

(2015) 05 DEL CK 0106

In the Delhi High Court

Case No : Writ Petition (C) 4600 of 2015

Coventry Coil-O-Matic (Haryana) Ltd.

APPELLANT

Vs

Alchemist Asset Reconstructions Co. Ltd. and Others

RESPONDENT

Date of Decision : 14-05-2015

Acts Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15, 15(1), 16, 17,
17(1)

Citation : (2015) 3 BC 337 : (2015) 220 DLT 431 : (2015) 150 DRJ 662

Hon'ble Judges : S. Ravindra Bhat, J; R.K. Gauba, J

Bench : Division Bench

Advocate : Jayant Bhushan, Senior Advocate, S.S. Behl, Sunil Goel, Rakesh Sinha, Ankur S. Kulkarni and Anand Srivastava, for the Appellant; Amit Chadha, Sr. Adv., Vaibhav Tyagi and Virender Negi, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.

CAV 469-470/2015

Learned counsel for the Caveator has put in appearance. Caveat Nos. 469-470/2015 are accordingly discharged.

W.P.(C) 4600/2015 and C.M. No. 8318/2015 (Stay)

1. The petitioner challenges the order of the DRAT dated 22.04.2015 by which it refused to entertain an application for suspension of proceedings before the Debt Recovery Tribunal (DRT) in OA No. 57/2008 on the ground that a scheme under Section 17 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "SICA") was pending. The DRT before which the petitioner made the application for suspension declined it, observing that the original reference made sometime in 1997 had worked itself out and relied on order dated 4.10.2001 for that purpose. Learned counsel appearing for the

petitioner urges that the impugned order is clearly erroneous. It is contended that even though the reference in the order of the DRAT (as that of DRT) was to a scheme under Section 17, in reality the scheme originally considered and sanctioned was under Section 18 of the Act. It is highlighted that the order dated 27.12.1999 considered the liabilities of the petitioner-company which was then sick and the deliberation of the secured creditors of the various measures that could be taken at that stage the fact that the secured creditors had agreed to payment of entire principle amounts due with 20% simple interest as on 31.3.1999 payable in quarterly installments within three years ending March, 2002. It was further agreed that the settlement amount will carry 15% interest per annum from 1.4.1999 upto the date of settlement.

2. The BIFR had noticed this position and the conditions for the settlement and rehabilitation of the sick company and directed as follows :

"6. On consideration of the facts of the case and the submissions made at today's hearing, the Bench took on record CCML's rehabilitation package envisaging settlement of the dues of the institutions as agreed to by all concerned. The Bench was also satisfied that with the proposed settlement and restructuring of the liabilities the net worth of the company would exceed. Its accumulated losses primarily on account of reliefs and concessions available with the implementation of the settlement scheme. The Bench accordingly allowed the company to make its net worth exceed accumulated losses within a reasonable time as per the agreed package (copy enclosed) in terms of the provisions of Section 17(2) of the Act.

7. The Bench also made it clear that it would be for the company to approach State Govt. concerned for further exemption from Sales Tax and Income Tax Deptt. for seeking exemptions from the provisions of Income Tax Act. In the event of any liability arising on this account, it would be for the company/promoters to bring the requisite funds to meet the shortfall.

8. ICICI would monitor the repayment as per the settlement, on their own accord, along with secured creditors and others concerned and report to the Board if there were defaults in repayment of settled dues. The Company is directed to submit half-yearly progress report of the implementation of the agreed package beginning with 31.3.2000 and the Bench would take note of periodical review in regard to rehabilitation. In the event of non payment or non compliance of any terms and conditions of the package,, the secured creditors may submit their report with their specific suggestions with regard to the rehabilitation of the sick industrial company in terms of the Act."

The order dated 27.12.1999, inter alia, recorded that ICICI had been asked to submit half-yearly progress report of the implementation of agreed revival package to be considered under Section 17(2) which was done.

3. On 4.10.2001 BIFR, after considering the implementation of its directions dated 27.12.1999, recorded as follows :

"1. Whereas an approved package for rehabilitation of the sick industrial company viz., Coventry Coil-O-Matic (Haryana) Ltd. (CCL) was taken on record of the Board vide Bench-I order dated 27.12.1999, under section 17(2) of the Sick Industrial Company (Special Provisions), Act 1985 and CCL was allowed to make its net worth exceed the accumulated losses within a reasonable time, subject to provision for submission of half yearly progress report;

2. And whereas on considering the Balance Sheet of 31.3.00 and the progress report of 31.3.01, we find that the net worth of the company has turned positive and HSIDC vide their communication dated 21.8.2001 have submitted that they have no objection if the company is discharged from the purview of BIFR.

3. Now, therefore, we consider that the company has ceased to be a sick industrial company within the meaning of Section 3 (1) (o) of the Act and has also discharged all its major financial obligations; its case is no longer required to be dealt with under SICA by the BIFR. The proceedings in the case are, therefore, closed. However, the unfulfilled obligations, if any, under the approved package would continue to remain in force for the unexpired period and shall be discharged by all concerned accordingly."

4. The petitioner-company continued to function and carry on business. On 5.3.2008 the first respondent - M/s. Alchemist Asset Reconstruction Company Ltd. (respondent company) took measures under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) which led the petitioner to invoke writ proceedings before the Punjab and Haryana High Court. Apparently, an adverse order was passed against the petitioner and it had appealed before the Division Bench. The appeal is pending. Subsequently, original proceedings under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as "RDDBFI Act") were initiated by first respondent, being OA No. 57/2008. It was mentioned here that first respondent company became the successor-in-interest insofar as the petitioner's debts are concerned with respect to the right, title and entitlements of two secured creditors i.e. Industrial Development Bank of India (IDBI) and Industrial Financial Corporation of India (IFCI). The secured creditor - successor - respondent company- initiated proceedings both under SARFAESI Act and RDDBFI Act which led to similar challenges and defences by the petitioner.

5. In these circumstances, the petitioner for the first time in pending proceedings before the DRT contended that since the rehabilitation scheme was operational and pending before BIFR, legal proceedings could not continue by virtue of Section 22 of SICA. This was done separately - first before the BIFR and later in another application in the pending proceedings before DRT. The applications preferred before the DRT were rejected concurrently both by DRT and DRAT.

6. Mr. Jayant Bhushan, learned senior counsel contends that given the mandate of Section 18 of SICA - which is to be considered together with Section 22,

measures and claims cannot be pursued by any creditor or person claiming against the company without the permission of BIFR. He relied upon the orders dated 27.12.1999 and the last preferred order dated 4.10.2001 to say that without seeking the permission of BIFR, the proceedings before DRT could not have continued. It was submitted in this context that the only exception enabling a secured creditor to continue with proceedings is by virtue of third proviso to Section 15(1) of BIFR which was introduced when SARFAESI was brought into force by virtue of Second Schedule to that enactment. Elaborating on this submission learned counsel submitted that since the first respondent company stands in the place of two secured creditors and the value of its claim does not measure up to the requisite standard provided in the third proviso to section 15(1), the measures taken by it under SARFAESI as well as RDDBFI Act, could not be pursued.

7. Mr. Amit Chadha, learned senior counsel for respondent company contends that petition is not maintainable and resists submissions of the petitioner. According to him no rehabilitation scheme was ever drawn in the manner known to law. He contended that on 27.12.1999 the BIFR merely sanctioned rehabilitation package in terms of Section 17(2) as part of its exploratory jurisdiction under Section 17(1) to first ensure if the company could be brought back on rails. Having successfully done that on 4.10.2001 BIFR divested itself under SICA. In these circumstances there was no impediment for initiating proceedings under SARFAESI Act as well as RDDBFI Act as they are independent statutes providing for separate remedies which respondent company is entitled to invoke.

8. Section 17 of the SICA reads as follows :-

17. Powers of Board to make suitable order on the completion of inquiry.-

(1) If after making an inquiry under section 16, the Board is satisfied that a company has become a sick industrial company, the Board shall, after considering all the relevant facts and circumstances of the case, decide, as soon as may be by order in writing, whether it is practicable for the company to make its net worth exceed the accumulated losses within a reasonable time.

(2) If the Board decides under sub-section (1) that it is practicable for a sick industrial company to make its net worth exceed the accumulated losses within a reasonable time, the Board, shall, by order in writing and subject to such restrictions or conditions as may be specified in the order, give such company as it may deem fit to make its net worth exceed the accumulated losses.

(3) If the Board decides under sub-section (1) that it is not practicable for a sick industrial company to make its net worth exceed the accumulated losses within a reasonable time and that it is necessary or expedient in the public interest to adopt all or any of the measures specified in section 18 in relation to the said company it may, as soon as may be, by order in writing, direct any operating agency specified in the order to prepare, having regard to such guidelines as

may be specified in the order, a scheme providing for such measures in relation to such company.

(4) The Board may,-

(a) if any of the restrictions or conditions specified in an order made under sub-section (2) are not complied with by the company concerned, or if the company fails to revive in pursuance of the said order review such order on a reference in that behalf from any agency referred to in sub-section (2) of section 15 or on its own motion and pass a fresh order in respect of such company under sub-section (3);

(b) if the operating agency specified in an order made under sub-section (3) makes submission in that behalf, review such order and modify the order in such manner as it may deem appropriate."

9. It is evident from a plain reading of the above provision that upon receiving a reference, BIFR is authorised to consider if and to what extent a sick company can be rehabilitated. As a first step in doing so, it could take recourse to the power enumerated under Section 17(2). That authorises BIFR, with the consent of the secured creditors entitled to claim amounts and assets of the sick company - to draw a rehabilitation package and place mechanisms for a limited duration. It is in the event of failure of this exercise or if in the first instance under Section 17(1) BIFR feels that it is not possible to revive the company within the existing parameters, that under Section 17(4), it proceeds to take the measures which ultimately culminate in a rehabilitation scheme under Section 18(1). The facts discussed in the present case clearly demonstrate that BIFR was to first explore the possibility of revival of the company by issuing the directions it did on 27.12.1999. The order no doubt refers to a package - but that is not in the sense as understood in Section 18(1). It is not the case of the parties that draft rehabilitation scheme was ever circulated, considered, objected to, revised or finally sanctioned by BIFR. In fact, the various efforts outlined in Section 18 and the culmination of DRS into a scheme resulting in its publication never took place. In these circumstances, we are unpersuaded with the submission of the learned senior counsel for the petitioner that the order of 27.12.1999 constituted as sanction under Section 18(1) and not under Section 17(1) or (2). If there was any lingering doubt, it is made clear in order dated 4.10.2001 in categorical terms, which recorded that "now, therefore, we consider that the company has ceased to be a sick industrial company within the meaning of Section 3 (1) (o) of the Act and has also discharged all its major financial obligations; its case is no longer required to be dealt with under SICA by the BIFR." Para 3 of the said direction stated that unfulfilled obligations would continue to remain in force. In the opinion of the Court, the said order is not enlarging the initial directions, which were essentially under Section 17(2) and continued to be so, into a scheme under Section 18(1).

10. In view of the conclusions we have recorded above, this Court cannot fault

the DRAT's reasoning that there was no rehabilitation package pending for monitoring by the BIFR which acted as an embargo by Section 22 of SICA. The arguments with respect to the operation or application of third proviso to Section 15(1) of SICA, in our opinion, do not arise since the first essential condition for its applicability was pending reference or any sanctioned scheme subject to BIFR. Having concluded that no such reference or scheme existed, there was no question of operation or applicability of Section 15 in the circumstances of the case. In view of the above conclusions, the petition is unmerited and accordingly dismissed.