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(1996) 05 MP CK 0016

In the Madhya Pradesh High Court

Case No : Company Petition No. 1 of 1963

Board for Industrial and Financial Reconstruction APPELLANT

Vs

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 : (1998) 91 CompCas 514 : (1997) 1 MPLJ 617

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

Bench : Single Bench

Advocate : J.S.L. Sinha, J.P. Gupta and J.D. Suryavanshi, for the Appellant;

Judgement

T. S. Doabia, J.

This petition for winding up of the concern by the name of Gwalior Synthetics Pvt. Ltd. is pending in this court since February 5, 1993. This came to be registered with this court under the 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 rehabilitation. On this application, the Board for Industrial and Financial Reconstruction (hereinafter referred to as "the Board"), passed an order on November 9, 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. Proceedings were initiated for winding up of the company.

Later on, a prayer was made by the company before the Board that the order dated November 9, 1992, be recalled. This application was filed on August 23, 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.

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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, learned counsel appearing for the company, has placed on record a letter dated April 9, 1996. This is to the effect that a sum of Rs. 57 lakhs 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. 14,60,291 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 November 9, 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 October 31, 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 the BIFR''s order dated November 9, 1992, regarding the Board''s final opinion as to the winding up of the sick industrial company, Gwalior Synthetics Pvt. Ltd. This opinion has already been forwarded to the High Court of Madhya Pradesh. From a perusal of the interim orders of the High Court, M. P. (Jabalpur Bench), dated September 15, 1995, in Company Case No. 1 of 1993, it appears that on an application made on behalf of the company stating to the effect that the 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 counsel of the parties, the case has been adjourned to November 17, 1995. As there is no provision in the Act which empowers the BIFR to review its own orders passed u/s 20(1) of the Act, we are unable to entertain the applications under consideration. The same, being legally non-maintainable, are hereby rejected. As the matter stands, the BIFR has become functus officio in the matter. The applicant-company is free to put forward whatever contentions it has with respect to its winding up, before the 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.

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 November 9, 1992. He submits that a direction may be given to the Board to reconsider the matter.

As indicated above, the company had 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.

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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 of 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 Companies (Special Provisions) 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, the 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 subsists. It would now proceed to give a fresh look to the entire matter in accordance with the 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 the winding up process, then it would make a fresh reference to this petition. So far as the prbesent petition is concerned, that stands disposed of.

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