(1996) 05 MP CK 0053

In the Madhya Pradesh High Court

Case No : Company Petition No. 1 of 1993 (G)

B.I.F.R. Bench II, New Delhi — APPELLANT

Vs

M/s. Gwalior Synthetics Pvt. Ltd. — RESPONDENT

Date of Decision : 09-05-1996

Acts Referred:

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15(1), 20

Citation : (1997) 1 MPJR 321

Hon'ble Judges : T.S. Doabia, J

Bench : Single Bench

Advocate : J.S.L. Sinha, for the Appellant; J.P. Gupta, for the Respondent

Judgement

T.S. Doabia, J.

This petition for winding up of the concern by the name of M/s. Gwalior Synthetics Pvt. Ltd. is pending in this Court since 5th of February 1993. This came to be registered with this Court under following circumstances :

The directors of the company had filed an application u/s 15(1) of the Sick Industrial Companies Special Provisions Act, 1985 (hereinafter referred to as the Act). In this, a prayer was made that the company may be declared and treated as a sick unit and steps be taken for its re-habilitation. On this application, the Board for Industrial and Financial Reconstruction (hereinafter referred to as the Board), passed an order on 9th of November 1992. It recommended that action be taken u/s 20 of the above Act. It was under these circumstances this petition came to be registered by the Registry of this Court. Proceeding were initiated for winding up of the Company.

Later on, a prayer was made by the company before the Board that the order dated 9th of November, 1992 be recalled. This application was filed on 23rd of August, 1995. It was stated that the financial position of the company has since improved and it has satisfied the demands of several of its creditors including the M.P. Financial Corporation.

When this petition was taken up for hearing today, Shri J.D. Suryavanshi, counsel appearing for the M.P. State Financial Corporation, stated that the company has met its obligations towards the Corporation. Besides, the learned counsel appearing for the company, has placed on record a letter dated 9th of April, 1996. This is to the effect that a sum of Rs. 57 lacs has been paid to the M.P. State Industrial Development Corporation Ltd. He has also placed another communication issued by the Union Bank of India. This communication is to the effect that a sum of Rs, 14, GO, 291/- has since been paid to the bank by the company towards adjustments of previous dues.

It is on the above basis, a prayer was made before the Board that the order dated 9th of November, 1992 be given a fresh look and the order passed by it for winding up the company should not be given effect to. The Board has declined the prayer. An order to this effect has been passed on 31st of October, 1995. The Board has come to the conclusion that it has no jurisdiction in this regard. Para 3 of the order is relevant and it be noticed :

We have carefully considered the matter. In substance, the applicant company seeks a review of BIFR''s order dated 9.11.1992 regarding the Board''s final opinion as to winding up of the sick industrial company M/s. Gwalior Synthetics Pvt. Ltd. This opinion has already been forwarded to the Hon''ble High Court of Madhya Pradesh. From a perusal of the interim orders of the Hon''ble High Court, M.P. (Jabalpur Bench) dated 15.9.1995 in company case no. 1/1993, it appears that on an application made on behalf of the company stating to the effect that BIFR has been approached to recall the orders of winding up of the company, as it is now a running concern, at the request of the Counsels of the parties, the case has been adjourned to 17.11.1995. As there is no provision in the Act which empowers BIFR to review its own orders passed u/s 20(1) of the Act, we are unable to entertain the applications under considerations. The same being legally non-maintainable are hereby rejected. As the matter stands, BIFR has become functus-of-ficio in the matter. The applicant Company is free to put forward whatever contentions, it has with respect to its winding up, before the Hon''ble High Court, which may consider the same and pass such orders as deemed fit.

Against the above order, the Company had a remedy to prefer an appeal. That has not been done. However, a writ petition has been preferred in the Delhi High Court. This is said to be pending.

The learned counsel appearing for the company submits that no useful purpose would be served by taking proceedings for winding up in pursuance of the order passed by the Board on 9th of November, 1992. He submits that a direction may be given to the Board to reconsider the matter.

As indicated above, the Company has an alternate remedy of appeal. This they have not done. A writ petition was filed in the Delhi High Court. That is said to be still pending.

Notwithstanding the availability of the remedy of appeal and notwithstanding the fact that the company has taken proceedings by way of a writ petition before the Delhi High Court, I am of the view that it would be just and proper to direct the Board to reconsider the matter afresh and if the financial position of the company has improved then, this factor be taken note of. Such a matter came up before the Supreme Court of India in the case reported as Crescent Iron and Steel Corporation Ltd. Vs. Union of India (UOI) and Another, . The Supreme Court of India gave a direction to the Board to reconsider the matter. It specifically observed that if the financial position of a company has improved then this factor should be taken note of. The relevant observations are contained in para 8 of the judgment. These be noticed.

all the above circumstances have happened after the passing of the order by the BIFR and the order of the State Government dated July 13, 1992 has come into existence after the order passed by the appellate authority. The BIFR and the appellate authority are authorised to take into consideration the facts and circumstances of each case and then to decide whether any reference u/s 15(1) of the Sick Industrial Company (Special Provision) Act, 1985 was at all necessary or not and any other appropriate order meeting the ends of justice in each case.

Following the law laid down by the Supreme Court of India and taking note of the fact that the company in question has satisfied some of the major creditors that is M.P. State Financial Corporation, it would not be just and proper to proceed further with the winding up of the company. As such, a direction is given to the Board to reconsider the matter in the light of the facts stated above. Any other factor which the company wishes to bring on record may also be taken note of. The impediment pointed out by the Board that it has no jurisdiction to review its order no longer subsist. It would now proceed to give a fresh look to the entire matter in accordance with law laid down by the Supreme Court and also in accordance with the directions made in this order.

The Board would accordingly reconsider the matter. If the Board comes to the conclusion that the company still requires to be subjected to winding up process, then it would make a fresh reference to this petition. So far as the present petition is concerned, that stands disposed of.