(2002) 04 AHC CK 0127

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1116 of 2002

Classic Rugs Pvt. Ltd. APPELLANT

Vs

Assistant Commissioner (Assessment) and Another RESPONDENT

Date of Decision : 10-04-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 20, 22

Citation : (2003) 115 CompCas 736 : (2004) 52 SCL 220

Hon'ble Judges : S.K. Sen, C.J;V.M. Sahai, J

Bench : Division Bench

Advocate : Manish Goyal, for the Appellant; S.P. Kesarwani, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Sen, C.J.—The petitioner-company having its registered office at New Delhi and in respect of which winding up proceeding is pending in Delhi High Court, has moved this writ petition challenging the notice dated February 28, 2002, directing the petitioner-company to deposit the amount of Rs. 21,34,593 as trade tax due against the writ petitioners since 1994-95 to 1996-97.

2. The contention of Sri Manish Goyal learned counsel for petitioner is that there is automatic suspension of the proceedings u/s 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "The Act") and as such complying with the said Section 22, the notice being in the nature of a distress proceeding, the notice should be stayed. It is, however, on record that all stages of inquiry and other proceedings before the Board of Industrial and Financial Reconstruction are over and learned counsel for petitioner also cannot dispute that the matter has been sent to the High Court under the relevant provisions of the said Act and winding up proceeding is pending u/s 20 of the said Act. Section 20 of the said Act provides as follows :

"20. Winding up of sick industrial company.-

(1) Where the Board after making inquiry u/s 16 and after consideration of all the relevant facts and circumstances and after giving an opportunity of being heard to all concerned parties, is of opinion that the sick industrial company is not likely to make its net worth exceed the accumulated losses within a reasonable time while meeting all its financial obligations and that the company as a result thereof is not likely to become viable in future and that it is just and equitable that the company should be wound up, it may record and forward its opinion to the concerned High Court.

(2) The High Court shall, on the basis of the opinion of the Board, order winding up of the sick industrial company and may proceed and cause to proceed with the winding up of the sick industrial company in accordance with the provisions of the Companies Act, 1956 (1 of 1956)

(3) For the purpose of winding up of the sick industrial company, the High Court may appoint any officer of the operating agency, if the operating agency gives its consent, as the liquidator of the sick industrial company and the officer so appointed shall for the purposes of the winding up of the sick industrial company be deemed to be, and have all the powers of, the official liquidator under the Companies Act, 1956 (1 of 1956).

(4) Notwithstanding anything contained in Sub-section (2) or Sub-section (3), the Board may cause to be sold the assets of the sick industrial company in such manner as it may deem fit and forward the sale proceeds to the High Court for orders for distribution in accordance with the provisions of Section 529A, and other provisions of the Companies Act, 1956 (1 of 1956)."

3. The fact remains that proceedings for winding up of the sick industrial company u/s 20 is pending in Delhi High Court. That itself shows that all proceedings by way of inquiry or otherwise were already concluded in the Board of Industrial and Financial Reconstruction. The first and foremost contention of Mr. Goyal is that there is automatic suspension u/s 22 of the Act cannot have any application in the present case and the reliance placed by him on the judgment and decision in the case of Gram Panchayat v. Shree Vallabh Glass Works ltd. [1991] 71 Comp Cas 169 is misconceived. The Supreme Court in the aforesaid decision held that as soon as inquiry u/s 16 of the Act is ordered by the Board various proceedings set out under Sub-section (1) of Section 22 would be deemed to have been suspended and no proceeding against any of the property of the company could be proceeded further except with the consent of the Board.

4. In the instant case admittedly no proceeding is pending with the Board, and all inquiry and other proceedings are over and, as such, the said decision has no application to the facts and circumstances of the present case.

5. Mr. Goyal has also referred to Sub-section (2) of Section 20 of the Act and submitted that the High Court has power on the basis of opinion of the Board to consider the case of revival. In our view, the High Court referred to in subsection (2) of Section 20 of the Act is the Delhi High Court, where the winding up

proceeding is pending. Section 20 of the Act relates to winding up after the matter is referred to the High Court for passing an order of winding up. It is open to the High Court in the said proceedings to consider all aspects of the matter and to find out if the company could be revived. The said provision in our view cannot apply to the facts and circumstances of the present writ petition. It will be open for the company to approach appropriate court where the winding up proceeding is pending, if the High Court deems fit and proper to revive the company. The contention of Mr. Goyal on this aspect of the matter, therefore, cannot be accepted. Mr. Goyal has also relied upon the decision of Madras High Court in the case of J. M. Malhotra v. Union of India [1997] 89 Comp Cas 600. The principle relied upon in the said decision cannot be disputed, although, in our view the same does not apply to the facts and circumstances of the instant case. In the aforesaid decision the matter came up for consideration before the Madras High Court u/s 20 for winding up. As we have already noted, it is open to the winding up court to consider all aspects of the matter including the viability of the revival of the company at the stage of winding up. The said principle enunciated in the aforesaid decision, in our view, does not come to the aid of the writ petitioner.

6. Considering all aspects of the matter we are of the view that the writ petition is devoid of any merit and is liable to be dismissed. The same is accordingly dismissed without any order as to costs.

