
(2000) 07 DEL CK 0078

In the Delhi High Court

Case No : CWP No. 2525 of 2000 and CM 3932 of 2000

AVS Industries Ltd and Another

APPELLANT

Vs

AAIFR and others

RESPONDENT

Date of Decision : 20-07-2000

Acts Referred:

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15(1), 16

Citation : (2003) 115 CompCas 255 : (2000) 86 DLT 683 : (2000) 54 DRJ 902

Hon'ble Judges : Dr. Arijit Pasayat, C.J.; D.K. Jain, J

Bench : Division Bench

Advocate : Mr. P. Chidambaram. and Ms. Tasneem Ahmadi, for the Appellant;
Mr. Jagdeep Kishore, Ms. Naudip Kaur and Mr. Harpreet Singh, for the Respondent

Judgement

Arijit Pasayat, CJ.

1. Rule D.B.

Since a short point is involved, with the consent of counsel for parties, this petition is taken up for final hearing.

2. Controversy in this petition lies within a very narrow compass, to appreciate which, a brief reference to factual aspects would suffice:

Petitioner No. 1 filed an application before Board for Industrial and Financial Reconstruction (BIFR in short) u/s 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as the "Act") After hearing on certain dates, BIFR passed an order on 16th November, 1999, inter alia, with the following directions :

"Therefore, IFCI is appointed as Coordinating Agency u/s 16(2) of the Act. CA would appoint a Chartered Accountant for conducting SIA and report in 8 weeks after holding a joint meeting of all secured creditors and company/promoters. Till then out orders on declaring the company as sick will continue to be reserved and after examining SIA report, the Bench would consider passing further

appropriate orders in this case".

3. Reports of Chartered Accountants were received on 27th December, 1999 and 31st January, 2000. A meeting was convened by the Industrial Finance Corporation of India (IFCI in short) on 3rd February, 2000. On that date respondent No. 4-Punjab National Bank (PNB in short) wanted certain information and time to submit its further views. On 4th February, 2000. IFCI sent its report to the BIFR. Though there is no specific material in that regard, it is PNB's stand that on 24th February, 2000. PNB had submitted its report, which was in line with the report of IFCI before BIFR. On 25th February, 2000. BIFR passed a final order holding that petitioner No. 1 was not a sick company within the meaning of the Act and reference was not accepted. Matter was carried in appeal before Appellate Authority for Industrial and Financial Reconstruction (AAIFR in short). Specific stand was taken that there was non-compliance with the requirements of Regulations 21 and 40 of the BIFR Regulations, 1987 ("Regulations" in short). However AAIFR did not consider that aspect and on merits held that conclusions of BIFR are in order.

4. In support of the petition. Mr. P. Chidambaram, learned senior counsel for the petitioners, submitted that there was infraction of the mandatory requirements of Regulations 21 & 40. Mere fact that AAIFR considered the matter at length on merits would not cure the legal deficiencies which occurred by not granting opportunity as stipulated in Regulations 21 & 40. There is no appearance on behalf of respondents except respondent No. 4-PNB and respondent No. 9-ESIC. Learned counsel for PNB submitted that since a fresh reference has been filed before the BIFR for the period ending on 31st March, 2000, even if there was any deficiency so far as the reference relatable to the period ending 31st March, 1999 is concerned. that is of no consequence.

5. In order to appreciate rival submissions, it is necessary to take note of the provisions, which are relevant for the present case:

Section 16 of the Act

Section 16: Inquiry into working of sick industrial companies:

(1) The Board may make such inquiry as it may deem fit for determining whether any industrial company has become a sick industrial company-

(a) upon receipt of a reference with respect to such company u/s 15; or

(b) upon information received with respect to such company or upon its own knowledge as to the financial condition of the company.

(2) The Board may, if it deems necessary or expedient so to do for the expeditious disposal of an inquiry under sub-section (1) require by an order any operating agency to enquire into and make a report with respect to such matters as may be specified in the order."

(3) xxxxxxxxxxxx".

Regulations 21 & 40 of Regulations

"21. Upon a reference with respect to an industrial company u/s 15 or upon information received with respect to such company, or upon its own knowledge as to the financial condition of the company, the Board may-

(a) itself make such inquiry as it may deem fit, for determining whether the industrial company has become a sick industrial company; or

(b) if it deems necessary or expedient so to do, for the expeditious disposal of inquiry mentioned at (a) above, direct by an order, an operating agency, to be specified in the order, to enquire into and make a report with respect to such matters as may be specified in the order;

Provided that reasonable opportunity for making submissions shall be given by the board to the informant, and to the concerned industrial company if it is not the informant, before deciding whether the said company has become a sick industrial company or not."

"40. Assistance to the Board:-

The Board may, at any time, take the assistance of public financial institutions, banks or other institutions, consultants, experts, Chartered Accountants, surveyors and such other technical and professional persons as it may consider necessary and ask them to submit report or furnish any information:

Provided that if the report or information so obtained or any part thereof is brought on record of any inquiry and is proposed to be relied upon by the Board for forming its opinion or view, the party or parties to the inquiry shall be given a reasonable opportunity of making his or their submissions with respect thereto."

6. A bare reading of Regulations 21 & 40, which appear in Chapter IV and Chapter IX respectively, make it clear that after certain information/report comes to the knowledge of BIFR, it is required to grant an opportunity to the affected person before making use of that information/report. That is in line with the requirement of principles of natural justice. Chapter IV of the Regulations deals with inquiry u/s 16 and Chapter IX deals with restriction on disclosure of information. The provisos in both the Regulations warrant grant of reasonable opportunity for making submissions. That admittedly has not been done on the facts of the present case by the BIFR.

7. Natural justice is an inseparable ingredient of fairness and reasonableness. Statutory provisions as contained in the "provisos referred to above encapsulate that concept. Observance of the principles of natural justice is the pragmatic requirement of fairplay in action. The purpose of following the principles of natural justice is the prevention of miscarriage of justice. Rules of natural justice operate as implied mandatory processual requirement, non-observance whereof invalidates the exercise of power.

8. So far as the effect of subsequent reference is concerned, the consequence

which flow from Section 22 cannot be lost sight of. The said provision reads as follows:

"22. Suspension of legal proceedings contracts etc-

(1) Where in respect of an industrial company, an inquiry u/s 16 is pending or any scheme referred to u/s 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal u/s 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law; no proceedings for the 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 a receiver in respect thereof (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) shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority."

Above being the position, filing of reference for the subsequent period in terms would not render an earlier reference infructuous if it is illegally or improperly decided by the BIFR or AAIFR as the case may be.

9. In the aforesaid background the writ petition is allowed. Rule is made absolute and Orders of BIFR and AAIFR dated 25th February, 2000 and 26th April, 2000 respectively are quashed. BIFR is directed to grant an opportunity to petitioner No. 1 company in terms of Regulations 21 & 40. To avoid unnecessary delay, let the parties appear before the BIFR on 30th August, 2000 so that necessary directions can be given by the BIFR in the proceedings. We make it clear that we have not expressed any opinion on merits.

Copy of the order be given dusty to counsel for the parties.