

(1996) 04 MAD CK 0044

In the Madras High Court

Case No : Original Application No. 1331 of 1995 and Application No's. 4042 of 1995 and 73 of 1996

Blue Star Ltd.

APPELLANT

Vs

Hindustan Photo Films Manufacturing Co. Ltd.

RESPONDENT

Date of Decision : 25-04-1996

Acts Referred:

Arbitration Act, 1940 — Section 41B

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15(1), 22, 22(1)

Citation : (1997) 2 CTC 538 : (1997) 3 LW 306

Hon'ble Judges : R. Jayasimha Babu, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Jayasimha Babu, J.—The common applicant in Original Application No. 1331 and Application No. 4042 of 1995 is a party to an

arbitration proceeding in which the respondent company is the opposite party. The applicant has claimed a sum of Rs. 4.9 crores. There is also a

counter-claim of about Rs. 2.35 crores. It is stated at the Bar that the arbitration is in progress.

2. Pending the arbitration, these applications have been filed invoking section 41B and Schedule II to the Arbitration Act, 1940. Interim orders

were made directing the respondent company not to utilise funds up to Rs. 5 crores so that that sum may be available to the applicant herein, in the

event of its success in the arbitration.

3. The orders so made were prior to January 23, 1996. On that date, the Board for Industrial and Financial Reconstruction in Case No. 503 of

1995 made an order pursuant to a reference made u/s 15(1) of the Sick

Industrial Companies Act by the respondent company. The Board

appointed a special director and also nominated an operating agency to work out a scheme of rehabilitation for the company.

4. It is, therefore, clear that as of now, section 22 of the Sick Industrial Companies Act is attracted to any proceeding to which the company is a

party. Learned senior counsel for the applicant, however, submitted that section 22 of the Act has no application in so far as the facts of this case

are concerned. He submitted that the applicant is entitled to maintain the applications, and also continue to have the benefit of the interim orders.

Learned senior counsel also submitted that the application filed by the company for the suspension of the orders should be denied, as the applicant

had a genuine claim against the company, the company having admitted its liability in several letters addressed to the applicant.

5. The relevant part of section 22(1) here is set out below :

22(1) . . . 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.

6. It is not in dispute that the applicant has not approached the Board and there is no consent of the Board for the proceedings now pending in this

court or for the continuance thereof by the applicant.

7. It was contended for the applicant that the use of the words ""distress or the like"" in section 22(1) of the Act can only be applied to proceedings,

which would result in all or any part of the assets of the company being seized, and a mere order of restraint, putting fetters on the company,

regarding the use of its assets, whether movable or immovable, which continued to be in its possession, is not covered by the expression ""distress

found in section 22(1) of the Act. Learned senior counsel referred to the meaning of the word ""distress"" given in paragraph 201 of Halsbury's

Laws of England (fourth edition, volume 13). That paragraph reads as follows :

201. Meaning of distress. - The term "distress" primarily connotes a summary

remedy by which a person is entitled without legal process to take into his possession the personal chattels of another person, to be held as a pledge to compel the performance of a duty, or the satisfaction of a debt or demand. By almost universal sanction the term "distress" is now used to designate both the process of taking, and the chattels taken though originally it applied only to the taking.

By statute, remedies referred to as distress have been introduced for the recovery of rates and taxes and for the enforcement of certain fines imposed by orders of magistrates' courts. A statutory right to distrain has also been given for the recovery of tithe rent charge and the tithe redemption annuity, and for the recovery of annual sums charged on land.

8. Though in the first paragraph of the definition, it is stated that "'distress'" primarily connotes a summary remedy by which a person is entitled, without legal process, to take into his possession chattels of another person, the second paragraph therein makes it clear that that expression has also been used with reference to statutory remedies and is not confined to private acts. The second paragraph refers to statutory remedies referred to as "'distress'" for the purpose of recovery of rates, taxes and for the enforcement of certain fines, etc.

9. The definition of "'distress'" found in Halsbury's Laws of England is not decisive of the scope of the term found in section 22(1) of the Act, which has to be understood in the context of the section itself, the scheme of the Act and the object of the enactment.

10. Learned senior counsel also referred to the decision of the Supreme Court in *Shree Chamundi Mopeds v. Church of South India Trust*

Association [1992] 75 Comp Cas 440 and more particularly to the following observations of the Supreme Court found therein (page 450) :

The second category contemplates proceedings for execution, distress or the like against any other properties of the industrial company. The

words "or the like" have to be construed with reference to the preceding words, namely, "for execution, distress" which means that the

proceedings which are contemplated in this category are proceedings whereby recovery of dues is sought to be made by way of execution,

distress or similar process against the property of the company.

11. The passage relied upon precedes the following statement in the same

judgment (page 450) :

Proceedings for eviction instituted by a landlord against a tenant who happens to be a sick industrial company cannot, in our opinion, be regarded as falling in this category. We may, in this context, point out that, as indicated in the preamble, the Act has been enacted to make special provisions with a view to securing the timely detection of sick and potentially sick companies owning industrial undertakings, the speedy determination by a board of experts of preventive, ameliorative, remedial and other measures which need to be taken with respect to such companies and the expeditious enforcement of the measures so determined. The provision regarding suspension of legal proceedings contained in section 22(1) seeks to advance the object of the Act by ensuring that a proceeding having an effect on the working or the finances of a sick industrial company shall not be instituted or continued during the period the matter is under consideration before the Board or the Appellate Authority...".

12. The passage extracted above shows that the observation made by the apex court regarding the eviction proceedings not being covered by section 22(1) of the Act was in the context of the fact that such eviction proceedings have no effect on the working or the finances of the company.

Any proceedings, which would have an effect on the working or the finances of the sick industrial company are not to be instituted or continued during the pendency of the proceedings before the Board. The judgment relied upon does not support the contentions sought to be sustained by the applicant.

13. The object of the Sick Industrial Companies (Special Provisions) Act was explained by the Supreme Court again in Maharashtra Tubes Ltd. v.

State Industrial and Investment Corporation of Maharashtra Ltd. [1993] 78 Comp Cas 803 as follows :

... the High Court, with respect, failed to appreciate that the 1985 Act was enacted primarily to assist sick industrial undertakings, which, inter alia, failed to meet their financial obligations. 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 that 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 Board for Industrial and Financial Reconstruction 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.

14. There can, therefore, be no doubts whatsoever about the object of the enactment as also the object sought to be achieved by section 22 of the Act. That object is to insulate the company from any action or any legal proceedings in any forum whatsoever, which would have an effect on the working or the finances of the company. Even the loans granted by banks and financial institutions may not be recovered by instituting proceedings against the company, even when the liability of the company to such institutions is admitted.

15. The position of the applicant cannot be any better than that of any bank or any other financial institution. The fact that it has chosen to resort to arbitration does not confer any immunity to the applicant from the provisions of section 22 of the Act, at least in so far as any interim relief, which would affect the working or the finances of the company, is concerned.

16. Even on the plain language of section 22, there can be no doubt whatsoever that an application like the one filed by the applicant herein for injunction as also for directing furnishing of security, cannot be maintained against a sick industrial company regarding which proceedings are pending before the Board. Section 22 of the Act was amended by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993.

After the amendment, the section specifically prohibits the institution or continuance of any suit for recovery of money or for the enforcement of any security or any guarantee, even in respect of any loans or advances granted to the industrial company. The object of section 22 of the Act has been made crystal clear. Even a person, whose right to recover is beyond any shadow of doubt, is rendered incapable of instituting proceedings for recovery. A person, whose claim against a company, is yet to be established, cannot by way of interim relief, obtain an order, which would prevent

the company from making use of its own assets or which would affect its working or finances.

17. The applications for injunction as also the application seeking direction to the respondent to furnish security, therefore, cannot be maintained or

continued, after the proceedings commenced before the Board for Industrial and Financial Reconstruction. O.A. No. 1331 of 1995 and

Application No. 4042 of 1995 are dismissed. Consequently, Application No. 73 of 1996 is also dismissed as unnecessary.