

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.626 OF 1989

In the matter of M/s.Intex Computers

Pvt. Ltd. (in Liqn.)

Omega Power System

: Petitioner

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Mr.Snehal Shah with Ms Mahek Bookwala i/b. Sajjal Patel
for purchaser.

Mr.Arif Bookwala for society.

Ms Soumya Srikrishna for Bank of Baroda.

Mrs.Aruna Pai for Official Liquidator.

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CORAM : S.A. BOBDE, J.

DATE : AUGUST 30, 2008.

ORAL ORDER:

1. The Official Liquidator has in his report dated 24.3.2008 prayed for an order declaring the sale conducted for satisfaction of the society's dues as void in terms of section 537(1) of the Companies Act, 1956.

2. The Official Liquidator has been appointed as Liquidator of M/s.Intex Computers Pvt. Ltd. (in liquidation) by this Court in pursuance of an order for winding up of the company passed on 15.1.1992. The

relevant facts leading to the sale at the instance of M/s.Hansa "D" Industrial Premises Co-operative Society Ltd., which is now sought to be set aside, are as follows:-

On 14.6.2000 an award was passed by the Registrar of Co-operative Societies under section 101 of the Maharashtra Co-operative Societies Act, 1960, hereinafter referred to as the "Co-operative Societies Act", on the application made by the society as a claimant against the company i.e. Intex Computers Pvt. ltd., which was arraigned as an opponent. The claim was made by the society for arrears of maintenance. The Co-operative Court passed an award in the sum of Rs.2,83,328.44 with interest at 12% per annum from 1.6.2000. Apparently, settlement between the parties failed and the society wrote a letter to the company to clear the outstanding dues as per the award dated 14.6.2000. The company which was then in liquidation did not comply with the demand of the society and, therefore, the society applied for warrant of execution in execution of the award. On 13.8.2004 the warrant for sale of the property and for recovery of a sum of Rs.4,14,949.32 was issued. The sale of the property was duly advertised. The property was sold by way of public auction after due publicity. Four bids were received by the Sheriff pursuant to the auction

purchase. This Court in Execution Application no.384 of 2003 recorded that the highest bidder has raised his bid to Rs.40,00,000/-, after directing that notices be issued to the other bidders to ascertain whether they were interested in raising their bids and the Court directed sale of the property in the sum of Rs.40,00,000/-. After sale, the Sheriff submitted a report to the learned Judge taking up execution application and the learned Judge made the Sheriff's report absolute in terms of prayer clauses (a) to (h) directing that upon the dues of the society being paid in full as per the decree, the society shall hand over all documents, deeds and writing to the auction purchaser. This was by an order dated 14.12.2007. The said amount of Rs.40,00,000/- is admittedly lying in this Court.

3. The Official Liquidator has applied for setting aside of the sale by public auction under section 537 of the Companies Act which reads as follows:-

"537. Avoidance of certain attachments, executions, etc., in winding up by Tribunal.-- (1) Where any company is being wound up by Tribunal--

(a) any attachment, distress or

execution put in force, without leave of the Tribunal against the estate or effects of the company, after the commencement of the winding up; or

(b) any sale held, without leave of the Tribunal of any of the properties or effects of the company after such commencement

shall be void.

(2) Nothing in this section applies to any proceedings for the recovery of any tax or impost or any dues payable to the Government."

There is no dispute that the property of the company which was being wound up was being sold by the Court. However, it is clear that the sale without permission of the Court shall be void only where section 537 would apply.

4. Mr.Bookwala, the learned counsel for the society, opposes the prayer of the Official Liquidator, inter

alia, on the ground that having regard to the scheme of the Companies Act under which the company is being wound up and the Co-operative Societies Act which governs the property in question belonging to the company, the Company Court has no jurisdiction to adjudicate upon and set aside the sale conducted under the Co-operative Societies Act.

5. The relevant provisions of the two Acts must be examined to appreciate the contention.

6. The Maharashtra Co-operative Societies Act, 1960 is an enactment under Entry 32 of List II of Seventh Schedule of the Constitution of India which empowers the State Legislature to legislate on co-operative societies. It is necessary to see how the Act operates in relation to a dispute regarding the property of a co-operative society held by a person, including a company and further see which Court has jurisdiction in relation to such dispute. Section 91 of the Co-operative Societies Act makes a dispute, inter alia, between a society and its member, such as the present one, triable by a Co-operative Court. Section 91(3) provides that no Court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in sub-section (1), save as otherwise provided under

sub-section (2) of section 93. Sub-section (3) of section 91 reads as follows:-

"(3) Save as otherwise provided under sub-section (2) of section 93, no Court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in sub-section (1)."

Section 163 of the Co-operative Societies Act bars jurisdiction of other Courts in the following terms:-

"163. Bar of jurisdiction of Courts.-- (1)
Save as expressly provided in this Act, no Civil or Revenue Court shall have any jurisdiction in respect of--

- (a)
- (b)
- (c)
- (2)

(3) All orders, decisions or awards passed in accordance with this Act or the rules shall, subject to the provisions for appeal or revision in this Act be final; and no

such order, decision or award shall be liable to be challenged, set aside, modified, revised or declared void in any Court upon the merits or upon any other ground whatsoever."

7. Section 167 of the Co-operative Societies Act reads as follows:-

"167. Companies Act not to apply.-- For the removal of doubt, it is hereby declared that the provisions of the Companies Act, 1956, shall not apply to societies registered or deemed to be registered; under this Act."

From the above provisions, it is clear that the dispute which has resulted in the sale in question was triable exclusively by a Co-operative Court under section 91 of the Co-operative Societies Act. No other Court, including the Company Court, has any jurisdiction to entertain the dispute. All orders, decisions and awards passed in accordance with the Co-operative Societies Act were immune from challenge or modification or revision in any Court upon the merits or upon any other ground whatsoever, vide section 163(3). In any event, section

167 of the Co-operative Societies Act makes it clear that the Companies Act will have no application to societies registered under the Co-operative Societies Act.

8. Mrs.Pai, the learned counsel for the Official Liquidator, submitted that since the company was in liquidation and since the property of the company has been sold, such sale and appropriation of the sale proceeds by the society would be in breach of section 529-A of the Companies Act, 1956, which lays down the priority according to which the debts of the company shall be paid. This contention cannot be accepted in view of the scheme of the Co-operative Societies Act which exclusively governs co-operative societies, including all disputes in relation to the property of the society between itself and its members. Any dispute in relation to the property of a co-operative society is not governed by the provisions of the Act, having regard to the provisions of section 167 of the Co-operative Societies Act which declares that the Companies Act shall not apply to co-operative societies. The words of section 167 have a wide import and it is clear that the intention of the Legislature is to remove any doubt that the provisions of the Companies Act may apply to co-operative societies. Thus, the property of a co-operative society and the disputes between its members

and the society in relation thereto cannot be affected by the provisions of winding up contained in the Companies Act.

9. Mr.Bookwala, the learned counsel for the society in support of his submission that the proceedings under the Co-operative Societies Act which culminated in the sale of the company's property in favour of a co-operative society, relied on the decision of the Supreme Court in Damji v. L.I.C. of India (AIR 1966 SC 135) where the question was whether section 446 of the Companies Act which mandates that no suit or legal proceedings shall be commenced or continued against the company except with the leave of the Company Court could operate on the proceedings which were pending before the Tribunal or which may be sought to be commenced before it. The Supreme Court considered the provisions of winding up under the Companies Act and section 41 of the Life Insurance Corporation Act which is similar to section 163 of the Co-operative Societies Act barred the jurisdiction of all civil Courts to entertain or adjudicate upon any matter which the Tribunal under the Life Insurance Corporation Act is empowered to decide or determine under that Act. The Supreme Court observed in paragraphs 17, 18 and 19 as follows:-

"(17) In this connection, reference may be made to S. 41 of the LIC Act which provides that no civil Court shall have jurisdiction to entertain or adjudicate upon any matter which a Tribunal is empowered to decide or determine under that Act. It is not disputed that the Tribunal had jurisdiction to entertain the application of the Corporation and adjudicate on the matters raised thereby. The Tribunal is given the exclusive jurisdiction over this matter.

(18) It is in view of the exclusive jurisdiction which Sub-s. (2) of S. 446 of the Companies Act confers on the company Court to entertain or dispose of any suit or proceeding by or against a company or any claim made by or against it that the restriction referred to in Sub-s.(1) has been imposed on the commencement of the proceedings or proceeding with such proceedings against a company after a winding-up order has been made. In view of S. 41 of the LIC Act the company Court has no jurisdiction to entertain and adjudicate

upon any matter which the Tribunal is empowered to decide or determine under that Act. It is not disputed that the Tribunal has jurisdiction under the Act to entertain and decide matters raised in the petition filed by the Corporation under S. 15 of the LIC Act. It must follow that the consequential provisions of Sub-s. (1) of S. 446 of the Companies Act will not operate on the proceedings which be pending before the Tribunal or which may be sought to be commenced before it.

(19) Further, the provisions of the special Act i.e., the LIC Act, will override the provisions of the general Act, viz., the Companies Act which is an Act relating to companies in general."

It is clear that the ratio of the decision in Damji's case (supra) applies to the scheme of the Companies Act and the Co-operative Societies Act involved in the present case and that the provisions of the Co-operative Societies Act must be treated as those of special Act which relate to co-operative societies in particular which override the provisions of the general Act i.e.

the Companies Act which is an Act relating to the companies in general.

10. Similarly, the observations relevant to the present dispute were made by a Constitution Bench of the Supreme Court in S.V. Kandeakar v. V.M. Deshpande [(1972) 1 SCC 438] wherein in paragraph 17, it has been observed as follows:-

"Looking at the legislative history and the scheme of the Companies Act, particularly the language of Section 446, read as a whole, the expression "other legal proceeding" in sub-section (1) and the expression "legal proceeding" in sub-section (2) convey the same sense and the proceedings in both the sub-sections must be such as can appropriately be dealt with by the winding up court. The Income-tax Act is a complete code and it is particularly so with respect to the assessment and re-assessment of Income-tax. The fact that after the amount of tax payable by an assessee has been determined or quantified, its realisation from a company in liquidation is governed by the

Act because the income-tax payable also being a debt has to rank pari passu with other debts due from the company does not mean that the assessment proceedings for computing the amount of tax must be held to be such other legal proceedings as can only be started or continued with the leave of the liquidation court under Section 446 of the Act. The liquidation court cannot perform the functions of Income-tax Officers while assessing the amount of tax payable by the assessee even if the assessee be the company which is being wound up by the court."

The earlier decision of the Supreme Court in Damji's case was expressly approved in this case.

11. In Allahabad Bank v. Canara Bank [(2000) 4 SCC 406], the Supreme Court observed in paragraphs 30 and 31 where the question was whether leave of the Company Court was necessary to proceed with a claim before the Debt Recovery Tribunal or in respect of execution proceedings before the Recovery Officer that there was no such need to seek leave of the Company Court since the latter proceedings could not be transferred to the Company

Court, vide paragraph 30.

12. Recently, in Greater Bombay Coop. Bank Ltd. v. United Yarn Tex (P) Ltd. [(2007) 6 SCC 236], while considering the scheme of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the Co-operative Societies Act, Their Lordships reversed the judgement of this Court which held that Co-operative Banks are banking companies within the meaning of the Banking Regulation Act and, therefore, the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 were applicable to recovery of dues by the co-operative bank from their members, and observed that the Co-operative Societies Act was a complete self-contained Code which governs the recovery of dues of the co-operative society.

13. In view of the aforesaid decision, it is clear that the Co-operative Societies Act is a self-contained Code and confers exclusive jurisdiction on the Co-operative Courts for adjudication of disputes arising under that Act and the Companies Act, 1956 cannot deal with any of the disputes within the exclusive domain of the Co-operative Court nor can entertain any proceedings for setting aside the orders passed under the Co-operative Societies Act. Therefore, the prayer of the Official

Liquidator that the sale conducted in pursuance of the award of the Co-operative Court be declared void in terms of section 547 of the Companies Act cannot be entertained and is hereby rejected. Order accordingly.

S.A. BOBDE, J.