

4 SCOB [2015] AD 1

APPELLATE DIVISION

PRESENT:

Mr. Justice Surendra Kumar Sinha, Chief Justice

Mrs. Justice Nazmun Ara Sultana

Mr. Justice Hasan Foez Siddique

CIVIL APPEAL NOS.179-80 OF 2007.

(From the judgment and order dated 19.3.2005 passed by the High Court Division in Writ Petition Nos.954 of 2001 and 1610 of 2000)

**Bangladesh Shilpa Rin Sangstha
represented by its Managing Director
and another:** Appellants.
(In both the Appeals)

For the Appellants:
(In both the Appeals)
Mr. Sheikh Habib-ul Alam, Advocate,
instructed by Mrs. Nahid Sultana,
Advocate-on-Record.

Vs.

**Rony Twines Limited represented by its
Director Mustafa Jamal Pasha and
others:** Respondents.
(In both the Appeals)

For the Respondents:
(In both the Appeals)
Mr. Kamal-ul-Alam, Senior Advocate,
instructed by Mrs. Modhumaloti
Chowdhury Barua, Advocate-on-Record.

Date of hearing: 21st and 22nd April, 2015.
Date of Judgment: 22nd April, 2015.

Remission of interest to the sick industry:

The question is whether the expressions ‘fñf pè’ and ‘cä pè’ used in this sub-clause (C) above include remission of all interest accrued from the day of taking loan and already paid by the sick industry by installments against the total outstanding amount to be excluded or the interest accrued on the day of recommendation made by the Special Committee out of the total amount of outstanding dues. The expression ‘fñf’ means obtainable or to be paid, that is, the interest which has accrued from the date of privilege of remission of interest given and not the past interest already paid. ... (Para 5)

J U D G M E N T

Surendra Kumar Sinha, CJ:

1. These appeals arose out of the same judgment of the High Court Division which disposed of the rules analogously declaring the order under memo dated 21.12.2000 issued by the Management Committee of Bangladesh Shilpa Rin Sangstha (BSRS) and the notice for auction sale of the assets of Rony Twines Limited without lawful authority. It also directed the writ respondent No.3 BSRS to implement the recommendation of the Special Committee on Interest Remission in respect of writ petitioner’s sick industry.

2. Short facts are that the writ petitioner in course of its business availed a loan of Tk.49,00,700.96 from BSRS. Subsequently the industry became sick for manifold reasons

beyond its control. The then Finance Minister through the budget speech in 1998-99 placed some proposals for approval before the Parliament to provide assistance to the sick industries for their rehabilitation. Following the aforesaid budget speech, the Finance Minister constituted a Special Committee for Remission of Interest of the sick industries. The Special Committee communicated its decision to the writ petitioner by a letter dated 3.5.2000 recommending for remission of 100% interest. The writ petitioner paid an amount of Tk.50,14,547.63 as against the total loan amount of Tk.49,00,700.96 and as the Special Committee remitted 100% interest, there remained no residual amount to be paid to BSRS.

3. The High Court Division held that in view of the recommendation by the Special Committed for Remission of Interest of the writ petitioner's sick industry and also in view of the repayment of excess amount against the total amount of loan taken and the substitution of the words 'Ae;cu;e pe' by the words 'f;f;f pe', BSRS cannot claim any more money from the writ petitioner.

4. The Ministry of Finance, Finance Division, constituted a Special Committee in 1996 to consider the applications for remission of interest of sick industries and then it constituted a reconciliation committee for disposal of cases pending against sick industries so that the cases pending against the sick industries can amicably be disposed of out of court. The reconstituted review committee identified some sick industries but both the committees couldn't solve the problems of sick industries. To obviate the situation, on the prayer of sick industries the concerned Ministry constituted a Special Committee under Memo dated 26th August, 1998 (annexure-A) to consider the unresolved cases. The Ministry gave guidelines to the committee as to its power of recommendation in paragraph (5) of them, sub-clause (B) is relevant for our consideration, which is as under:

“কমিটি প্রাপ্য সুদ এবং দন্ড সুদের ১০০% পর্যন্ত মওকুফের সুপারিশ করতে পারবে। তবে কোন অবস্থাতেই আসল ঋণ ও মামলা খরচ মওকুফের সুপারিশ করা যাবে না। এছাড়া যে সকল প্রতিষ্ঠান ইতোপূর্বে সুদ মওকুফের সুবিধা লাভ করেছে তাদের ক্ষেত্রে শতকরা ৯০ ভাগের বেশী সুদ মওকুফের সুপারিশ করা যাবে না”

5. This sub-clause said that the Special Committee may recommend for remission of 100% interest but in no case it can recommend for remission of the principal amount of loan and the expenses incurred towards the litigation. It was also directed that those organizations which had availed of the benefit of remission of interest may also be given remission of 90% interest. The question is whether the expressions 'f;f;f pe' and 'cä pe' used in this sub-clause (C) above include remission of all interest accrued from the day of taking loan and already paid by the sick industry by installments against the total outstanding amount to be excluded or the interest accrued on the day of recommendation made by the Special Committee out of the total amount of outstanding dues. The expression 'f;f;f' means obtainable or to be paid, that is, the interest which has accrued from the date of privilege of remission of interest given and not the past interest already paid.

6. The Ministry of Finance, Finance Division, as per recommendation of the Special Committee by letter under memo dated 03rd May, 2000, intimated the writ petitioner that in pursuance of its application before the review committee, the Special Committee recommended its industry as sick industry and directed it to comply with clause (M) in order to avail the opportunity of remission of interest, that is to say, to deposit 5% down payment of the amount remained outstanding for the renewal of loan and other expenses incurred by BSRS within 30 days of the date of receipt of the order. It was recited that all interest including penal interest, if there be, were exonerated and that the balance amount after remission to be paid in thirty months by installments as per reschedule to be made by such

financial institution. Admittedly, the writ petitioner did not comply with the said direction. Accordingly, as per sub-clause (M) of the said letter, the writ petitioner could not claim the benefit of Special Interest Remission. It waived the privilege of remission of interest.

7. Learned Counsel submits that since the writ petitioner has already paid Tk.50,00,000/- against the disbursement of loan of Tk.49,00,700.96, it was under no obligation to make any further down payment. This submission of the learned Counsel is devoid of substance. The condition precedent for availing the opportunity of Special Interest Remission was that from the date of recommendation of the Special Committee, the sick industry was required to make down payment of 5% out of the outstanding amount excluding the interest. Neither in annexure-A nor in annexure-B of the writ petition, there was any recital that the concerned Ministry or BSRS gave any assurance or any undertaking to the writ petitioner that the money paid by it prior to the decision of the Special Committee on Interest Remission would be adjusted against the total amount of remission of interest. To avail the opportunity one must make deposit of the required amount as a condition precedent within thirty days from the date of receipt of the notice. Since the writ petitioner did not avail of the opportunity, it does not acquire any right on the question of remission of interest.

8. The High Court Division has totally ignored that aspect of the matter and illegally held that the writ petitioner was not under any obligation to make any payment. The appeal is therefore, allowed without any order as to cost. The judgment of the High Court Division is set aside.