

(2005) 06 SHI CK 0001

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) 3 ShimLC 219

Hon'ble Judges : Arun kumar Goel, J

Bench : Single Bench

Advocate : D.D Sood, D. Dadwal and Sunil Awasthi, for Himachal Advanced Circuits Limited, Anand Sharma, Tarlok Chauhan and N.K. Sood, for ICICI Bank, M.S. Chandel, General and P.M. Negi, Assistant A.G. for Department of Industries, Government of Himachal Pradesh, Shrawan Dogra and Monika Joshi, for HPSEB, for the Appellant;

Judgement

Arun Kumar Goel, J.—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. 16/1998. On 14.9.1999 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. Operating Agency had got the techno-economic viability study done from Himachal Consultancy Organization keeping in view the product of the company. Finally

order u/s 20(1) of SICA was confirmed by the BIFR on 13.1.2000, 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, matter was registered as Company Petition No. 1 of 2000. On 4.7.2001 when it came up before the Court in Company Petition No. 1 of 2000. following order was passed:

The Board of Industrial and Financial Reconstruction vide its order dated 13.1.2000 has found that the company M/s. Himachal Advanced Circuits Ltd. Having its registered office at 8, Industrial Area, Phase-II, Baddi, Distt. 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 28.2.2000 of 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 231 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. Company had meanwhile preferred appeal against the order dated 13.1.2000 passed by the BIFR before the Appellate Authority under the SICA. It was dismissed on 11.9.2001. This order had attained finality intra parties.

5. In the above background, on 16.4.2003 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 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. Matter came up for consideration after decision in appeal before the BIFR and on reconsideration of the whole matter, vide impugned order dated 27.11.2003, 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 CWP 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 13.1.2000 passed by the BIFR

recommending winding up of the Company. Annexure PE is the subsequent order dated 27.11.2003 passed by BIFR being objected to in this Company Petition.

9. 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 CWP 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 SICA. Whereas proceedings in CWP 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. Vital question is, whether the Company can be allowed to have parallel remedies claiming identical relief. 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. Sole purpose apparently appears to be, that if it fails in one lis, it can continue its other lis. This can never be the purpose of law, particularly when in substance relief claimed in both cases is same and identical in terms.

10. Learned Senior counsel submitted that the impugned order recommending winding up of the company is ultra-vires of the SICA, because according to him, on 14.1.2000 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 14.1.2000 to 27.11.2003, Shri Sood fairly stated "none", but he hastened to add that after receipt of the material sent vide registered post on 14.1.2000, 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 14.1.2000, therefore, on this ground also impugned order dated 27.11.2003 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. 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 14.1.2000. In case submission of the learned

Senior counsel is accepted, 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 14.1.2000 appears to be purposeful and intentional.

13. Again if the argument of the 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 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 14.1.2000 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 SICA all proceedings against the Company come to a stand still. Ordered accordingly.

15. Further in the facts of this case, I am of the view that mere non-issuance of fresh notice after 14.1.2000 has not in any manner prejudiced the Company. So far order dated 27.11.2003 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 impugned order dated 27.11.2003. 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 CWP 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. Record of CWP 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 Hon'ble the Chief Justice that the writ petition may be listed alongwith Company Petition No. 15 of 2003, prayer was allowed. There was no order passed by the Division Bench for either connecting or listing both these cases together for hearing. On 24.12.2004, CWP No. 557 of 2004, and Company Petition No. 15 of 2003 were listed together when following order was passed in the writ petition:

24.12.2004

Present: Shri D.D. Sood, Senior Advocate, with Shri Dushyant Dadwal and Shri Sunil Awasthi, Advocates for the Petitioners.

Ms. Shilpa Sood, Additional Central Government Standing Counsel for Respondents No. 1 and 8.

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

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

Sd/-Arun Kumar Goel, J. 24th December, 2004 Sd/- M.R. Verma, J.

18. When writ petition came up for consideration on 4.2.2005, following order was passed:

CWP 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, Additional Central Government Standing Counsel for Respondents No. 1 and 8.

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

Co. Petition No. 15/2003

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, Additional C.G.S.C. for the Commissioner, Central Excise.

Ms. M.S. Chandel, Advocate General with Shri D.C. Pathik, Additional 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 15 of 2003, be listed before Company Judge.

Sd/- Arun Kumar Geol, J. January 4, 2005 Sd/- M.R. Verma, J.

19. Thus it is clear that both the cases, i.e. Writ Petition as well as the Company Petition were listed together when mention memo was filed before Hon''ble the Chief Justice and not that these were to be heard together. Thereafter Company Petition was ordered to be listed before the Company Judge on 4.1.2004. Therefore, plea urged by learned Senior counsel that both the cases should have been heard together, is without substance.

20. No other point is urged.

21. In view of the aforesaid discussion, objections filed by the Company against the recommendations of the BIFR dated 27.11.2003 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 H.P. Government Rajpatra within one month as required under the rules.

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