
(2008) 02 P&H CK 0288
In the Punjab And Haryana At Chandigarh

Ashiana Paper Mills Pvt. Ltd.

APPELLANT

Vs

Punjab State Electricity Board and Others

RESPONDENT

Date of Decision : 19-02-2008

Acts Referred:

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15, 16, 17, 19, 22

Citation : AIR 2008 P&H 119

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ranjit Singh, J.—Whether any suit is maintainable for recovery of money or enforcement of any security against the Industrial Company while the Company is declared sick and is under rehabilitation? This question arises for consideration in terms of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short "SICA") in this case.

2. The facts, in brief, are that the petitioner is a limited company which went into losses and had got itself registered with the Board of Industrial and Financial Reconstruction, New Delhi (for short "BIFR"). The company was registered with the BIFR in the year 1998. On 30-9-2005, BIFR concluded that the promoters of the Company are not in a position to revive it and that there is no rehabilitation proposal. The Company went in appeal against the said order before the Appellate Authority for Industrial and Financial Reconstruction (for short "AAIFR"). The operation of the order passed by the BIFR was stayed on 30-1-2006. On 13-6-2002 respondent No. 1 Electricity Board filed a civil suit for recovery of a sum of Rs. 28,14,088/- in the Civil Court at Hoshiarpur. The petitioner-company filed an application for dismissal of civil suit before a Civil Judge pleading that the said suit is not maintainable in view of the provisions of Section 22 of SICA. On 24-3-2006 Civil Judge (Senior Division), Hoshiarpur dismissed this application filed by the petitioner-company, which is impugned through the present revision petition.

3. The learned Counsel for the petitioner has made a single fold submission before me on the basis of contents of Section 22 of SICA. As per the counsel, no proceedings for winding up of the industrial company or for execution against any of the properties of the industrial company and no suit for recovery of money etc. shall lie or proceeded with except with the consent of the Board (BIFR) or of the Appellate Authority (AAIFR) as the case may be. It is submitted that respondent No. 1 Board could have filed this suit only after obtaining permission from the Board where the company was registered or the Appellate Authority where appeal is pending in terms of Section 22 of SICA.

4. This line of reasoning to challenge the order is seriously contested by the counsel for respondent No. 1. He would say that Section 22 would not be a bar for filing a suit for recovery of money arising out of consumption of electricity and this provision is being wrongly read by the petitioner-company. He would, thus, contend that the trial Court has rightly held that Section 22 of the SICA would not be a bar for filling suit for recovery of electricity charges even where the unit is declared sick.

5. Mr. Mansur Ali counsel for the petitioner has placed strong reliance on the case of Maharashtra Tubes Ltd. v. State Industrial & Investment Corporation of Maharashtra Ltd. and Anr. (1993) SCC 144 : AIR 1993 SCW 991. He would refer to the observations of the Hon'ble Supreme Court made in para 14 of the judgment where it is inter alia noticed as under:

We are, therefore, of the opinion that where an inquiry is pending under Sections 16/17 or an appeal is pending u/s 25 of the 1985 Act there should be cessation of the coercive activities of the type mentioned in Section 22(1) to permit the BIFR to consider what remedial measures it should take with respect to the sick industrial company. The expression "proceedings" in Section 22(1), therefore, cannot be confined to legal proceedings understood in the narrow sense of proceedings in a court of law or a legal tribunal for attachment and sale of the debtor's property.

The counsel would also highlight the following observations of the Hon'ble Supreme Court:

It is, therefore, difficult to accept the view of the High Court that where the creditors of a sick industrial concern happen to be banks or State Financial Corporations different considerations would come into play. It must be realised that in the modern industrial environment large industries are generally financed by banks and statutory corporations created specially for the purpose and if they are permitted to resort to independent action in total disregard of the pending inquiry under Sections 15 to 19 of the 1985 Act the entire exercise under the said provisions would be rendered nugatory by the time the BIFR is able to evolve a scheme of revival or rehabilitation of the sick industrial concern by the simple device of the Financial Corporation resorting to Section 29 of the 1951 Act.

Reference is also made to the case of M/S Patheja Bros. Forgings and Stamping

and Another Vs. I.C.I.C.I. Ltd. and Others, , wherein it is held that suit against a guarantor of loan or advance granted to concerned industrial company would not be maintainable or cannot be proceeded with without the sanction of Board or Appellate Authority under the Act. The submission made in the case of M/S Patheja Bros. Forgings and Stamping and Another Vs. I.C.I.C.I. Ltd. and Others, was that as per Section 22, no suit for enforcement of any guarantee in respect of any loan or advance granted to the industrial company would lie or could be proceeded with except with the consent of Board or Appellate Authority under the Act. Noticing the contents of Section 22 which relate to the suspension of legal proceedings, the Hon"ble Supreme Court has observed that the words in the square brackets in the section reading "and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company" were inserted by the Act 12 of 1994. It is noticed that these words are relevant for the purpose of decision in the case and the Court went on to observe:

As we read them, they provide that no suit-

(a) for the recovery of money, or

(b) for the enforcement-

(i) of any security against the industrial company, or

(ii) of any guarantee in respect of any loans or advance granted to the industrial company.

shall lie or be proceeded with except with the consent of the Board or the Appellate Authority under the said Act. For our purposes, therefore, the relevant words are : "no suit...for the enforcement...of any guarantee in respect of any loans or advance granted to the industrial company" shall lie without the consent of the Board or the Appellate Authority. The words are crystal clear. There is no ambiguity therein. It must, therefore, be held that no suit for the enforcement of a guarantee in respect of a loan or advance granted to the concerned industrial Company will lie or can be proceeded with without the sanction of the Board or the Appellate Authority under the said Act.

6. Mr. Section C. Pathela appearing for the respondents has, however, placed reliance on the case of Keshri Steels and Another Vs. M.P. Electricity Board and Others, . While interpreting Section 22 of the SICA, the Court observed that the protection under SICA cannot be invoked for recovery of electricity bill. It is held that the electricity bill is neither a loan nor an advance as contemplated u/s 22(3) of the Act. While considering the issue, the High Court has held:

27. The basic and foremost question, that arises for consideration of this Court, is, whether arrears of electrical dues can be said to fall in the category of loan or advance as appearing in Section 22 of the Act. Petitioners have failed to satisfy this Court, that the arrears of electrical charges can be said to be either a loan or advance.

28. It is also not in dispute, that, as contemplated under Sub-section (3) of Section 22 of the Act, there is no order passed in favour of petitioners by BIFR, restraining recovery of the amounts due and outstanding against the petitioners, towards electrical charges. The said amounts became due and payable on account of Agreement, entered into between the parties. Under, the umbrella of Section 22 of the Act, Petitioners have no right to claim that even such an amount cannot be recovered on the ground, that Petitioners' Units are Sick Industrial Units.

7. Reference is then made to judgment in case of Sarup Chand Vs. M.K. Paper and Board Mills Pvt. Ltd., Kharar and others, where it is held that proceedings in a suit for recovery against the company filed by third party cannot be stayed in view of Section 22 of SICA. It is held that only certain specified proceedings are contemplated to be stayed u/s 22 of the Act like winding up, execution, distress or appointment of a Receiver etc.

8. Let us examine the legal position that would emerge from the provisions of the Act and the law laid down by the Courts. In Gujarat Steel Tubes Co. Ltd. v. Virchandbhai Bhogilal Shah and Ors. 2000 (2) RCR (Civil) 343, the question arose whether suit for recovery of arrears of rent from a Sick Industrial Company was maintainable or not. Holding that such suit would be maintainable, meaning of the expression "no suit for recovery of money" contained in Section 22(1) is explained. It is observed that this phrase cannot be considered in isolation without the reference to the earlier part of the Section or the latter part thereof. It is accordingly held that totality of the Section is to be considered and the Section clearly indicates that "no suit for recovery of money" shall be instituted for winding-up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of the Receiver in respect thereof. It is further held that likewise, no suit for the recovery of money shall be instituted or proceeded with for the enforcement of any security against the industrial company or of any guarantee in respect of the loan or advance granted to the industrial company. The relevant observation of the Court in this regard are as under:

Now reverting to Section 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, it is abundantly clear that a blanket interpretation as put up by Mr. Clerk on behalf of the applicant to the phrase "no suit for the recovery of money" cannot be given to this phrase. This phrase cannot be considered in isolation without the reference to the earlier part of the Section or the latter part of the Section. The earlier part of Section clearly indicates that (i) no proceedings for the winding-up of the industrial company, or (ii) for execution, distress or the like against any of the properties of the industrial company, or (iii) for the appointment of a Receiver in respect thereof, shall lie or be proceeded with further. The latter part of this phrase i.e. "no suit for the recovery of money" clearly indicates that for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the

industrial company no proceeding shall lie or be proceeded with further. Therefore, the phrase "no suit for the recovery of money" employed in Section 22(1) must be read and interpreted not in isolation but with the aid of previous part of the Section and the latter part of the Section. The totality of the Section is to be considered and the Section clearly indicates that "no suit for the recovery of money" shall be instituted for winding-up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of the Receiver in respect thereof. Likewise, no suit for the recovery of money shall be instituted or proceeded with for the enforcement of any security against the industrial company or of any guarantee in respect of the loans or advance granted to the industrial company. The object of the Sick Industrial Companies (Special Provisions) Act, 1985 is to protect the assets of the company and bar is put up in Section 22(1) for certain proceedings taken against the assets of the company.

9. The precise submission of the counsel for the petitioner is to read words, "no suit for recovery of money" appearing in Section 22 of SICA in isolation. The counsel cannot make his plea good otherwise. He has basically relied upon the ratio of law laid down in Maharashtra Tubes" case AIR 1993 SCW 991 (supra). The aspect of issue arising on account of electrify charges was impliedly considered by the Hon"ble Supreme Court in this case. The case of The Andhra Cement Company Ltd., Secunderabad Vs. A.P. State Electricity Board and others, , was referred to before the Hon"ble Supreme Court to urge that injunction against Electricity Board to restrain it from refusing to supply electrical energy to sick undertaking cannot be granted. The High Court in the case of Andhra Cement Co. Ltd. (supra), was dealing with the suit filed by the company seeking declaration that the Electricity Board is not entitled to take any coercive steps by disconnection of power pending the settlement of claim between the company and the Board in view of the provisions of SICA. High Court took a view that non-supply of goods under a contract cannot be equated with the kind of proceedings contemplated by Section 22(1). It is observed that non supply of goods in future cannot amount to action proposed against the property of the company. The High Court has held that Section 22(1) was not attracted. The High Court further held that threat of disconnection or disconnection of supply of power to sick company are not hit by the prohibition contained in Section 22(1) of the SICA. Going into the background of SICA 1985, Court observed that this is a benevolent piece of legislation and provisions are to be construed to see that the purposes of the Act are achieved and are not defeated. However, while doing so, as observed by the Court, two other principles are to be borne in mind and these are that the provisions of Section impose certain restrictions on the rights of third parties in respect of institution or continuation of legal proceedings such as winding-up, execution, distress or the like against the properties of the industrial company. The purpose of the Act was required to be harmonised with the legal rights of others and the restrictions imposed on such others have to be limited to the extent intended by the legislature and would not be extendable

any further. It is also observed that the jurisdiction of the Courts or other bodies or 22(1) authorities cannot be unduly curtailed beyond what the legislature has intended. Section 22 of SICA provides that no proceedings either for winding-up or for execution, distress or the like against any of the properties of the company or for appointment of a Receiver shall "lie or be proceeded with". Non-supply of further goods under a contract was held to be not equated with the kind of proceeding contemplated u/s 22(1) of the Act. The injunction sought by the company in *The Andhra Cement Company Ltd., Secunderabad Vs. A.P. State Electricity Board and others*, against the disconnection and for further continuance supply of electricity even after default of payment was accordingly declined. In *Mangilal Vs. Suganchand Rathi*, it is observed by the Hon'ble Supreme Court that the principle that liberal construction must flow from the language used does not mean the raising of any presumption that the protection of the widest amplitude must be deemed to have been conferred upon those for whose benefit the legislation may have been enacted. As held in *Yudhishter Vs. Ashok Kumar*, the rule of beneficent legislation has to be read reasonably and justly and without interfering with the right to hold property or other rights of other person which may expose it to the vice of unconstitutionality. The Court took a view that on a plain reading of Section 22 of SICA, the Section contemplates that no proceedings either for winding-up or for execution, distress or the like against any of the properties of the company or for appointment of a Receiver in respect thereof shall lie or be proceeded with and if the Electricity Board by itself refused to supply its product namely, electricity in future, it cannot be brought within the abovesaid prohibition. It further held as under:

The words "the like" in Section 22(1) cannot also help the Company. The said words only mean "similar" and not the "the same". Stroud's Judicial Dictionary (5th Edn.) says that the words "the like" are not equivalent to "the same". "Like" may not import identity as definitely as the use of the word "same" would have done. But, at least, it connotes resemblance in main features (Venkataramaiya's Law Lexicon, 2nd Edn. quoting words and phrases, Vol. III p. 262). In Ramanatha Aiyar's Law Lexicon (1987) it is said that "like" means equal to quantity, quality, or degree; exactly corresponding; so that "in like manner" means "with same force or effect". Webster's dictionary is quoted as follows: "While the context determines its significance, the term is generally defined to mean analogous, resembling; having the same, or nearly the same, appearance, qualities, or characteristics, resembling, similar to, equal in quantity, quality, or degree; exactly corresponding."

10. It would be seen from the above that the right of the Electricity Board either to supply electricity or to discontinue supply thereof has not been held to be covered under the restriction introduced through Section 22(1) of the Act. In the case of *Keshri Steels* AIR 1998 MP 315 (supra), the recovery of electricity bill on account of nonpayment was held to be not protected under the provisions of Section 22 of the Act. It was held that electricity bill is neither a loan nor an advance as contemplated u/s 22(3) of the Act. View further is, as can be seen

from the case of Sarup Chand (supra), that the proceeding in a suit for recovery against the company filed by third party cannot be stayed. In Gujarat Steel Tubes" case (supra), the phrase appearing in the Section "no suit for recovery of money" was interpreted and it was held that the same cannot be considered in isolation without the reference to the earlier part or the latter part of the Section. The earlier part of the Section clearly indicates that no proceedings for the winding-up of the industrial company, or for execution, distress or the like against any of the properties, or the appointment of a Receiver shall lie or be proceeded with further. The latter part of the phrase, i.e., "no suit for recovery of money" clearly indicates that for enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company, no proceedings shall lie or be proceeded with. If the phrase "no suit for recovery of money" appearing in Section 22(1) is read in isolation as is being suggested by the counsel for the petitioner, then that would have serious consequences on the third party rights. As observed by Hon"ble Supreme Court, rule of beneficent legislation has to be read reasonably and justly and without interfering with the right to hold property or other rights of third persons. Thus, the bar for recovery of suit of rhoney would be for enforcement of any security against the industrial company or of any guarantee in respect of any loan or advance granted to the industrial company and not as wide as argued by learned Counsel for the petitioner. The meaning as suggested by the counsel for the petitioner may expose the provision to the vice of unconstitutionality. The view expressed in the case of The Andhra Cement Company Ltd., Secunderabad Vs. A.P. State Electricity Board and others, did not find disapproval by the Hon"ble Supreme Court in Maharashtra Tubes Ltd."s case AIR 1993 SCW 991 (supra). In fact, in Maharashtra Tubes Ltd."s case, the Hon"ble Supreme Court was dealing with the rights of the Bank or State Financial Corporation and held that different considerations would not come into play as was viewed by the High Court, which was under challenge before the Hon"ble Supreme Court. The ratio of law laid down in this case would not apply in case of a claim by the Electricity Board which is neither making a claim for recovering any loan or such like situation. It is also noticeable that the plea of the company which was registered with the BIFR in the year 1998 has been rejected on 30-9-2005 by holding that promoters of the company are not in a position to revive the same. The company is now in an appeal against this order. The petitioner-company has also made no effort to stall recovery of electricity dues. It is not possible to hold that the suit filed by the Electricity Board for recovery of the dues would be barred or not maintainable in view of he provisions of Section 22 of the SICA. This provision is meant to apply to those proceedings as specified in the Section and not to any other suit or proceedings as argued.

11. There is, thus, no irregularity or infirmity noticed in the impugned order and the revision is accordingly dismissed.