

(2002) 10 MAD CK 0159

In the Madras High Court

Case No : Company Application No's. 313 and 314 of 2002 in Company Petition No. 251 of 2001

Board for Industrial and Financial Reconstruction APPELLANT

Vs

Sri Ramakrishna Steel Industries Ltd. RESPONDENT

Date of Decision : 22-10-2002

Acts Referred:

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

Citation : (2003) 42 SCL 882

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : Jayesh Dolia, for the Appellant; Nithyanandam, for the Respondent

Final Decision : Dismissed

Judgement

V. Kanagaraj, J.—Both the above Company Applications have been filed by one and the same party viz., The Indian Bank, Coimbatore Main Branch as third party applicant as against the B.I.F.R., New Delhi and the Official Liquidator, High Court, Madras. In the first Company Application above praying to grant relief to the applicant to sell the assets of the company as per the order of the B.I.F.R. dated 12-9-2001 and in the second Company Application, praying to permit the Assets Sales Committee as constituted by the B.I.F.R. by its order dated 12-9-2001 to sell the assets of the company as per the guidelines of B.I.F.R, through public advertisement and permit the said Committee to deposit the net sale proceeds into this Court for distribution as per Section 529A of the Companies Act, 1956.

In the affidavit filed in support of the Company Application No. 313 of 2002 above, the applicant Bank would submit that the company was declared sick industry u/s 3(1)(o) of Sick Industrial Companies (Special Provisions) Act, 1985 and the I.D.B.L was appointed as Operating Agency for preparation of revival scheme which was directed to explore change of management which did not fructify; that the company had also sought time for payment of amount due to

the Bank on one time settlement which also failed; that the B.I.F.R. by its order dated 18-2-2000 formed a prima facie opinion to wind up the company in terms of Section 20(1) of the Act; that even though the company was directed to make deposits in "No Lien Account" by B.I.F.R., they could not do so; that the applicant Bank by its letter dated 19-7-2001 had stated that they have sanctioned one time settlement proposal of Rs. 2,279 lakhs payable before 31-7-2001 and since the company failed to deposit the amount, the one time settlement proposal lapsed; that since the company and its promoters did not take serious efforts to revive the company but were attempted to delay the legal process and withhold the huge debts of the secured creditors like the applicant, the B.I.F.R. has recommended the winding up of the company in terms of Section 20(1) of the Act,

2. The further case of the applicant is that by proceedings dated 12-9-2001, the B.I.F.R. constituted Assets Sales Committee, comprising the applicant Bank and I.D.B.I. to sell the assets of the company, pursuant to which the Official Liquidator was appointed to take charge of the company and its affairs as per this Court's order dated 13-12-2001 and the present application is filed seeking leave of this Court to permit the applicant Bank to sell the assets of the company as constituent of Assets Sales Committee as per the order dated 12-9-2001 passed by B.I.F.R.; that without leave of this Court, being a secured creditor, the interest of the applicant-Bank would be jeopardised regarding the sum of Rs. 5,048 lakhs. On such grounds, the applicant in C.A. No. 313 of 2002 would pray for the relief of grant of leave to sell the assets of the company as per the orders of the B.I.F.R. dated 12-9-2001.

3. So far as the second application in C.A. No. 314 of 2002 is concerned, the applicant Bank would submit that it sanctioned various working capital facilities to the company in liquidation but the company committed default on the account became a Non-Performing Asset and applicant filed O.A. No. 2372 of 2001 for the recovery of a sum of Rs. 50,48,10,349.25 against the company in liquidation and its guarantors and the said application is pending adjudication before the Debts Recovery Tribunal, Chennai.

4. Further submitting what has been stated in all those averments contained in para 1 applies to this case also since being common for both the applications, it would further be submitted that in consideration of the said request made by the applicant, the B.I.F.R. issued the following directions :

"Indian Bank was appointed as Selling Agency (S.A.) for sale of the company's assets in terms of Section 20(4) of the Act for which purpose, the Indian Bank could take over the charge of assets of the company forthwith and arrange for their insurance, security etc., that the Indian Bank with the help of Operating Agency (I.D.B.I.) shall constitute the Assets Sales Committee (A.S.C.) having representatives of I.D.B.I., Indian Bank and the company to oversee the sale of assets which would be conducted in accordance with the enclosed guidelines and in a transparent manner through public advertisements; that the net sale

proceeds of the assets would have to be remitted to the concerned High Court for distribution by them as per the provisions of Section 529A of the Companies Act; that the promoter shall extend full co-operation to Indian Bank and I.D.B.I. in effecting the sale of the company's assets; that in case of problems, the Indian Bank shall inform the matter to the Board and on receipt of the adverse report from I.D.B.I., the Bench would order the concerned D.M. to take over the assets of the company and hand them over to the Indian Bank, the designated agency."

5. The applicant further stating that as per the directions of the B.I.F.R., the Assets Sales Committee has been constituted and the Bank also appointed the Chartered Valuer and Chartered Accountant for taking inventories of the assets of the company but since on 13-12-2001, this Court was pleased to order winding up of the company, appointed the Official Liquidator as Provisional Liquidator to take charge of the company and its affairs. On the strength of this direction, the Official Liquidator by his proceedings dated 17-1-2002 called for the meeting to be held on 25-1-2002 in which it was decided that the applicant would arrange for the security agency and remit the payment to the Official Liquidator; that the Assets Sales Committee shall take steps to implement the order of B.I.F.R., as per which the applicant should take charge of the assets of the company with the help of the Operating Agency (I.D.B.I.) and a representative of the company to oversee the sale of the assets.

6. The applicant would further submit that notwithstanding the above arrangements, the Provisional Liquidator has stated that the order of the B.I.F.R. is no longer in force and that he is bound by the order of this Court and therefore, he is going to take charge of the assets of the company as per the letter of the Official Liquidator dated 5-2-2002, thus wanting to act independently, giving a go-bye to the directions of the B.I.F.R. as per its order dated 12-9-2001 and if the Provisional Liquidator does not permit the applicant-Bank and the Assets Sales Committee to function as per the suggestions of the B.I.F.R., severe hardships and delay would be caused in bringing the assets of the company for sale and depositing the sale proceeds as per the provisions of Section 529A of the Companies Act, 1956 for the distribution of the sale proceeds among the charge holders and others; that since the request made by the applicant to the Provisional Liquidator by letter dated 25-1-2002 to permit the Assets Sales Committee to sell the proceeds of the Company in accordance with the directions of the B.I.F.R. has not been given effect to with positive reply, the present application is filed for necessary directions as extracted supra.

7. Though, no counter has been filed on the part of the respondents in both the above applications, the learned Official Liquidator would appear and argue the case on behalf of the second respondent and therefore, a decision has to be taken in consideration of the pleadings of both the Company Applications, having regard to the materials placed on record and upon hearing the learned counsel for both.

8. During the arguments, learned counsel appearing on behalf of the applicant-Bank in both the above Company Applications, citing the order of the BIFR from the typed set of papers and the other order passed by this Court dated 30-12-2001 winding up the company and appointing the Official Liquidator of the High Court, Madras as Provisional Liquidator of the company, the learned counsel would exhort that they have taken possession of the company on 14-2-2002 and they have also conducted the meeting of the constituents but the entire assets of the company is in the custody of this Court and it is the Official Liquidator to take all steps to sell the assets of the company. The learned counsel would point out that because of the appointment of the Provisional Liquidator, the order of BIFR dated 12-9-2001 cannot be implemented and this Court's order dated 13-12-2001 which is pursuant to the order of the BIFR, notwithstanding the proceedings before the BIFR, the Bank had gone to Debts Recovery Tribunal for the recovery of more than Rs. 50 crores and pursuant to the order of the BIFR, bank is directed to value the assets of the company and take the inventories further to appoint security guards to safeguard the assets of the company. The learned counsel would point out that the Official Liquidator could also join hands with them in the process of the sale of the assets of the company in the best interest of the company; that the property is in the custody of the Court which has been placed under supervision of the Official Liquidator. Now, the wrangle is whether the Official Liquidator or the applicant Indian Bank to bring the properties for sale? That the Official Liquidator already wrote to the Indian Bank by letter dated 22-3-2002 addressed to the Chief Manager that the order of appointing Assets Sales Committee dated 12-9-2001 says that when the properties are brought for sale, the sale proceeds shall be deposited for distribution as per Section 529A of the Companies Act; that this order of appointing the Committee is still in force and valid; that the Official Liquidator should not delay the process of bringing properties for sale. On such arguments, the learned counsel for the applicant would seek the relief prayed for in the above Company Applications.

9. In reply, the learned Official Liquidator would argue to the effect that it is for the applicant to value the assets immediately and to submit a report to the Official Liquidator; that if the Assets Sales Committee is not disturbed within 2-3 months it could be done, that the Operating Agency in this case is IDBI and the Indian Bank is the Selling Agent; that Section 20(4) is mandatory and the Committee should be allowed to continue. On such arguments, the learned Official Liquidator would pray to dismiss both the applications as devoid of merits,

10. In consideration of the facts and circumstances pleaded in both the above Company Applications, having regard to the materials placed on record and upon hearing the learned counsel for both, what comes to be known is that the applicant Indian Bank had already been given an opportunity by the BIFR to sell the assets as per its order dated 12-9-2001 but no steps have been taken on the part of the applicant and therefore, the BIFR had recommended the winding up of the company and now the subject is seized of by this Court and no wonder

that this Court has appointed the Official Liquidator to take charge of the company and its affairs and to initiate such steps to sell the assets of the company taking all such measures necessary in the circumstances of the case.

11. It is at this juncture, the applicant has come forward to file both the above applications. From the arguments of the learned counsel for both heard, what could be assessed is that in ejection of the Official Liquidator, the applicant-Bank wants to independently bring the assets of the company for sale and would see the presence of the Official Liquidator a hindrance for them whereas the learned Official Liquidator who has been appointed the Provisional Liquidator to take charge of the company and its assets as per the orders of this court dated 13-12-2001 seems to have gained control over the properties and in a further order of this Court dated 14-3-2002 also, that is after the filing of the above Company Applications, this Court had, subsequently directed the Official Liquidator to take steps to bring the properties for sale within a period of one week. Under these circumstances, it is not at all necessary on the part of this Court to again cause any interference into the steps taken by the Official Liquidator in bringing the assets of the company to sale in the manner provided for, by law and any order passed in favour of the applicant, would definitely jeopardise not only the functioning of the Official Liquidator but also the genuine interest of the company and its secured creditors. Therefore, this Court is of the firm view not to cause any interference into the orders already made in appointing the Official Liquidator of the High Court as the Provisional Liquidator as per its order dated 13-12-2001 directing him to do such things in such manner to bring the properties of the company for sale at the earliest and any interference caused into these orders already made, since being susceptible to jeopardise the interest of the company and its secured creditors and all others interested therein and therefore, the interference sought to be made by granting leave to the applicant to sell the assets of the company and permitting the Committee constituted by the BIFR to do so in spite of the Official Liquidator as Provisional Liquidator proceeding with the sale of the assets in the manner required by law, is neither necessary nor warranted and it has to be decided that no such interference need be made into the present state of affairs and in result, both the above Company Applications should only fail and be dismissed.

In result, both the above Company Applications are without merits and they are dismissed as such. No costs.