2320 2321/2000.

L. Nageshwara Rao, B. Sunita Rao and Sushil Kumar Pathak for the Appellant.

Rajeev Dutta, R. Sundaravardan, T.L. Vishwanathan Iyer, Sunita Sharma, Kiran Bhardwaj, D.S. Mahra, R.N. Keshwani, Ramlal Roy, M.T. George, Indu Malhotra and J.B. Dadachanji & Co. for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. These appeals involving identical questions of law and fact were taken up for hearing together and are being disposed of by this common judgment.

The factual matrix of the matter, however, would be noticed from Civil Appeal No. 2316 of 2000.

The management of the New Manekchowk Spinning and Weaving Mills Company Limited was taken over in terms of Section 18(1) of the Industries (Development & Regulation) Act, 1951. The Gujarat State Textile Corporation Limited was appointed as its Authorized Controller. The period of takeover was extended upto 31.03.1974.

The Parliament thereafter enacted the Sick Textile Undertakings (Nationalization) Act, 1974, (for short, 'the Act') which came into force with effect from 01.04.1974 in terms whereof the right, title and interest of the said textile mills vested absolutely in the Central Government. The Central Government, however, issued an appropriate notification whereby and whereunder the said mills instead of continuing to vest in the Central Government were directed to vest in the National Textile Corporation (Gujarat).

Statutory provisions :

Before we advert to the rival contentions of the parties, we may notice some of the relevant provisions of the Act.

"Appointed day" had been defined in Section 2(1) of the the Act to mean the "1st day of April, 1974".

The term "owner" has been defined in Section 2(h) of the Act as under:

> "(h) "owner", when used in relation to a sick textile undertaking, means any person or firm who or which is, immediately before the appointed day, the immediate proprietor or lessee or occupier of the sick textile undertaking or any part thereof, and in the case of a textile company which is being wound up or the business whereof is being carried on by a liquidator or receiver, includes such liquidator or receiver, and also includes any agent or manager or such owner but does not include any person or body of persons authorized under the Industries (Development and Regulation) Act, 1951, or the Sick Textile Undertakings (Taking Over of Management) Act, 1972, to take over the management of the whole or any part of the sick textile undertaking"

Before the Commissioner of Payments, the creditors became entitled to file their respective claims for the purpose of disbursement thereof out of the amount of compensation towards nationalization of the mills deposited with it by the Central Government.

A The claims under the Act are divided into two distinct categories (i) post-takeover management period; and (ii) pre-takeover management period.

The post-takeover management period was 14.02.1969 to 31.03.1974.

The Second Schedule appended to the 1974 Act provided :

B

"Order of priorities for the discharge of liabilities in respect of a sick textile undertaking

PART A

C *Post-Takeover Management Period*

Category I—

(a) Loans advanced by a bank.

D (b) Loans advanced by an institution other than a bank.

(c) Any other loan.

(d) Any credit availed of for purpose of trade or manufacturing operations.

E *Category II—*

(a) Revenue, taxes, cesses, rates or any other dues to the Central Government or a State Government.

F (b) Any other dues."

In terms of Section 3 of the Act, the right title and interest of the owner in relation to every sick textile undertaking vested absolutely in the Central Government. Section 5 provides that every liability, other than the liability specified in sub-section (2) thereof in respect of any period prior to the G appointed day, shall be that of such owner and shall be enforceable against him and not against the Central Government or the National Textile Corporation. Sub-section (3) of Section 5 reads as under :

"5.(3) For the removal of doubts, it is hereby declared that —

H (a) save as otherwise expressly provided in this section or in any

other section of this Act, no liability, other than the liability specified in sub-section (2), in relation to a sick textile undertaking in respect of any period prior to the appointed day, shall be enforceable against the Central Government or the National Textile Corporation; A

(b) no award, decree or order of any court, tribunal or other authority in relation to any sick textile undertaking passed after the appointed day in respect of any matter, claim or dispute, in relation to any matter not referred to in sub-section (2), which arose before that day, shall be enforceable against the Central Government or the National Textile Corporation. B

(c) no liability of any sick textile undertaking or any owner thereof for the contravention, before the appointed day, of any provision of law for the time being in force, shall be enforceable against the Central Government or the National Textile Corporation." C

Section 8 provides for deposit of the amount of compensation in cash by the Central Government. Section 17 provides for appointment of Commissioners of Payments, whereas priority and examination of claims filed before it are contained in Sections 21 and 22 of the Act, which read as under : D

"21. The claims arising out of the matters specified in the Second Schedule shall have priorities in accordance with the following principles, namely :- E

(a) category I will have precedence over all other categories and category II will have precedence over category III and so on;

(b) the claims specified in each of the categories, except category IV, shall rank equally and be paid in full, but if the amount is insufficient to meet such claims in full, they shall abate in equal proportions and be paid accordingly; F

(c) the liabilities specified in category IV shall be discharged, subject to the priorities specified in this section, in accordance with the terms of the secured loans and the priority, *inter se*, of such loans; and G

(d) the question of payment of a liability with regard to a matter specified in a lower category shall arise only if a surplus is left after meeting all the liabilities specified in the immediately higher H

A category."

"22. (1) On receipt of the claims under section 20, the Commissioner shall arrange the claims in the order of priority specified in the Second Schedule and examine the same in accordance with the said order;

B (2) If on examination of the claims, the Commissioner is of the opinion that the amount paid to him under this Act is not sufficient to meet the liabilities specified in any lower category, he shall not be required to examine the liabilities in respect of such lower category."

Section 27 which occurs in Chapter VII of the Act provides as under:

C "27. (1) Where any liability of the owner of a sick textile undertaking arising out of any item specified in category I of the Second Schedule is not discharged fully by the Commissioner out of the amount paid to him under this Act, the Commissioner shall intimate in writing to the Central Government the extent of the liability which remains D undischarged, and that liability shall be assumed by the Central Government.

(2) The Central Government may, by order, direct the National Textile Corporation to take over any liability assumed by that Government under sub-section (1), and on receipt of such direction, it shall be the E duty of the National Textile Corporation to discharge such liability."

Proceedings :

The company took some loan from the State Bank of India. During the period of takeover also, the State Bank of India continued to extend various F credit facilities to the management. The Respondent Bank in its claim stated:

"3. The appellant has given various credit facilities before and after the authorized controller took over the management. The appellant had given the facility of hypothecation account with the limit of Rs.13,50,000.00p. the amount in that account outstanding as on March G 31, 1974 was Rs.1,34,148.39p. and the amount outstanding as on March 31, 1974 was Rs.7,22,343.02p. In the Mortgaged account the limit was Rs.20,00,000/- and the amount outstanding as on March 31, 1974 was Rs.19,74,399.85p. and the amount outstanding as on March 31, 1977 was Rs.24,86,190.93p. In the Pledge account the limit was H Rs.30,00,000.00p. and the amount outstanding as on March 31, 1974

was Rs.20,65,989.90p. and the one outstanding on March 31, 1977 was Rs.28,65,735.15p. In the deferred payment guarantee account, the appellant had paid installments of Rs.6,43,709.20p. and the installments to be paid by the appellant were to the extent of Rs.6,35,218.42p. the appellant paid over due interest of the amount of Rs.16,800.49p. Thus, in this account the total amount claimed was Rs.12,95,828.20p. The appellant had issued cheques on or before March 31, 1974 but paid on or before Sept. 21, 1974, bills cheques of the value of Rs.6,16,291.58p. The appellant had debited Rs.21,911.65p. in the account of the National Textile Corporation as the bills or cheques of this value purchased on or before March 31, 1974 but returned or paid on or before Sept. 21, 1974. The appellant also claimed bank charges, and other amounts relating to the period upto March 31, 1974 but debited before September 21, 1974. The appellant also claimed Bank charges Rs. 17,39,648.00p. being the amount of bills/cheques purchased by the appellant on or before March 31, 1974 but realized on or after April 1, 1974. Thus the appellant in all claimed Rs. 99,97,944.32p. under four head as per the statement of the account annexed with the application of claim."

By an order dated 30.09.1978, the Commissioner of Payments held as under :

"That out of total claims, an amount of Rs.51,55,524.81p. could be admitted in Category I, an amount of Rs.24,86,109.93ps. could be admitted in Category IV and the rest of the amount of Rs.23,55,939.58ps. could not be considered for the purposes of categorization."

An appeal was preferred thereagainst before the City Civil Court. The said appeal was dismissed by an order dated 18.08.1980, holding :

"As discussed in the earlier part of the judgment, only those liabilities falling under the aforesaid two periods are required to be discharged out of the compensation amount fixed from the undertaking except as mentioned in sub-section (1) of Section 27 of the Act. The appellant had made payments to the supplier after 1.4.1974 i.e. after the appointed day. The Act restricted discharge of certain liabilities enumerated in the Second Schedule only falling due upto 31.3.1974. The appellant's claim cannot be covered in any of the categories in the Second Schedule.....Since the liability of the respondent No.1 does not exist on account of the contract having ceased to have effect on

A 1.4.1974, the appellant's claim for the same reasons become non-existent.It appears from the award of the Assistant Commissioner of Payments that the adjustments with the respondent No.2 for the bills purchased or the cheques realized was made. That has been done as the bills discounted or purchased on or before March 31, 1974, remained with the erstwhile owners and such ownership on rights vested in the nationalized textile corporation by virtue of Section 4 of the Act....."

A writ petition was thereafter filed before the High Court. By reason of the impugned judgment, a learned Judge of the High Court while allowing the said writ petition held as under :

"6. I have given anxious thought to the submissions made on behalf of the parties. The main question for determination by this Court is whether outstanding dues in different accounts for the pre-take-over as on 14.2.1969 were the liabilities of the Authorized Controller, or that liabilities which were thereafter can be considered under Section 5 of the Act for the purpose of awarding the compensation amount. For this purpose, we have to see the actual meaning of loan and advances. Loans and advance loans have been explained by the Apex Court in the case of *Jiwanlal Acharya* v. *Rameshwar Agarwalla,* reported in AIR (1967) SC 1118, wherein it has been held that the loan means an advance, whether of money or in kind on interest, made by a money-lender and shall include a transaction on a bond bearing interest in respect of post liability and in transaction, which in substance is a loan. When a loan is renewed by the execution of a fresh document of removal, there is no difficulty in holding that the former loan was repaid by borrowing a fresh loan on the document of renewal. So, the transaction itself can be treated as a fresh loan. The word "advance" appears to have been used there for convenience of the language, particularly to indicate that the loan must have been made after commencement of the Act. It does not imply that there should have been an actual advance, whether of money or any kind. Thus, in view of the proposition of law laid down by the Apex Court, the loans advanced by the petitioner bank prior to 14.2.1969, guaranteed by the Authorized Controller and by the State Government and by the State Government and guarantee for the post-take-over period would fall under the category no.1(a) of the Second Schedule and it would not fall in category no.4 of part "B". The Bombay High

Court has completely answered the question regarding the liability of the Authorised Controller for the amount due prior to 1.4.1974 and thereafter." A

Submissions :

Mr. L. Nageshwara Rao, the learned Senior Counsel appearing on behalf of the appellant, would submit that the High Court committed a serious error in holding : B

(i) loan was advanced during post-takeover period during which the management was with the corporation; (ii) the facility was given by the bank to continue to avail the credit facilities to pay the amount of loan on renewal thereof; (iii) the undertaking given by the Controller for continuing to obtain the said facilities would not make the outstanding dues on account of priority claim of the company; (iv) There exists a difference between a loan and liability; whereas the principal amount would come within the purview of priority claim, claim of interest would not. C D

Mr. R. Sundaravardan, the learned Senior Counsel appearing on behalf of the State Bank of India, on the other hand, submitted that: (i) the bank acted to its detriment at the instance of the Controller and relying on the guarantee furnished by it as also by the State of Gujarat continued to extend the facilities which would amount to a new loan. (ii) Such credit facility had been given so that the mills may survive and, thus, the Appellant cannot now be permitted to contend that the loan advanced by the Bank would not be disbursed on a priority basis. (iii) In any event, as part of the amount to be paid had been apportioned for past dues in terms of Section 60 of the Indian Contract Act, this Court should not interfere with the impugned judgment. E F

Mr. T.L. Vishwanatha Iyer, the learned Senior Counsel appearing for the Punjab National Bank, supplemented Mr. Sundaravardan contending that the deferred payment guarantee should be treated as an advance given during post management period and, thus, would come within the purview of Category I of the Second Schedule of the Act. It was submitted that for all intent and purport, the liability is akin to the concept of loan and in that view of the matter any amount which was payable as on 31.3.1974 including the amount of interest would come within the purview of the expression 'loan'. G

Priority claims : H

A The basic fact of the matter is not in dispute. Although the managements of the textile mills were taken over in terms of the provisions of the 1951 Act, the Authorized Controller managed the affairs of the mills for or on behalf of the owners. The liabilities incurred or profits made during the said period were to be credited to the account of the owners. The owners in terms of the provisions of the Act were not entitled to receive the amount of compensation B but also the interest provided for in the said Act as also the amount of compensation payable for taking over of the management of the mills under the 1956 Act.

The claim of every claimant was required to be determined by the C Commissioner of Payments strictly in terms of the provisions of the Act. For the purpose of enabling it to disburse his claim from the amount deposited with it by the Central Government, priorities were to be accorded to the specified category of claim in terms of the Second Schedule of the Act.

The Commissioner of Payments as a statutory authority was to act D within the four-corners of the Act.

In terms of the provisions of the Act, the liability of the owner has not ceased to run. The entire claim of the bank, if not capable of being disbursed from the amount deposited by the Central Government, the same would abate. E The claimants, therefore, are entitled to realize their remaining claims from the owners.

The Authorized Controller and the State of Gujarat furnished guarantees. Guarantees furnished by the State of Gujarat were *de'hors* the provisions of the Act. In terms of the provisions of the Act, the State of Gujarat had no F role to pay. It might have encouraged the Authorized Controller to revive the functioning of the mills upon continuing to obtain the facilities of the erstwhile owners from the banks and other industrial institutions for revival of the mill as a part of social welfare measure. Under the Act, however, it could not have intermeddled with the affairs of the functioning of the mills by the Authorized Controller. Any action taken pursuant to or in furtherance of any representation G made by the State of Gujarat would, thus, be of its own liability. Such liabilities can be enforced by the claimants. For the self same reasons any guarantee furnished by the Gujarat Financial Corporation would also be an act on its own behalf. It, while carrying out the management of the mill, could have incurred loan on behalf of the owner but if it had furnished any guarantee, H the same would constitute an independent act, although furnished for obtaining

loan or continue to obtain the facilities for running the mills. It could not act both as a loaner and a guarantor. The liability of the owner and guarantor would depend upon the terms of the documents executed in favour of the Bank and/or the provisions of the Indian Contract Act. Similarly if a claim comes within the purview of Section 27 of the Act, the Central Government would continue to be liable therefor. A similar guarantee furnished by the Gujarat State Financial Corporation on its own behalf subject to the terms of the guarantee may become enforceable against it.

We are in these appeals, however, only concerned with the interpretation of the relevant provisions of the Second Schedule of the Act. Continuing the credit facilities given by the banks to the owner, in our opinion, would not amount to a fresh agreement.

For the purpose of attracting the provisions of the Second Schedule, the amount mentioned in Category I must be confined to loans advanced by the banks or other financial institutions, or any other loan or any credit availed of for the purpose of trade or manufacturing operations. A distinction, therefore, exists between a loan given to the Controller and availing of the credit facilities which were available to the owner of the textile mills so as to enable it to carry on the manufacture operation thereof after its take over. The textile undertakings were sick ones. The managements of such mills were taken over for the purpose of revival thereof. If in that process the Authorized Controller was required to raise loan either from a bank or from a financial institution other than a bank or from any other person or availed any other credit, indisputably, the same would come within the purview of Category-I liability being a post-takeover management period.

Such loan, however, it will bear repetition to state, would not be renewal of pre-takeover loan. In *Jiwanlal Achariya* v. *Rameshwar Lal Agarwalla,* AIR (1967) SC 1118, this Court was concerned with interpretation of the expression 'loan' contained in Section 2(f) of the Bihar Money Lending (Regulation of Transactions) Act, 1939, which was in the following terms :

> "Loan" means "an advance, whether of money or in kind, on interest made by a money-lender, and shall include a transaction on a bond bearing interest executed in respect of past liability and any transaction which in substance is a loan, but shall not include....."

This Court in the context of the said definition of 'loan' opined that

A when a loan is renewed by execution of a fresh document, there is no difficulty in holding that the former loan was repaid by borrowing a fresh loan on the document of renewal.

In that case, the appellant therein claimed that no money was in fact advanced on February 4, 1954 and that the promissory note executed on that B date was to pay by renewal of a loan for Rs.4,000/- which had been taken as far back as October 1946. The sum of Rs.10,000/- included the principal amount of Rs.4,000 and the remainder was towards interest.

In the aforementioned factual matrix, it was held that all that S.2(f) C requires is that there should be an instrument in writing by which the obligor obliges himself to pay the past liability and the instrument should bear interest.

In this case, no such document admitting and acknowledging the past loan and a fresh document was executed. *Jiwanlal Achariya* (supra), therefore, D was decided in the fact situation obtaining therein.

The High Court in its impugned judgment relied upon *State Bank of India* v. *Edward Textile Mills Ltd. & Ors.*, AIR (1988) Bombay 313. The said decision was reversed by this Court in *State Bank of Indore* v. *Commissioner of Payments and Ors.*, [2004] 11 SCC 516, holding : E

> "Thus, the heading of the Second Schedule provides "priorities for the discharge of liabilities". The term "liability" as stated above would include interest. It would include a loan. It would also include credits availed of. It would include revenue, taxes, cesses, rates and other F dues. However, the payment in priority is for a loan. The distinction in language makes it very clear that what was to be paid in priority was only the amount of the loan i.e. the principal amount and not the interest amount due thereon. Of course, payments towards interest would remain liabilities. But for recovery of that the remedy would be to proceed against the owner/surety. G
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> This Court has in the case of *Industrial Finance Corpn. of India Ltd.* v. *Cannanore Spg. and Wvg. Mills Ltd.* held that by virtue of the provisions of the Act the liability of the principal debtor and that of the surety does not come to an end. It is held that if the compensation to be paid by virtue of Section 21 and the Second Schedule does not H

satisfy the full claim then the creditor is not barred from filing a civil suit for the balance. Further, in the case of *Punjab National Bank* v. *State of U.P.* it has been held that even though mode of recovery, against a surety, may be affected the liability of the principal debtor and the guarantor does not get affected by the provision of this Act. Not only are these authorities binding us but we are in complete agreement with what is laid down therein.

It is thus clear that the interest amounts are not to be paid in priority under the provisions of this Act. In this view, strictly speaking, even interest up to 31-3-1974 was not payable in priority"

Mr. Iyer placed strong reliance upon a decision of this Court in *Commissioner of Income-tax, Lucknow* v. *The Bazpur Co-operative Sugar Factory Ltd.,* AIR (1989) SC 1866. In that case, this Court was dealing with the provisions of Income Tax Act, 1961 *vis-a-vis* the bye-laws framed by a cooperative society. The question, which arose for consideration therein, does not arise before us. It was held therein that the deposits made by the members could not be regarded as loans advanced by the members to the assessee. The moneys deposited represented contribution by the members for converting the partly paid up shares into fully paid up shares and thereafter for defraying the loan taken from the Industrial Finance Corporation. Any balance remaining was to be refunded to the members. Such a question does not arise in the instant case.

In *Industrial Finance Corporation of India Ltd.* v. *Cannanore Spinning and Weaving Mills Ltd. and Ors.,* [2002] 5 SCC 54, a Division Bench of this Court interpreting the provisions of the 1974 Act, held :

"Turning attention to the effect of the Sick Textile Undertakings (Nationalisation) Act, 1974, a bare perusal of some of the provisions will indicate that there is no discharge of the liability of principal debtor, leave alone that of the surety. Sections 3, 4, 5 and 20 of the Act of 1974, if read together, would depict that the liability of the owner of the undertaking/the debtor continues and it is only the claim against the security which stands discharged by reason of the statutory shift of the charge on to the compensation. The liability of the principal debtor does not in any way come to an end, neither that of the guarantor"

A While doing so, it relied upon a decision of this Court in *Punjab National Bank* v. *State of U.P. and Ors.*, [2002] 5 SCC 80, wherein it had been held that the loan of a guarantor does not come to end with the coming into force of the 1974 Act, stating :

B "We have gone through the provisions of the said Act and in our opinion the decision of the courts below is not correct. Section 5 of the said Act provides for the owner to be liable for certain prior liabilities and Section 29 states that the said Act will have an overriding effect over all other enactments. This Act only deals with the liabilities of a company which is nationalised and there is no provision therein C which in any way affects the liability of a guarantor who is bound by the deed of guarantee executed by it. The High Court has referred to a decision of this Court in *Maharashtra SEB* v. *Official Liquidator, High Court, Ernakulam* where the liability of the guarantor in a case where liability of the principal debtor was discharged under the insolvency law or the company law, was considered. It was held in D this case that in view of the unequivocal guarantee, such liability of the guarantor continues and the creditor can realise the same from the guarantor in view of the language of Section 128 of the Contract Act as there is no discharge under Section 134 of that Act.

E In our opinion, the principle of the aforesaid decision of this Court is equally applicable in the present case. The right of the appellant to recover money from Respondents 1, 2 and 3 who stood guarantors arises out of the terms of the deeds of guarantee which are not in any way superseded or brought to a naught merely because the appellant may not have been able to recover money from the principal borrower. F It may here be added that even as a result of the Nationalisation Act the liability of the principal borrower does not come to an end. It is only the mode of recovery which is referred to in the said Act."

In *Rashtriya Mill Mazdoor Sangh* v. *National Textile Corporation (South Maharashtra) Ltd. and Ors.*, [1996] 1 SCC 313, this Court held that G gratuity payable by erstwhile owner cannot be recovered from the Central Government or the Corporation, stating :

"The submission is that since the Act has been enacted to protect the interests of the workmen employed in the textile undertakings whose H management has been taken over, sub-section (7) of Section 3 should

be construed in a manner that the interests of the workmen are protected and are not jeopardised and therefore, sub-section (7) of Section 3 should be confined in its application to liabilities other than the liabilities relating to the dues of the workmen in respect of the gratuity payable under the Payment of Gratuity Act. We find it difficult to accept this contention. It is one of the cardinal principles of the statutory construction that where the language of an Act is clear, the preamble cannot be invoked to curtail or restrict the scope of the enactment and only where the object or meaning of an enactment is not clear the preamble may be resorted to explain it. [See: *Burrakur Coal Co. Ltd.* v. *Union of India* SCR at p. 49 and *Motipur Zamindary Co. (P) Ltd.* v. *State of Bihar* SCR at p. 504.] Here we find that the language of sub-section (7) of Section 3 is clear and unambiguous inasmuch as in the said provision it has been declared that *any liability* incurred by the textile company in relation to the textile undertaking before the appointed day shall be enforceable against the textile company concerned and not against the Central Government or the Custodian. The words "any liability" in sub-section (7) of the said Section 3 are of wide amplitude to cover every liability that was incurred by the textile company in relation to the textile undertaking before the appointed day. Moreover, the statement in the preamble on which reliance has been placed by the learned counsel for the appellant, regarding giving protection to the interests of the workmen employed therein, also indicates that what was intended was to reorganise and rehabilitate the textile undertakings whose management was being taken over with a view to prevent the closure of such undertakings and consequent unemployment of workmen and thereby protect the interests of the workmen who were employed in the textile undertaking at the time of the taking over of the management of the said undertaking. The said statement in the preamble does not refer to persons who had ceased to be in employment of the textile undertaking on the date of such taking over of the management. We are, therefore, unable to hold that sub-section (7) of Section 3, must be so construed as to exclude its applicability in respect of liability for payment of gratuity under the Payment of Gratuity Act."

The liability of the owner continues even during the take-over period. Indisputably, however, that would not mean that any act done by the statutory authority or the State would be binding on the owner. The Gujarat Financial

A Corporation or the State of Gujarat having furnished guarantee on their own behalf, the same indisputably would continue to remain binding on them. Such guarantees which were furnished by the Gujarat Financial Corporation or the State of Gujarat would, thus, be enforceable against them. We, however, may clarify that we, at present advised, have not gone into the question of effect of abatement of claims against the owner.

B

1958 Act :

The question now arises for consideration is as to whether the provisions of the Bombay Relief Undertaking (Special Provision) Act, 1958 would be C applicable in the instant case. The 1958 Act was a temporary Act. Clause (iv) Sub-section (1) of Section 4 of the said Act provided :

> "4(iv) any right, privilege, obligation or liability accrued or incurred before the undertaking was declared a relief undertaking and any remedy for the enforcement thereof shall be suspended and all D proceedings relative thereto pending before any court, tribunal, officer or authority shall be stayed;"

The provisions of the said Act, however, do not bar adjustment of any account; but what was suspended was a declaration of relief undertaking and suspension of any remedy for the enforcement thereof. What was stayed was E the proceedings pending before any court, tribunal, officer or authority, but the same had nothing to do with the adjustment of accounts in terms of the provisions of the Indian Contract Act, 1872. Section 59 of the Indian Contract Act provides for application of payment where debt to be discharged is indicated. Section 60 thereof provides for application of payment where debt F to be discharged is not indicated. Section 61, however, provides that in absence of any party making appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitations of suits.

If the High Court was not correct in holding that the Authorized Controller G had renewed the loan taken by the owner, the facilities continued and in that view of the matter Sections 60 and 61 of the Indian Contract Act would become applicable.

In *The Union of India* v. *Kishorilal Gupta and Bros.*, AIR [1960] SCR H 493, upon which Mr. Sundaravardan placed strong reliance, wherein the

question which arose for consideration was as to where the parties to an original contract could by mutual agreement enter into a new contract in substitution of an old one, which does not contain an arbitration clause, wherein the dispute resolution mechanism occurring in an earlier contract could be taken recourse to.

Subba Rao, J., speaking for the majority, in the fact situation obtaining therein, stated the principle thus :

> "The following principles relevant to the present case emerge from the aforesaid discussion: (1) An arbitration clause is a collateral term of a contract as distinguished from its substantive terms; but nonetheless it is an integral part of it; (2) however comprehensive the terms of an arbitration clause may be, the existence of the contract is a necessary condition for its operation; it perishes with the contract; (3) the contract may be *non est* in the sense that it never came legally into existence or it was *void ab initio*; (4) though the contract was validly executed, the parties may put an end to it as if it had never existed and substitute a new contract for it solely governing their rights and liabilities thereunder; (5) in the former case, if the original contract has no legal existence, the arbitration clause also cannot operate, for along with the original contract, it is also void; in the latter case, as the original contract is extinguished by the substituted one, the arbitration clause of the original contract perishes with it; and (6) between the two falls many categories of disputes in connection with a contract, such as the question of repudiation, frustration, breach etc. In those cases it is the performance of the contract that has come to an end, but the contract is still in existence for certain purposes in respect of disputes arising under it or in connection with it. As the contract subsists for certain purposes, the arbitration clause operates in respect of these purposes."

The said decision would apply in the instant case.

In *Lalit Mohan Pandey* v. *Pooran Singh and Ors.*, [2004] 6 SCC 626, whereupon also the learned counsel placed reliance, this Court emphasized the need to construe the statute having in mind the object underlying the same by stating the principle of purposive construction. Thus, the remedies available to the Bank under the Indian Contract Act would continue to remain available to the respondent-Bank even if the 1958 Act applies.

A For the reasons aforementioned, we are of the opinion that the High Court was not correct in taking the views, it did. The judgments and orders passed by the High Court are, therefore, set aside with liberty to the parties to file appropriate suits or proceedings before appropriate forum(s) for recovery of the remaining amount, provided any cause of action therefor survives.

B Subject to the observations made herein, the appeals are allowed. No costs.

B.S. Appeals allowed.