

(2000) 08 AHC CK 0110
In the Allahabad High Court
Case No : Misc. Company Application No. 3 of 1999
In Re: Universal Insulators and Ceramics Ltd.

Date of Decision : 07-08-2000

Acts Referred:

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 18, 20(1)

Citation : (2000) 08 AHC CK 0110

Hon'ble Judges : M.C. Jain, J

Bench : Single Bench

Advocate : O.L. Mr. Ram, for the Appellant; Janardan Sahai, Anurag Khanna, P.K. Singhal, Vikram Nath and Satish Chaturvedi, for the Respondent

Final Decision : Disposed Of

Judgement

M.C. Jain, J.—Universal Insulators & Ceramics Ltd. is a public limited company incorporated under the Companies Act, 1956. It suffered losses and approached BIFR u/s 15(1) of Sick Industrial Companies (Special Provisions) Act, 1985 ("the Act"). The case had been before the BIFR for twelve years and efforts made for its revival had not succeeded. Ultimately, the BIFR found that the company was not likely to make its net worth exceed its accumulated losses within a reasonable time while meeting all its financial obligations. The company, as a result thereof, was not likely to become viable in future and that it was just, equitable and in public interest that it should be wound up u/s 20(1) of the Act. Under order dated 13-4-1999 BIFR forwarded its opinion to this Court for the winding up of the company. The company preferred appeal No. 40 of 1999 before AAIFR but the same was dismissed on 21-6-1999.

2. While the winding up matter on the recommendation of the BIFR is pending before this Court, the company in question has objected to its winding up on the recommendation of the BIFR and has come up with a Rehabilitation-cum-Repayment Scheme. The original proposal was submitted on 28-10-1999 and modified scheme has been presented on 28-4-2000 through application A-14. A.K. Bhargava, Chairman-cum-Managing Director of the company has filed affidavits in support of the such original scheme as also to back the modified one.

3. The financial institutions present before the BIFR were the following:

(i) IIBI.

(ii) Syndicate Bank.

(iii) PICUP.

(iv) UPSIDC.

4. Really speaking, what the company has presented before the court is not a Scheme of Rehabilitation. In true sense of the term, it is just a Scheme of Repayment of the loan of creditors named above. It is in the nature of one time settlement (OTS) with the above named financial institutions. The original schedule of repayment proposed by the company takes the cut off date as 31-3-2000. It has proposed to liquidate the amounts due to the above named financial institutions in quarterly instalments, the first of such quarterly instalment starting on 31-12-2000 and the last ending on 31 -3-2003. Subsequent to the receipt of letter of IIBI dated 7-4-2000, it has proposed a modified repayment schedule. As per the modified proposal, repayment has been scheduled to be made in 18 months with moratorium period of six months from the date of sanction of the scheme by the Court. It has also proposed payment of PLR interest with effect from 1-7-1999 to 31-3-2000. Payments are to be made by monthly equal instalments commencing from 7th month after the sanction of the scheme by the Court and ending on 24th months. Relevant averments in this behalf have been made in paragraphs 8 and 9 of the affidavit A-14 of the Managing Director of the company. The same are reproduced below:

"8. That the company do hereby accept and make commitments to comply with the terms and conditions stipulated in IIBI letter dated 7-4-2000 referred to hereinabove and accordingly the Payment Schedule is revised hereunder without any changes/modifications in the other terms and conditions including reliefs and concessions stipulated in the Rehabilitation- cum-Repayment Scheme submitted by the applicants to this Hon"ble Court.

9. That in view of the modification suggested by IIBI vide its letter dated 7-4-2000, the revised liabilities as crystallized at the agreed levels before the BIFR by the institutions/bank, now amount to Rs. 361.74 lakhs (instead of Rs. 332.02 lakhs) which include liability of PICUP as Rs. 83.80 lakhs (instead of Rs. 77.15 lakhs), IIBI Rs. 122.75 lakhs (instead of Rs. 113.00 lakhs) and Syndicate Bank Rs. 155.19 lakhs (instead of Rs. 142.87 lakhs). These revised figures have been arrived at to give effect to the modifications suggested by IIBI vide its letter dated 7-4-2000 to the Rehabilitation-cum-Repayment Scheme submitted on 28-10-1999 by company before this Hon"ble Court.

That the interest has also been provided on the lines of the sanction of IIBI towards the Buy-back of shares totalling to Rs. 11.16 lakhs, which include payment to UPSIDC for equity shares settled at Rs. 6.16 lakhs, payment to PICUP preference share at Rs. 5,00 lakhs and now these figures will be revised to

Rs. 6.69 lakhs for UPSIDC and Rs. 5.43 lakhs for PICUP respectively (total Rs. 12.12 lakhs)."

5. The first instalment is proposed to be paid on 31-12-2000 and the last one on 31-5-2001.

6. IIBI was the operating agency of BIFR. An affidavit A-16 has been filed on its behalf. Annexure-A is a copy of its letter dated 7-4-2000 relating to the proposal made by the company for OTS. In substance, it has agreed to the OTS proposal on the following terms and conditions :

"1. Scheme to be sanctioned by the Hon"ble High Court of Allahabad.

2. Company to pay to IIBI 100 per cent of its principal amount of Rs. 113 lakhs plus interest at PLR with effect from 1-7-1999 to 31-3-2000.

3. Payment be made by monthly equal instalments commencing from the 7th month and ending on the 24th month from the date of sanction of the Scheme by the Hon"ble High Court of Allahabad.

4. Reimbursement of Rs. 22,940 by the company towards share of insurance premium paid by IIBI within 7 days from the date of sanction of the scheme. Thereafter the company itself to renew the insurance policies to the satisfaction of FI"s/Bank.

5. Token down payment against the OTS as deemed fit by the Hon"ble High Court of Allahabad.

6. No additional term loan/working capital facilities from the present lending financial institutions/banks."

7. IIBI by its subsequent letter dated 4-5-2000 Annexure-B of the affidavit A-16 has made certain additions/amendments to its earlier letter dated 7-4-2000 which are to the following effect;

" 1. As regards token down payment as mentioned under Sl. No. 5 of the said letter dated 7-4-2000, the promoters have indicated that the token down payment would be in between Rs. 3 to 5 lakhs which would be adjusted against the interest for the period from 1-7-1999 to 31-3-2000 as contained in Sl. No. 2 of the said letter dated 7-4-2000.

2. The down payment is to be released by the company within 7 days from the sanction of the scheme by the Hon"ble High Court of Allahabad.

3. The balance amount of interest after down payment and the principal amount of Rs. 113 lakhs will be clubbed together and instalment will be fixed for repayment as contained under Sl. No. 3 of letter dated 7-4-2000.

4. The company is to pay interest at PLR from the date of sanction of the scheme by the Hon"ble Court on reducing value method.

5. As per schedule of payment to be approved by the Hon''ble Court as mentioned under Sl. No. 3 of the letter dated 7-4-2000, post dated cheques are to be handed over to IIBI by the company with specific condition that no letter of request will be entertained for non-presentation of the cheque on the due date or to present on a later date.

6. While considering the OTS proposed by the Hon''ble High Court, conditions as stipulated in letter dated 7-4-2000 and this letter are to be considered concurrently."

8. So far as Syndicate Bank is concerned, it appears that the company approached it (Bank) for OTS by letter dated 3-3-2000. Annexure-1 to the affidavit A-15 filed by R.C. Tiwari, Deputy Chief Officer (Law) of the Bank is the copy of such letter of the company. So far as the payment of debt due to the bank from the company is concerned, the letter proposed as under:

"(a) We shall pay the interest at the rate of PLR simple on the earlier agreed OTS amount with effect from 1-7-1999 to 31-3-2000.

(b) We shall pay the interest at the rate of PLR on the revised amount of OTS (i.e., Rs. 142.97 lakhs plus interest at the rate of PLR with effect from 1-7-1999 to 31-3-2000).

(c) We propose to pay the revised amount of OTS within two years with moratorium of six months from the date of the sanction of the scheme by Hon''ble High Court and the repayment shall not be linked with any condition and we shall make the requisite written undertaking before Hon''ble High Court to pay the amount on due dates.

(d) As gesture of goodwill, we shall try to pay 20 per cent of the OTS amount within a week immediately after the sanction of the Scheme by Hon''ble High Court."

9. The bank also considered the letter dated 7-4-2000 of IIBI regarding OTS and by letter dated 24-4-2000 (Annexure 3 to the affidavit A-15) laid down the following terms and conditions for accepting OTS :

"1. The company/borrower shall make down payment at 20 per cent of the revised offer of Rs. 157.19 lakhs and Rs. 13.23 lakhs within two weeks of approval of the scheme by the Hon''ble High Court at Allahabad.

2. The company/borrower shall pay balance revised offer amount within 24 months in monthly instalments with a moratorium of six months from the date of final sanction of the proposal/scheme by the Hon''ble High Court. The first instalment will commence from the 7th month.

3. The company/borrower shall pay future interest at PLR simple from 1-4-2000 on reducing balance basis on the revised offer amount till final settlement.

4. Any better offer to IIBI and PICUP mutalis mutandis shall be applicable to our

bank as well.

5. Any default on the part of the company to abide by the approved terms would open liquidation proceedings before the Hon'ble High Court at Allahabad.

6. The above terms shall be subject to IIBI and PICUP agreeing to consider the company's settlement proposal with them on the above terms and conditions."

10. It may be stated for the sake of clarity that the figure of Rs. 13,23 lakhs mentioned in serial No. 1 above relates to the personal loan of A.K. Bhargava, Managing Director of the company.

11. PICUP has not filed any written reply/counter affidavit to the repayment schedule (OTS) proposed by the company.

12. A.K. Bhargava, Chairman-cum-Managing Director of the company has filed with his affidavit A-22, the copy of a letter dated 17-7-2000 sent to it by UPSIDC which indicates that in response to company's letter dated 15-7-2000, proposing to pay Rs. 6.69 lakhs, the UPSIDC agreed to the proposal for the said payment being made on 31-12-2000 for purchase of 56,000 shares held by them (UPSIDC) of the company. However, no written reply/objection has been filed by UPSIDC either before this Court against the proposed repayment schedule (OTS). It may, however, be pointed out that the company claims to have withdrawn the proposal made to Syndicate Bank on 3-3-2000. It has been averred by the Managing Director of the company in his affidavit A-19 that the proposal of making 20 per cent down payment was incorporated in letter dated 3-3-2000 addressed to the bank (relevant contents reproduced above) under the pressure by the bank.

13. The stand of the company is that its proposal to the bank stood modified to fall in line of the sanction to the OTS accorded by IIBI in its letter dated 7-4-2000.

14. To recapitulate, the company insists for the OTS only as per acceptance of its offer made by IIBI in its letter dated 7-4-2000. The company does not agree for modification of the payment of schedule in accordance with additional conditions imposed by IIBI in its subsequent letter dated 4-5-2000 or as desired by Syndicate Bank through its letter dated 24-4-2000.

15. At the hearing, Shri Janardan Sahai, representing the applicant, Shri Vikram Nath, the learned counsel for IIBI and Shri Anurag Khanna, the learned counsel for PICUP advanced arguments. I heard them at length. It has been submitted by the learned counsel for PICUP that though it has not filed any reply/objection to the repayment schedule (OTS), but it would agree to the scheme as may be sanctioned in respect of the debt due to the IIBI and Syndicate Bank. While arguing, Shri Janardan Sahai, the learned counsel for the company, submitted that though the company is not agreeable to the modified conditions sought to be imposed by IIBI through its letter dated 4-5-2000 and by the Syndicate Bank in its letter dated 24-4-2000, yet it would make down payment of Rs. 3 lakhs to

each of the creditors to arrive at a solution as the company is seriously concerned in its revival. It has been urged that it is not at all possible to abide by the demand of the Syndicate Bank of 20 per cent down payment. It has been stressed that IIBI, the lead financial institution, was the operating agency of BIFR and as such, all other banks/financial institutions must fall in line with IIBI in the matter of the acceptance of repayment schedule as contained in IIBI's letter dated 7-4-2000.

16. I have considered the respective arguments of the learned counsel for the parties articulated across the bar and have given my thoughtful consideration to the matter in the light of the material available on record. Indeed, it is always better if the winding up of the company can be avoided and it is revived by the management of the company. The claim of the company is that it is technically and financially feasible to revive it. In affidavit A-19 filed by the managing director of the company, it is averred that the company is negotiating with foreign buyers for export orders. In short, the company is likely to exploit its export potentialities. Be that so, the point of the matter is that the company is seemingly banking upon private borrowings or arrangements for its revival. The repayment schedule (OTS) should be worked out on just, fair and reasonable lines. It should not simply be a ploy for putting off winding up and just to buy time to postpone the consideration of the recommendation of the BIFR to wind up the company. The repayment schedule has to be so designed as to liquidate the debts due to the creditors within a reasonable distance of time. It goes without saying that various financial institutions are dealing with public money and the schedule of repayment has to be fashioned in such a way as to facilitate the repayment of debts, while balancing the interest of the company as well as of the financial institutions and bank concerned. The OTS is to be based on some proper rationale and the down payment should be reasonably proportionate to the amount of debt instead of being a pittance. In case the management of the company has really made some private arrangements for the revival of the company and some financiers are there to back it, there can be no objection to postpone the consideration of winding up as recommended by BIFR. I am of the opinion that identical standard be applied as to the schedule of repayment in respect of all the concerned creditors, namely, IIBI, Syndicate Bank, PICUP and UPSIDC. In other words, all of them should be treated alike and be placed at par in respect of liquidation of their debts without any extra weightage or concession in respect of one or the other.

17. On a global and cumulative consideration of the relevant facts and circumstances as also the respective contentions put forth by the parties, I sanction the schedule of repayment (OTS) as per the directions and conditions detailed hereinbelow:

1. The company shall pay to IIBI, Syndicate Bank, PICUP and UPSIDC 100 per cent of the principal amount due to each of them as crystallized before BIFR (Rs. 113 lakhs of IIBI, 142.87 lakhs of Syndicate Bank, 82.15 lakhs of PICUP and

6.16 lakhs of the UPSIDC).

2. The company shall pay interest at PLR in respect of the above mentioned debts with effect from 1-7-1999 to 31-3-2000.

3. The company shall make down payment against the OTS to IIBI, Syndicate Bank, PICUP and UPSIDC at the rate of 5 per cent of the amount arrived at after adding up PLR interest for the period 1-7-1999 to 31-3-2000 to the amount of debt due to each of them as per serial Nos. 1 and 2 above.

4. 5 per cent down payment as mentioned at serial No. 3 above shall be made by the company to IIBI, Syndicate Bank, PICUP and UPSIDC by 31-8-2000.

5. The company shall pay PLR interest with effect from 1-4-2000 on reduced balance basis till the final payment is made as directed in serial No. 6 below.

6. There shall be a moratorium for six months and the company shall pay the balance amount in 18 equal monthly instalments, the first of which would be paid on 31-3-2001 to each of the above creditors and the last one on 31-8-2002.

7. The company shall reimburse a sum of Rs. 22,940 to IIBI towards share of insurance premium paid by the latter by 31 -8-2000. Thereafter the company itself would renew its insurance policy.

8. The company would issue post-dated cheques to the above-named creditors in respect of the amounts to be paid in 18 equal instalments starting on 31-3-2000 and ending on 31-8-2002.

9. Any default on the part of the company to abide by the above-mentioned terms would trigger liquidation proceedings before this Court in consequence of the recommendation made by the BIFR.

18. List on 4-9-2000 for further appropriate orders.