

(2005) 06 SHI CK 0020

In the High Court Of Himachal Pradesh

Case No : Company Petition No. 15 of 2003

In Re: Himachal Advanced Circuits Limited

Date of Decision : 28-06-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 16, 20(1), 20(2), 22

Citation : (2005) 128 CompCas 901

Hon'ble Judges : Arun Kumar Goel, J

Bench : Single Bench

Advocate : For ICICI Bank Anand Sharma and Tarlok Chauhan, For IFCI N.K. Sood, For the Company D.D. Sood, D. Dadwal and Sunil Awasthi, For the Department of Industries, Government of Himachal Pradesh M.S. Chandel, General and P.M. Negi, Asst. Advocate General, For the HPSEB Shrawan Dogra and Monika Joshi, for the Appellant;

Judgement

Arun Kumar Goel, J.—The Board for Industrial and Financial Reconstruction (BIFR), forwarded its opinion formed u/s 20(1) of the Sick Industrial Companies (Special Provisions Act), 1985 (hereinafter referred to as "the SICA"), as required u/s 20(2) thereof to this Court.

2. M/s. Himachal Advanced Circuits Limited (hereinafter referred to as "the company"), having become a sick industrial company within the meaning of the SICA, approached the BIFR. Its reference was registered as Case No. 16 of 1998. On September 14, 1999, on being satisfied u/s 20(1) of this Act that the company needs to be prima facie wound up, show cause notice was issued calling for objections and suggestions. It was also mentioned in this order that the promoters were still at liberty to submit their revival plan to the operating agency and the BIFR within the time specified in the show cause notice. A direction was issued to the operating agency that in case such a proposal is given by the promoters, it will examine the same and submit its recommendations to the Bench. The operating agency had got the techno-economic viability study done from Himachal Consultancy Organisation keeping in view the product of the

company. Finally, the order u/s 20(1) of the SICA was confirmed by the BIFR on January 13, 2000, when it was held that it would be just and equitable, as well as in public interest if the company, which is a sick company is wound up. Therefore, recommendation was forwarded to this Court u/s 20(2) of the SICA.

3. On receipt of recommendation in this Court, the matter was registered as Company Petition No. 1 of 2000. On July 4, 2001, when it came up before the court in Company Petition No. 1 of 2000, the following order was passed :

"The Board for Industrial and Financial Reconstruction vide its order dated January 13, 2000, has found that the company M/s. Himachal Advanced Circuits Ltd. having its registered office at 8, Industrial Area, Phase II, Baddi, District Solan, is a sick industrial company and that it cannot be rehabilitated. It has further come to the conclusion that the company should be wound up u/s 20(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, in the public interest. There is nothing on record to show that any appeal has been preferred against the order dated February 28, 2000, of the BIFR. The period for filing appeal against such an order has also elapsed. Under the circumstances, exercising the powers under Sub-section (2) of Section 20 of the above said Act, it is ordered that the company M/s. Himachal Advanced Circuits Ltd. shall be wound up. The official liquidator is directed to take over the affairs of the company. Notice in this behalf be published in the Indian Express and Amar Ujala (Chandigarh Edition) and it shall also be published in the H. P. Rajpatra within one month as per the rules. The present petition stands disposed of."

4. The company had meanwhile preferred appeal against the order dated January 13, 2000, passed by the BIFR before the appellate authority under the SICA. It was dismissed on September 11, 2001. This order had attained finality intra parties.

5. In the above background, on April 16, 2003, after taking note of the appeal filed by the company, this Court passed the following order :

"Since an appeal was preferred against the order of the BIFR, the reference made by the BIFR on the face of it is bad and is accordingly rejected. A fresh reference is required to be made in pursuance of the order of the appellate authority."

6. The matter came up for consideration after decision in appeal before the BIFR and on reconsideration of the whole matter, vide impugned order dated November 27, 2003, the Board again forwarded its opinion to this Court. On receipt of this opinion, notices were issued to the parties appearing before the BIFR.

7. Pursuant to the notice issued by this Court, the company has filed detailed objections, opposing the recommendations of the BIFR to wind it up, whereas all the opposite parties supported the opinion of the Board.

8. Another fact that needs to be taken note of in the context of the objections

filed by the company is, that C. W. P. No. 557 of 2004 has also been filed by the company wherein a prayer is made for quashing of annexures PA and PE. Annexure PA is the earlier order dated January 13, 2000, passed by the BIFR recommending winding up of the company. Annexure PE is the subsequent order dated November 27, 2003, passed by the BIFR being objected to in this company petition.

9. The main thrust of the submission of Mr. Sood, learned senior counsel is, that the objections filed in this company petition is not an alternate efficacious remedy, as such filing of C. W. P. No. 557 of 2004 is no bar to the hearing of this matter. Further, according to him objections are in the nature of opposition to the recommendations made by the BIFR u/s 20(1) of the SICA. Whereas proceedings in C. W. P. No. 557 of 2004 are aimed at seeking relief based on violation of Articles 14, 19 and 21 of the Constitution of India. Thus according to him, both can continue simultaneously. The vital question is, whether the company can be allowed to have parallel remedies claiming identical relief. The answer in my considered view would be, "no". If the company is allowed to do so, it will be in the nature of allowing it to keep both the cases alive. The sole purpose apparently appears to be, that if it fails in one Us, it can continue its other lis. This can never be the purpose of law, particularly when in substance the relief claimed in both cases is the same and identical in terms.

10. Learned senior counsel submitted that the impugned order recommending winding up of the company is ultra vires the SICA, because according to him, on January 14, 2000, his client by registered post had made detailed submissions before the BIFR suggesting suitable ways and means for its revival. This was necessitated because when material intended to be placed before the BIFR was not accepted, his client was forced to send the same by registered post. Thus according to him, it ought to have been taken note of by the BIFR and then decision should have been arrived at. This was the least, that was expected of the BIFR. Even in the absence of his client this was otherwise necessary to have been considered by the BIFR so that principles of natural justice, equity and fair play were followed and his client was not condemned unheard.

11. When specifically questioned by the court as to whether his client made any enquiry after January 14, 2000, to November 27, 2003, Shri Sood fairly stated "none", but he hastened to add that after receipt of the material sent vide registered post on January 14, 2000, his client should have been called upon by the BIFR to assist it and then it (the BIFR) should have dealt with the matter. To similar effect is his submission that no notice was served upon his client after January 14, 2000, therefore, on this ground also impugned order dated November 27, 2003, needs to be set aside.

12. In the context of present case, it may be appropriate to notice that the company cannot be allowed to plead that it was not supposed to have enquired as to what was happening to the proceedings before the BIFR which were initiated at its instance. The reason for making this observation is, that the direct

consequence of the registration of case with the BIFR u/s 16 of the SICA is, that all the proceedings against the company come to a grinding halt. Therefore, as a prudent party, it was expected, as well as incumbent upon it to have approached and enquired as to what was happening to its case after the submission of material through registered post on January 14, 2000. In case the submission of learned senior counsel is accepted, the consequence will be disastrous. Because after registration of the case other legal proceedings got stayed. This is what Section 22 of the SICA says. And this matter is no more res integra in view of the decisions of the Supreme Court in The Gram Panchayat and another Vs. Shree Vallabh Glass Works Ltd. and others, and Maharashtra Tubes Ltd. Vs. State Industrial and Investment Corporation of Maharashtra Ltd. and Another, . Therefore, the omission to enquire as to what was happening to proceedings after January 14, 2000, appears to be purposeful and intentional.

13. Again if the argument of learned senior counsel is taken to its logical end, it would mean that because the case was registered and the company had filed some documents before the BIFR, it can go into hibernation, to be brought out only when the impugned order was passed by the BIFR.

14. Keeping in mind the stand of the company that has been taken note of in the preceding paras., I am satisfied that the plea urged on behalf of the company that it was not served after January 14, 2000, after having submitted material for revival of the company, or it was not called upon and/or it was not expected of it to enquire what was happening to the case registered at its instance, is not correct and merits rejection. Despite the fact, that by operation of law, i.e., Section 22 of the SICA all proceedings against the company come to a standstill. Ordered accordingly.

15. Further in the facts of this case, I am of the view that mere non issuance of fresh notice after January 14, 2000, has not in any manner prejudiced the company. So far as order dated November 27, 2003, is concerned, it is admittedly appealable, however no appeal has been filed against it. What is its effect hardly needs to be explained.

16. Faced with this situation, Mr. Sood learned senior counsel urged that the civil writ petition has been filed challenging the impugned order dated November 27, 2003. Whether writ is an efficacious remedy nothing is being said. But the fact remains that appeal being the alternate efficacious remedy, can hardly be disputed.

17. Learned senior counsel further submitted that this company petition as well as C. W. P. No. 557 of 2004 both need to be taken up together. According to him, both these matters were ordered to be heard together by the court. The record of C. W. P. No. 557 of 2004 was summoned. From its part "B" it is clear that on a mention memo having been filed on behalf of the company before the Hon"ble Chief Justice that the writ petition may be listed along with Company Petition No. 15 of 2003, the prayer was allowed. There was no order passed by the Division

Bench for either connecting or listing both these cases together for hearing. On December 24, 2004, C. W. P. No. 557 of 2004 and Company Petition No. 15 of 2003 were listed together when following order was passed in the writ petition :

"24-22-2004

Present : Shri D. D. Sood, senior advocate, with Shri Dushyant Dadwal and Shri Sunil Awasthi, advocates for the petitioners.

Ms. Shilpa Sood, Addl. Central Govt. Standing Counsel for respondents Nos. 1 and 8.

Sri M. S. Chandel Advocate General with Shri D. C. Pathik, Additional Advocate General, for respondent No. 9.

List during the week commencing from January 3, 2005, as prayed for on behalf of the petitioners.

(Sd.) Arun Kumar Goel J. (Sd.) M.R. Verma J.

24th December, 2004. "

When the writ petition came up for consideration on February 4, 2005, following order was passed :

"C. W. P. No. 557 of 2004

4-1-2005

Present : Mr. D. D. Sood, Senior Advocate, with Shri Dushyant Dadwal, Advocate, for the petitioners.

Ms. Shilpa Sood, Addl. Central Government standing counsel for respondents Nos. 1 and 8.

Shri M. S. Chandel, Advocate General with Shri D. C. Pathik, Addl. Advocate General, for respondent No. 9.

Co. Petition No. 15 of 2003

Mr. D. D. Sood, Senior Advocate, with Shri Dushyant Dadwal, Advocate, for the M/s. Himachal Advanced Circuits Limited.

Mr. N. K. Sood, Advocate for IFCI.

Mr. Tarlok Chauhan, Advocate, for ICICI.

Ms. Shilpa Sood, Addl. C. G. S. C. for the Commissioner, Central Excise.

Shri M. S. Chandel, Advocate General with Shri D. C. Pathik, Addl. A. G. for the Secretary, Department of Industries to the Government of Himachal Pradesh, respondent No. 9.

List in the month of May, 2005.

Company Petition No. 15 of 2003, be listed before the company judge.

(Sd.) Arun Kumar Goel J.

January 4, 2005 : (Sd.) M. R. Verma J."

18. Thus it is clear that both the cases, i.e., the writ petition as well as the company petition were listed together when mention memo, was filed before the hon"ble Chief Justice and not that these were to be heard together. Thereafter the company petition was ordered to be listed before the company judge on January 4, 2004. Therefore, the plea urged by learned senior counsel that both the cases should have been heard together, is without substance.

19. No other point is urged.

20. In view of the aforesaid discussion, objections filed by the company against the recommendations of the BIFR dated November 27, 2003, are rejected. Consequently, in exercise of powers u/s 20(2) of the SICA, the company, i.e., M/s. Himachal Advanced Circuits Limited, is ordered to be wound up. The official liquidator is directed to take over the affairs of the company. Notice as required in this behalf be now published in the Indian Express and Amar Ujala (Chandigarh Editions), in addition to its being published in the H. P. Government Rajpatra within one month as required under the Rules.

21. Pending application(s) if any, shall stand disposed of.