
(2001) 08 BOM CK 0024

In the Bombay High Court

Case No : Notice of Motion No's. 18 and 233 of 2001 and Writ Petition No. 862 of 1999

Girni Kamgar Sangharsh Samiti

APPELLANT

Vs

Matulya Mills Ltd.

RESPONDENT

Date of Decision : 27-08-2001

Acts Referred:

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 17(3), 18, 22A

Citation : (2002) 2 BomCR 725 : (2002) 1 LLJ 347

Hon'ble Judges : V.K. Tahilramani, J; H.L. Gokhale, J

Bench : Division Bench

Advocate : Colin Gonsalves, for the Appellant; K.K. Singhvi, B.B. Saraf and Naina Buch, for the Respondent

Judgement

1. Both these notices of motion are taken out by the petitioner-trade union. The respondent No. 1 is the mill company and the respondent No. 2 is its director. Both these motions seek to espouse the cause of 660 workmen of the 1st respondent mill company.

2. Notice of Motion No. 18 of 2001 seeks a direction to the respondent No. 6, i.e., BIFR [before whom the proceeding for revival of 1st respondent mill company is pending under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 ("the Act")], to deposit in this Court the amount of Rs. 2,76,04,000 with interest at the rate of 18 per cent per annum from June 1999. That amount is lying with the respondent No. 6 and it is the case of the petitioner that that amount should be disbursed towards the unpaid wages of the employees. Prayer (aa) of the motion is for an order to disburse the unpaid wages of the employees from this deposit. This motion is opposed by the respondent No. 1 through a reply by one of its directors. It is also opposed by the respondent No. 7 which is the representative union in the industry through the reply of its working President. The stand of the respondent Nos. 1 and 7 has been that these amounts should not be released merely as payments towards

unpaid wages, but the same should be paid to the employees as a part of overall settlement under which the employees give up the idea of revival of the mill and opt for voluntary retirement.

2.1 Notice of Motion No. 233 of 2001 is a related motion which is also taken out by the same petitioner-trade union. Prayer (a) of this motion is to restrain the respondent Nos. 1 and 2 from dismantling and/or selling or removing the machinery from the premises of the respondent No. 1 mill. Prayer (b) is to direct them to allow the workers to mark their attendance without first tendering resignation letters. Prayer (c) is to seek police protection and prayer (d) is to direct the respondent Nos. 1 and 2 to disclose the names of the traders to whom the machinery has been sold. An ad interim order in terms of prayers (a) to (d) has been running in this matter.

3. Since both these motions are inter-connected, they are heard together. Mr. Colin Gonsalves has appeared for the petitioner in both the motions. Mr. K.K. Singhvi, Senior Advocate with Mr. B.B. Saraf has appeared for the respondent Nos. 1 and 2 and Naina Buch has appeared for the respondent No. 7.

4. The case of the petitioner-union is that for no reason, the 1st respondent has suddenly stopped functioning since about September 1998. It is the case of the petitioner that the 1st respondent is not interested in running the mill company and wants to close it and develop the land by constructing buildings thereon and thereby make money. It is their case that the 1st respondent wants the employees to leave the mill company in some way or the other. The petition has been filed in March 1999 and prayer (a) amongst others seeks a direction to the 1st respondent to provide employment to these employees and to pay their wages regularly. When this petition came up before a Division Bench (Ghodeswar and Srikrishna, JJ.) on 6-7-1999, it was recorded that the matter needed urgent attention since wages of about 660 workmen were not being paid on the ground that there was no finance. The court, therefore, asked IDBI (an Operating Agency appointed by BIFR) to appoint an auditor. In the subsequent order of 7-7-1999, the court recorded that large sums of money have been collected on the ground of development of the property under the terms of BIFR Scheme, but they were not utilised for the purpose for which the amounts were meant. The court, therefore, passed an order on 7-7-1999 that until arrears of wages of the workers from December 1998 to June 1999 were cleared, the 1st respondent shall not dispose of any of its assets without the leave of the court.

5. Subsequently for the first time again after a round of litigation, some amount was directed to be released by one of us sitting as a Single Judge of this Court (Gokhale, J.) by his order dated 9-9-1999 in Contempt Petition (Lodging) No. 86 of 1999. That was the last time any amount was received by the employees concerned. Their wages have been cleared in this manner so far only up to the period including the month of July 1999. On 22-11-1999, the Division Bench recorded that the payments/entries of payment incorporated by the respondent No. 1 appeared to be doubtful and directed the 1st respondent-company to pay

the wages to the workers from June 1999 onwards (they have to be paid in fact from August 1999).

6. In the meanwhile, the BIFR, before whom the revival proceedings are pending, recorded in its order dated 25-1-2000 that a Voluntary Retirement Scheme, which has been sanctioned earlier for revival, had failed and the only option open was to explore the possibility of change in management of the company. That order also recorded that the company had expected certain inflow from one B.E. Billimoria & Co., to which company a part of the land had been sold earlier under the earlier rehabilitation scheme and the company had stated that that would be sufficient to meet the wages up to January 2000 (i.e. from August 1999 onwards). Now what is relevant to note is that in that order of 25-1-2000, the BIFR also recorded that the representatives of the company had requested that for making the payment of wages to the workers beyond January 2000 (as required under the orders of the Bombay High Court), the company should be allowed to raise resources by selling all assets, if necessary, and the Bench had mentioned that the company should make a separate comprehensive application to enable the BIFR to take a view in this regard. The BIFR also directed IDBI to resume its role as an operating agency once again u/s 17(3) of the Act and to give advertisement seeking offers for change in the management. Subsequently in an order in the present writ petition, when part of the money was realised by sale of the land by B.E. Billimoria & Co., by clause (13) of the Consent Terms, it was recorded as follows :

"It is further agreed by the parties hereto that the aforesaid sum of Rs. 2,13,89,628.76 be deposited with the BIFR subject to the directions of BIFR."

7. Thereafter in the proceeding before the BIFR, on 1-3-2001 it was informed on behalf of the 1st respondent-company that an agreement had been entered into with the workers in February 2001. The Bench of BIFR wanted to know from the company whether the MOU signed with the workers would help in rehabilitation of the company. The company had not come with any viable rehabilitation proposal by itself or with the help of some co-promoter and, hence, the Bench directed that the said MOU would be considered along with an acceptable scheme, if submitted. Thereafter the Bench recorded as follows :

"The Bench indicated that they could allow sale of assets/part of assets if it would have been a part of the revival proposal of the company."

8. Mr. Gonsalves, therefore, submitted that thus the 1st respondent company had itself stated that the amount realised from B.E. Billimoria & Co. was sufficient to meet the wages up to January 2000. The company had also submitted an application to the BIFR on 8-2-2000 that it may be permitted to dispose of its assets in order to make payment to the workers in full and final settlement of their wages, salaries and remunerations. Mr. Gonsalves further submitted that this company had no other liabilities, there were no debts whatsoever and there was no reason why the company should not be revived.

The workers were interested in the revival of the company. The 1st respondent-company knew that it had been directed to make an application to raise resources through sale of assets which was recorded in the BIFR order dated 25-1-2000. The company was subsequently told on 1-3-2001 that the sale could be allowed if it was a part of the revival proposal. Mr. Gonsalves therefore submitted that the company was duty-bound to pay the wages. The scheme for revival and the proceedings for that purpose were pending before the BIFR. In the meanwhile, the amount deposited with BIFR ought to be released to the employees and the application made by the company for sale of its assets should be considered subsequently by the BIFR and the machinery should not be allowed to be sold in the meanwhile.

9. Mr. Singhvi, the learned Senior counsel appearing for the respondent-company, on the other hand, submitted that the 1st respondent-company had entered into a settlement with the respondent No. 7, which is a representative Union under the Bombay Industrial Relations Act, 1946 ("B.I.R. Act"). That settlement was a binding settlement u/s 44 of the B.I.R. Act and unless there was a specific order u/s 22A of the Act, nothing could prevent the company from disposing of its assets. Mr. Singhvi submitted that the 1st respondent had no objection to the amounts lying with the BIFR being released to the employees, but those amounts should be released only in terms of the settlement signed with the respondent No. 7 union and not otherwise. He submitted that there was no chance of any revival of the respondent-mill company and, therefore, it was in the fitness of things that the settlement signed with the respondent No. 7 should be permitted to be acted upon and the machinery be directed to be sold. His submission was supported by Ms. Buch, the learned counsel appearing for the respondent No. 7, who stated that more than 550 employees had signed the declarations as accepting the Voluntary Retirement Scheme and, therefore, the amount deposited with the BIFR should be released to the workers now only by way of a final settlement. She stated that there was no chance of the mill being revived and the workers were only being held to ransom.

10. Mr. Singhvi relied upon the judgment of the Apex Court in U.P. State Sugar Corpn. Ltd. Vs. U.P. State Sugar Corpn. Karamchari Assn. and Others, . That was a case of a potentially sick company. The company had not become sick as such and there was no reference pending before the BIFR. The Court made a distinction between the two and pointed out that the role of BIFR with respect to potentially sick company was a limited one. In para 6 of the judgment, the Court recorded that there was no provision available similar to Section 22A (concerning the sick companies) whereby" the Board may direct a potentially sick industrial company not to dispose of its assets. However, Mr. Singhvi submitted that to prevent the sale of assets there has to be a specific order u/s 22A whether under Chapter III (dealing with sick company) or Chapter IV (dealing with potentially sick company) of SICA. In para 19 of the judgment, the Apex Court has observed--

"...Apart from the fact that this power is restricted in its application to a sick industrial company dealt with under Chapter III of the Act and does not apply to a potentially sick industrial company dealt with under Chapter IV, even in respect of a sick industrial company this power to impose such a restriction is available only during the period of preparation or consideration of the scheme u/s 18...." (p. 292)

In para 23 of the judgment, the Apex Court has observed--

".. .Except when the Board passes an express order in accordance with the provisions of Section 22A, it is not possible to infer a limitation from the provisions of the Act on the right of a sick industrial company or a potentially sick industrial company to dispose of its assets. ..." (p. 294)

11. Mr. Singhvi then submitted that in a way this petition had already been worked out. The prayers therein were with respect to the sanctioned modified scheme of 13-2-1996 prepared by the operating agency. That was prayer (a). That scheme had already failed. Prayer (b) was to pay the wages from October 1998 till the filing of the petition, i.e., March 1999. The workers had been paid their wages till July 1999. Thereafter there were many other prayers concerning the construction and sale of land, etc. Mr. Singhvi submitted, and was supported by such appearing for the respondent No. 7, that the petitioner union had no locus, even for that matter to file that writ petition since it was not a representative Union. But in any case, the petition had been worked out and now by taking out notices of motion, a settlement in the interest of the workers was being stalled by a minority union. That should not be permitted.

12. Mr. Gonsalves, on the other hand, in his rejoinder pointed out that prayer (a) of the petition, apart from dealing with the scheme of 13-2-1996, specifically prayed that the respondent-company be directed to provide employment to the 800 workers and to pay their wages regularly. He submitted that the order passed by BIFR on 25-1-2000 clearly directed the company to make an application in case they wanted to sell their assets. On this aspect the Bench states in para 12 as follows :--

"The representative of the Company further requested that for payment of the workers" dues beyond January 2000 as required under the orders of BHC they should be allowed to raise resources through sale of assets, if necessary. The Bench mentioned that the company should make a separate comprehensive application to enable BIFR to take a view in this regard, giving copies thereof to all secured creditors and the workers" union (RMMS), who may file their responses to the company"s request before the IDBI (MA) and BIFR within 15 days thereof."

That order was confirmed in Appeal No. 102 of 2000 by the appellate authority vide its order dated 23-5-2000 (see paras 5 and 6 of that order). Then in the order passed by the BIFR on 1-3-2001, it had recorded in para 14 as follows :--

"The Bench indicated that they could allow sale of assets/part of assets if it would have been a part of the revival proposal of the company."

He then pointed out that the company had filed an application also before the BIFR on 8-2-2001 praying that it may be given permission to dispose of its assets in order to make payment to the workers as per the understanding entered with the representative Union. Mr. Gonsalves therefore submitted that all this clearly indicated that there was an order which could be considered to be an order u/s 22A not to dispose of the assets since the scheme for revival u/s 18 was under consideration. He submitted that in its order dated 25-1-2000, the BIFR had specifically directed IDBI to resume the role of operating agency u/s 17(3). Section 18 of the Act in turn refers to Section 17(3) and Section 18 deals with preparation and sanction of the scheme where an order is already made u/s 17(3) directing the operating agency to prepare the scheme. Mr. Gonsalves, therefore, submitted that all these orders could not be brushed aside and it could not be said that there was no prohibitory order as contemplated u/s 22A. That apart, he referred to other judgments of the Apex Court. He submitted that firstly in Maharashtra Tubes Ltd. Vs. State Industrial and Investment Corporation of Maharashtra Ltd. and Another, , in the context of Section 22(1), the Apex Court gave a wide meaning to the expression "proceedings for... distress or the like" appearing therein. In para 10 of the judgment, the court observed that the purpose and object of this provision u/s 22(1) is clearly to await the outcome of the reference made to the BIFR for the revival and rehabilitation of the sick industrial company. The court further observed that if the Corporation (SICOM) was permitted to resort to the provisions of Section 29 of the 1951 Act (State Financial Corporation Act, 1951), while proceedings under sections 15 to 19 of the Act were pending, it will render the entire process nugatory. That is why the court had given a broad construction to Section 22(1). Mr. Gonsalves also referred to another subsequent judgment of the Apex Court in Real Value Appliances Ltd. Vs. Canara Bank and Others, , which reiterated the interpretation given by the Apex Court earlier in Maharashtra Tubes Ltd. (supra) where in para 23 the court observed--

"It is also the legislative intention to see that no proceedings against the assets are taken before any such decision is given by the BIFR for in case the Company's assets are sold, or the Company wound up it may indeed become difficult later to restore the status quo ante."

In this view of the matter, Mr. Gonsalves submitted that the machinery should not be permitted to be removed and the amounts deposited with BIFR be released in favour of the workers.

13. Having heard all the counsels, in our view, although the interpretation placed by Mr. Singhvi on the judgment of the Apex Court in V.P. State Sugar Corporation Ltd. (supra) is quite apt, in view of what is narrated earlier, it cannot be said that no proceedings as contemplated u/s 18 are pending before the BIFR. The BIFR has in terms appointed an Operating Agency u/s 17(3) and Section 17(3) is

referred in Section 18. Besides, as narrated above, the BIFR directed the 1st respondent-company to make an application for sale of the assets if it wanted to do so by so recording in its order dated 25-1-2000. The 1st respondent-company, having understood this position, has made an application to the BIFR accordingly on 8-2-2001 seeking sale of assets. Thereafter in its order dated 1-3-2001, it again recorded that it could allow sale of assets if it would have been a part of the revival proposal of the company. In our view, this clearly indicates the fact that though there is no specific reference to Section 22A, there is a prohibition on sale of assets directed by the BIFR in the present matter in its orders dated 25-1-2000 and 1-3-2001 which are referable to Section 22A. Section 22A reads as follows :--

"22A. Direction not to dispose of assets.--The Board may, if it is of opinion that any direction is necessary in the interest of the sick industrial company or creditors or shareholders or in the public interest, by order in writing direct the sick industrial company not to dispose of, except with the consent of the Board, any of its assets--

- (a) during the period of preparation or consideration of the scheme u/s 18; and
- (b) during the period beginning with the recording of opinion by the Board for winding up of the company under Sub-section (1) of Section 20 and up to commencement of the proceedings relating to the winding up before the concerned High Court."

In the present case, there are two orders dated 25-1-2000 and 1-3-2001. The orders do direct that if the company deems it necessary, it may apply for the consent of the Board to dispose of its assets. The order is very much during the preparation or consideration of a scheme u/s 18. In our view, the conditions u/s 22A(a) are fulfilled. Ultimately as observed by the Apex Court in Maharashtra Tubes Ltd. 's case (supra) as well as in Real Value Appliances Ltd. 's case (supra), it is the legislative intent that no proceedings against the assets be taken before any decision is arrived at by BIFR or else it will be impossible to restore the status quo ante. In the circumstances, in our view, the proper course for the mill company is to apply to the BIFR for sale of the assets and to present the scheme for voluntary retirement. The machinery of the mill cannot be allowed to be disposed of until then.

14. Similarly, as far as disbursement of the amount is concerned the respondent No. 7 Union is not as such opposed to the disbursement of the amount nor is the company. Their only submission is that the amount be released as a part of the overall package. In this view of the matter, in our view, the amounts can be released to the employees. Those of the employees who want to take these amounts by signing the VRS, they are at liberty to take them if they want to take them in that manner and those of the employees who want to take these amounts towards the unpaid wages they should be at liberty to receive those amounts as amounts received towards the unpaid wages. Whether these

amounts released should be called as amounts released towards the unpaid wages or towards Voluntary Retirement Scheme will depend upon the decision of the BIFR before whom the main matter is pending. It is before this authority that the necessary application moved by the 1st respondent-company is already pending. It would be open to the petitioner-union to oppose that application or to make further application. But in the event the application is decided in favour of the management, the payment released to them will be treated as released towards Voluntary Retirement Scheme and all the employees will have an option to sign the Voluntary Retirement Scheme. That will of course be subject to their right of appeal. This order is being made only because as such none of the parties are opposed to release of the amounts, but they want the amounts to be released under a particular nomenclature. It is in view of their minimum agreement that the amounts should be released that the present order is being passed, otherwise it is a matter within the jurisdiction of the BIFR. It is BIFR which will decide as to whether Voluntary Retirement Scheme should be accepted or this payment should be treated as a payment towards the unpaid wages and the revival scheme ought to be proceeded.

15. Although all were agreeable to the amount to be disbursed to the workmen (but under different nomenclature), according to the management, some 29 workmen were not eligible to receive these amounts. It was so contended on the footing that they were badli workmen. The petitioner-union was not in full agreement with this viewpoint, but were in any case agreeable that the amount meant for these 29 workmen be kept apart and the amount meant for others be released. The names and particulars of these 29 workmen are as follows :--

S. No. Department Ticket No. Name

1. Blow Room 3 Maniram Sahadev
2. Blow Room 2 Laltaprd. Bandhoo
3. Carding 2 Brijmohan Ramrup
4. Frame 7 Hasan Addulla
5. Frame 9 Anant Shankar
6. Frame 24 Amol Anant
7. Ring P.D. 12 Mohan Ramchandra
8. Ring 11 Pandurang Laxman
9. Ring 31 Shivaji Chandrappa
10. Ring 37 Anant Govind
11. Ring 28 Rajaram Sitaram
12. Ring 30 Krishana Balaram

13. Ring 32 Ramchandra Dhondoo
14. Ring 37 Vijay Pandurang
15. Ruti 10 Ex. Keshav Shripat
16. Ruti 11 Ex. Deepak Ramchandra
17. Ruti 13 Ex. Tirthraj Ramkishor
18. Ruti 5 Ex. Shrikant Dalsingar
19. Auto Corner 7 Mangesh Ganpat
20. Packing 1 Santosh Wasudev
21. Packing 2 Baloo Narayan
22. Packing 3 Ravikant Dattatray
23. Packing 4 Ramesh Narayan
24. Packing 5 Dattaram Baloo
25. Pirn Winding 4 Chandrakant Dhakoji
26. Sizing 3 Sanjay Dattaram
27. Sizing 5 Harishchandra Sitaram
28. Sizing 6 Shambunath Ramdular
29. B.C. Winding 7 Prajwala Prakash

16. There is also one more reason why we are passing this order and the same is that after the matter was heard for quite some time, an effort was made to sort it out amicably. All the parties were agreeable that the amount be released to the workmen after keeping apart the amount of Rs. 10,43,483, for which there is a claim of IDBI and the amount that would be due to above 29 workmen. The only difference amongst the parties, as stated above, was with respect to the nomenclature under which the amount should be released to the workmen.

17. We therefore direct that--

(a) The amount arrived at after deducting Rs. 10,43,483 from the amount, which is lying with the BIFR including the accrued interest, be transferred by the BIFR to the Prothonotary and Senior Master, High Court, Bombay within two weeks from the receipt of a copy of this order. It approximately comes to Rs. 2,03,46,145.76 (Rs. 2,13,89,628.76 - Rs. 10,43,483.00).

(b) During the argument before the court, it was almost accepted by all parties that the amount that would come to each of the workmen would be almost equivalent to the six months wages. Therefore, after the amount is received in this Court, the Prothonotary and Senior Master will ask the 1st respondent-

company to submit a list of workmen to the Prothonotary and Senior Master along with the amounts that would be due to them at the rate of six months wages. Within two weeks of receiving the cheque, the Prothonotary will seek the above particulars from the 1st respondent.

(c) The amounts meant for the 29 workmen, whose names are mentioned above, will be kept separately by the Prothonotary and Senior Master in a separate bank account. The release of the amounts to these 29 workmen is being objected to by the 1st respondent on the ground that they were badli workmen and they are not entitled to these amounts. The stand of the petitioner-union in this behalf is different. It will be open to the petitioner-union to apply to the Court in that behalf for release of that amounts to 29 workmen or some of them and on receiving that application, the Court will consider passing appropriate orders after hearing all concerned.

(d) These amounts will be released as ad hoc payments to these workmen, subject to the determination thereon by the BIFR as to whether this payment is towards wages or VRS. The amounts will be distributed amongst the workmen under the supervision of the Prothonotary and Senior Master in the manner as set out in the order dated 9-9-1999 passed by Gokhale, J. in Contempt Petition (Lodging) No. 86 of 1999.

(e) In the meanwhile, after distributing the amounts for the workmen other than 29 workmen, the Prothonotary and Senior Master will make a report to the Court for seeking directions with respect to the depositing the amounts meant for these 29 workmen.

18. Notice of Motion No. 18 of 2001 is accordingly made absolute in terms of prayers (a) and (ad) as modified in the directions above. Notice of Motion No. 233 of 2001 is made absolute in terms of prayers (a) and (a). Both the notices of motion are accordingly disposed of though without any order as to costs.

19. Mr. Singhvi applies for stay of this order. The disagreement amongst the parties is only with respect to nomenclature under which this amount should be released. That being so, the request for stay is rejected.