



GAHC010077472018

Page No.# 1/11



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2459/2018

DR. NABA KUMAR SARMA AND ANR.
S/O LT. CHANDRA KR. SARMA
EX-MANAGING DIRECTOR M/S ANANDA TEA CO. PVT. LTD. R/O J.
BARUAH ROAD,
CHENIKUTHI, GUWAHATI - 781003.
KAMRUP (M), ASSAM

2: MR. ARZOB KUMAR SARMA
S/O DR. NABA KUMAR SARMA
EX-DIRECTOR M/S ANANDA TEA CO.PVT. LTD.
R/O J. BARUAH ROAD

CHENIKUTHI

GUWAHATI- 781003

KAMRUP (M)
ASSA

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM,
DEPARTMENT OF LAND REVENUE, DISPUR, GUWAHATI-781006, KAMRUP
(M), ASSAM

2:THE BAKIJAI OFFICER OF CO-OPERATIVE SOCIETIES

GUWAHATI
GMDA BUILDING

BHANGAGARH
GUWAHATI- 781005



KAMRUP (M)
ASSAM

3:THE DEPUTY COMMISSIONER
KAMRUP (M)

4:THE REGISTRAR OF CO-OPERATIVE SOCIETIES

KHANAPARA
GUWAHATI- 781006
DIST. KAMRUP (M)
ASSAM

5:M/S EASTERN AGRO PROCESSING AND TEA WAREHOUSING CO-
OPERATIVE SOCIETY LTD.
JAWAHARNAGAR
BASISTHA
GUWAHATI - 781029

KAMRUP (M)
ASSAM

6:THE ASSAM CO-OPERATIVE APEX BANK LTD.
HEAD OFFICE AT PANBAZAR

GUWAHATI - 781001
KAMRUP (M)
ASSAM
REP. BY ITS CHAIRMAN

7:M/S JAINEX TEA CO. PVT. LTD.
RAM KUMAR ARCADE
2ND FLOOR
CHATRIBARI
GUWAHATI- 781001
KAMRUP (M)
ASSAM
REPRESENTED BY ITS DIRECTOR

Advocate for the Petitioner : Mr. B. D. Deka, Advocate

Advocate for the Respondents : Mr. K. N. Choudhury, Sr. Advocate
Mr. B. K. Kashyap, Advocate
Mr. R. Thakuria, Advocate
Mr. L. P. Sarma, Advocate

BEFORE**HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

Date of Hearing : 13.09.2023

Date of Judgment : 13.09.2023

JUDGMENT AND ORDER (ORAL)

The petitioners who are the erstwhile Directors of a company, namely, M/s Annada Tea Co. Pvt. Ltd. have filed the instant writ petition assailing the Bakijai proceedings being Bakijai Case No.B-16/2009 pending before the respondent No.2 as well as the order dated 28.03.2018 passed therein.

2. The brief facts of the instant case as could be seen from the perusal of the pleadings on records are that the petitioners were the Directors of a Company, namely, M/s Annada Tea Co. Pvt. Ltd. which has its registered office at Chowkidinghee, Dibrugarh-786001,. For the purpose of running the Tea Estate owned by the M/s Annada Tea Co. Pvt. Ltd. (for short, 'the Company'), during the year 2006-07, the said Company had availed financial assistance in the form of block advance from the respondent No.5 which is the Cooperative Society. In that regard a few loan agreements were executed. Owing to financial crunch, the Company had defaulted in repayment of the loan and thereafter a Bakijai proceedings was initiated against the then Managing Director of the Company being the petitioner No.1 herein before the respondent No.2. Accordingly, a notice under Section 7 of the Bengal Public Demands Recovery Act, 1913 (for short, 'the Act of 1913') with a copy of a demand certificate to the tune of Rs.64,40,193/- on 19.01.2009 was issued. It further appears that the said proceedings was initiated on the basis of a requisition made under Section 5 of the Act of 1913 by the Registrar of Co-operative Societies, i.e. the respondent No. 4. In the said Bakijai proceedings, the petitioner No.1 who was the then Managing Director of the Company filed an objection

against the notice under Section 7 of the Act of 1913 on 19.02.2009 and disputed the demand made in the certificate. However, the records further appear that the Company undertook to make payment in installments on the basis of a settlement agreement dated 31.08.2009 executed between the Company and the Respondent No.5 whereby it was agreed that the certificate amount would be repaid in installments. Pursuant thereto, the Company paid three numbers of installments amounting to Rs.1,00,000/- each. It has also been alleged that the terms of the settlement however stood modified by subsequent arrangements between the parties. It was also alleged that the Company had made payment of Rs.24,30,419/-.

3. This Court finds it relevant to take note of another very relevant aspect of the matter. The Company had taken some loan from the respondent No.6 bank. Being unable to repay the said loan, the respondent No.6 initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act of 2002') in respect of a alleged default to the tune of Rs.2,82,82,612.63 by issuing a notice under Section 13(2) of the Act of 2002. As the Company failed to do the needful in terms with the notice issued under Section 13 (2) of the Act of 2002, proceedings under Section 13 (4) of the Act of 2002 were initiated and a notice was issued by the Authorized Officer of respondent No. 6 on 20.06.2015 calling for offers to take over the management of the Company. At this stage, it is relevant to take note of that the said notice is a part of the record and has been enclosed as Annexure-4 to the writ petition. The relevant portion of the said notice is quoted herein under for the sake of convenience:

“It is hereby clarified that the Bank is contemplating to take over management of the business of the above Tea Company in terms of Section 13(4)(b) of the above Act on the strength of security created against tea crops, tea bushes, plants & machineries of the Tea Company, which is a substantial part of the business of the borrower. Any agency allotted by the Bank shall have to be run strictly in terms of all the relevant provisions of law in application, including the above Act. It is further clarified that the

Managing Agent shall have to bear all other liabilities of the Tea Company, including statutory liabilities both pending and future.”

4. Record further shows that the respondent No.7 was appointed as the Managing Agent of the petitioner Company and in that regard, a Deed of Agreement was entered into by and between the respondent No.6 and the respondent No.7 on 23.07.2015.

5. This Court further finds it relevant to take note of that on the same date of entering into the agreement by the respondent No.6 with the respondent No.7, a notice was published by the Authorized Officer of the respondent No.6 under Section 13 (4) (b) and 15 (1) (a) of the Act of 2002 wherein it was mentioned that the respondent No.6 bank had in exercise of the power conferred under Section 13 (4) (b) of the Act of 2002 vide order dated 22.07.2015 had already taken over the management of the business of the Company with immediate effect including the right to transfer by way of lease, assignment or sale for realizing the secured assets (debt) which is confined to the business of the Company, which is relatable to the security for the debt. It was also mentioned in the said notice that in terms with Section 15(1) (a) of the Act of 2002 that Shri Pratap Kochar, Shri Arvind Kochar and Shri Avishek Kochar of M/s Jainex Tea Co. (P) Ltd. were appointed as Directors of the Company with immediate effect. Further to that it was also notified vide the said notice that all the properties and effects of the business of Company shall be deemed to be in the custody of the said Directors from the date of publication of this notice and all persons holding office as Directors of the Company and all persons holding any office having power of superintendence, direction and control of the business of the Company before publication of the present notice shall vacate their offices with immediate effect in terms of Section 15(2) of the Act of 2002. Pursuant thereto, the record further shows that a communication dated 20.07.2016 was issued by one Shri Avinab Kumar Sarma on behalf of the petitioner No.1 informing the respondent No.2 about the development. The Company had assailed the action of the respondent No.6 by filing a writ petition being WP(C) No.3666/2015. It is not known



about the fate of the said writ petition. Be that as it may, the representation which was submitted on 20.07.2016 to the respondent No.2 failed to bear any fruitful result for which the petitioner No.1 preferred a writ petition before this Court being WP(C) No.38/2017 seeking quashment of the Bakijai Case No. B-16/2009 as against him. However, the writ petition subsequently was withdrawn with a liberty being granted to approach the respondent No.2. The petitioner No.1, thereupon submitted a representation on 24.01.2017 before the respondent No.2 praying for dropping the recovery proceedings against him by reiterating the position that he ceased to be the Managing Director of the Company. However, the respondent No.2 did not act upon the said representation as alleged in the writ petition and instead the respondent No.2 sent a fresh notice addressed to the petitioner No.1 to show cause as to why he should not be sent to Civil Prison. The said notice was issued on 14.03.2018 and the petitioner No.1 was directed to furnish cause on or before 22.03.2018. The notice was received by the petitioners only on 19.03.2018 and as such he filed an application before the respondent No.2 on 21.03.2018 praying for extension of time to submit the reply against the show cause notice. The said application for extension however was not considered by the respondent No.2 and a warrant of arrest was issued which was forwarded to the local Police Station from the office of the respondent No.2. It is under such circumstances that the petitioners have approached this Court praying for quashing the impugned proceedings in Bakijai Case No.B-16/2009 pending before the respondent No.2 against the petitioners and the order dated 28.03.2018 whereby the warrant of arrest was issued against the petitioners.

6. Upon the instant writ petition being filed on 12.04.2018, this Court vide the order dated 23.04.2018 issued notice and until further orders, the arrest warrant issued against the petitioners in Bakijai Case No.B-16/2009 was directed not to be executed.

7. The record further reveals that the respondent No.5 had filed an affidavit-in-opposition on 13.11.2018. From a perusal of the said affidavit-in-opposition, it transpires



that it is the case of the respondent No.5 that the Company had defaulted in payment of the loan and as the Company was represented by the petitioners, it is the petitioners who had defaulted in payment the amount for which the Bakijai Case was initiated by the respondent No.2. It was further stated that the petitioners herein still continued to the Directors of the Company.

8. The respondent No.2 had also filed an affidavit-in-opposition on 21.08.2023. It was mentioned in the said affidavit-in-opposition that the petitioners submitted a representation dated 24.01.2017 and subsequent to which the respondent No.2 issued a notice on 30.10.2017 in regard to Bakijai Case No. B-16/2009 fixing 08.11.2017 as the date of hearing. However the petitioners neither appeared on the said date of hearing either personally or through his counsel nor submitted any response in this regard. It is under such circumstances, the respondent No.2 issued warrant of arrest in the local Police Station on 28.02.2018. It was further mentioned that as regards taking recourse to the proceedings of the Act of 2002, the said matter pertains to the respondent Nos.6 & 7.

9. The respondent No.7 had also filed an affidavit-in-opposition. In the said affidavit-in-opposition, various aspects have been mentioned challenging the maintainability of the writ petition. However, it is relevant to take note of one pertinent aspect of the matter as stated in paragraph No.28 of the said affidavit-in-opposition wherein it was clarified that due to miscommunication a submission was made by the learned counsel appearing on behalf the respondent No.7 that the respondent No.7 is willing to pay the amount in terms with the certificate issued against the Company in Bakijai Proceedings bearing Bakijai Case No.B-16/2009. It was mentioned in the said paragraph that the respondent No.7 has no liability towards Bakijai Proceedings initiated against the petitioners for which the certificate has been issued against the Company and its erstwhile Directors in Bakijai Proceedings bearing Bakijai Case No.B-16/2009. It was further mentioned in the said paragraph that the petitioners were trying to fasten undue financial liability upon the respondent No.7 by way of the petition when no such financial liability can be legally

fastened upon the respondent No.7, especially when the respondent No.7 has never been a party in the Bakijai Proceedings bearing Bakijai Case No.B-16/2009 nor has it even been given an opportunity of being heard over the matter nor as the petitioners arrayed the respondent No.7 as a party to WP(C) No.38/2017.

10. I have heard the learned counsels for the parties and perused the materials on record. From the materials on record it transpires that the loan was taken by the Company from the respondent No.5 and not by the petitioners in their individual capacity. These aspects of the matter could be seen from the Annexure-VI of the affidavit-in-opposition filed by the respondent No.5 which is the loan agreement dated 12.06.2006. The Promissory Note enclosed as Annexure-VII to the said affidavit-in-opposition filed by the respondent No.5 is also for an on behalf of the Company and not in the individual capacity of the Directors. The repayment schedule as enclosed as Annexure-III also shows that the repayment schedule was in respect of the Company and not the Directors. Further to that, the contents affidavit-in-opposition of the respondent No.5 also shows that the loan was given to the Company and the petitioner No.1 was arrayed in the Bakijai Proceedings as the Managing Director of the Company and not otherwise.

11. Now the question, therefore, arises as to whether the petitioners who were the Directors of a Company which is limited by shares would be liable to pay the debts of the Company after ceasing to be the Directors of the Company. In the opinion of the Court, liability would be that of the Company and the said liability cannot be fastened entirely on the erstwhile Directors of the Company as it is well settled that the liability of the Company has to be first met for the assets of the Company.

12. In the backdrop of the above analysis, the question arises what is the effect of the proceedings initiated against the Company under the Act of 2002 by the respondent No.6. This Court had duly taken note of in the earlier segments of the instant judgment that the proceedings under the Act of 2002 was initiated against the Company by

issuance of a notice under Section 13 (2) of the Act of 2002 and thereupon measures were taken in terms with Section 13 (4) of the Act of 2002.

13. From the notice issued on 20.05.2015 enclosed as Annexure-4A shows that the respondent No.6 invited applications from the interested persons for being appointed as Managing Agent in terms with Section 15 of the Act of 2002 for managing the Company and the relevant portion of the said notice had already been quoted herein above. Pursuant thereto, on 23.07.2015, the notice under Section 13 (4) (b) and Section 15 (1) (a) of the Act of 2002 was issued whereby the Directors, i.e. the petitioners were removed from the Directorship of the Company by operation of Section 15 (2) of the Act of 2002 and on the very date, an agreement was entered into whereby the respondent No.7 was made the Managing Agent to manage the Company on the terms and conditions mentioned therein.

14. This Court at this stage finds it relevant to refer to the relevant portion of Section 15 of the Act of 2002 which stipulates the consequences of the publication of a notice under Section 15 (1) of the Act of 2002, i.e. the notice dated 23.07.2015. Section 15 (2) of the Act of 2002 stipulates the consequences for which the same is reproduced hereinunder:-

“(2) On publication of a notice under sub-section (1),—

(a) in any case where the borrower is a company as defined in the Companies Act, 1956 (1 of 1956), all persons holding office as directors of the company and in any other case, all persons holding any office having power of superintendence, direction and control of the business of the borrower immediately before the publication of the notice under sub-section (1), shall be deemed to have vacated their offices as such;

(b) any contract of management between the borrower and any director or manager thereof holding office as such immediately before publication of the notice under sub-section (1), shall be deemed to be terminated;

(c) the directors or the administrators appointed under this section shall take such steps as may be necessary to take into their custody or under their control all the property, effects and

actionable claims to which the business of the borrower is, or appears to be, entitled and all the property and effects of the business of the borrower shall be deemed to be in the custody of the directors or administrators, as the case may be, as from the date of the publication of the notice;

(d) the directors appointed under this section shall, for all purposes, be the directors of the company of the borrower and such directors or as the case may be, the administrators appointed under this section, shall alone be entitled to exercise all the powers of the directors or as the case may be, of the persons exercising powers of superintendence, direction and control, of the business of the borrower whether such powers are derived from the memorandum or articles of association of the company of the borrower or from any other source whatsoever.”

15. The above quoted provisions would clearly show that all persons holding office as Directors of the Company shall be deemed to have vacated their offices on the publication of the notice under Section 15 (1) of the Act of 2002. Sub-clauses (c) and (d) of Section 15 (2) of the Act of 2002 stipulates the rights and powers of the Directors as the administrators who are appointed under Section 15 of the Act of 2002. In the instant case, it shall be the Respondent No.7 and the persons mentioned in the Notice dated 23.07.2015 who shall for all purposes be the Directors of the Company.

16. In view of the above, it is the opinion of this Court that as the Bakijai Proceedings have been initiated against the petitioners on the basis that the petitioners were the Directors of the Company and not on the basis of their individual liabilities, the said Bakijai Proceedings cannot be allowed to continue against the petitioners after the petitioners have ceased to be Directors of the Company.

17. Accordingly, this Court is of the opinion that the order dated 28.03.2018 on the basis of which the warrant of arrest was issued against the petitioners is not sustainable in law in as much as the petitioners w.e.f 23.07.2015 are no longer the Directors of the Company.

18. This Court further finds it relevant to observe that the respondent No.5 cannot be



made remediless for their debts payable by the Company. The respondent No.5, shall be at liberty to proceed against the Company and those who are in-charge of the affairs of the Company under the Act of 1913, if so permissible or resort to such other proceedings as permission under law.

19. With the above, the instant writ petition stands disposed of with the following observations and directions:-

- (i) The impugned order dated 28.03.2018 whereby the warrant of arrest issued against the petitioners is set aside and quashed;
- (ii) The Bakijai Proceedings bearing Bakijai Case No.B-16/209 pending before the respondent No.2 cannot be proceeded against the petitioners as they are no longer the Directors of the Company; and
- (iii) The respondent No.5 shall be at liberty to proceed against the Company and those who are in-charge of the affairs of the Company in the said Bakijai Proceedings, if permissible under law or initiate such recovery proceedings against the Company in the manner permissible under law.

JUDGE

Comparing Assistant