(2004) 06 MAD CK 0098

In the Madras High Court

Case No : W.A No. 3993 of 2003

Jagadeeswaran Textiles Ltd. APPELLANT

Vs

Appellate Authority for Industrial and Financial Reconstruction and Others RESPONDENT

Date of Decision : 21-06-2004

Acts Referred:
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 20(1)

Citation : (2004) 06 MAD CK 0098

Hon'ble Judges : V.S. Sirpurkar, J;A.K. Rajan, J

Bench : Division Bench

Advocate : S.S. Sundar, for the Appellant; Jayesh Dolia, for Aiyar and Dolia, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Sirpurkar, J.—The appeal is against the interim order rejecting the stay. In that, the petitioner / appellant had sought the stay of the order of the Appellate Authority for Industrial and Financial Reconstruction (AIFR). The AIFR had confirmed the order of the Board for Industrial & Financial Reconstruction (BIFR). The BIFR has held after eight years of deliberation before it that the appellant company could not be revived and there could not be any such exercise and it decided to recommend its winding up u/s 20(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "the Act"). That was appealed against by the appellant before the AIFR and the AIFR also confirmed the findings.

2. It is very fairly stated by the learned counsel for the appellant that in pursuance of that a reference had already been made to the High Court and the matter is pending before the learned Company Judge. Needless to mention that the learned Company Judge would be deciding the matters more particularly based on the opinions expressed by the BIFR and AIFR. In the meantime however, the appellant also filed a writ petition No. 3635/2003 wherein he filed a

WPMP No. 4596/2003 and in that, he sought for the stay of the order of the BIFR as well as AIFR. Now, we do not understand what is meant by the stay of that order because, those orders are only in the nature of the recommendations or the opinions as the case may be. The petitioner would always have an opportunity before the learned Company Judge to show that those opinions could still be ignored by the learned Company Judge. Be that as it may, we are not to express anything on that.

3. The learned Single Judge has refused the stay on the ground that he could not have interfered in the matter, there being the question of fact involved in the matter. Undoubtedly, the question as to how much would be the liabilities, how much would be the assets and whether there have been any efforts on the part of the company to wipe out the liabilities and whether the company is economically viable, are all essentially questions of fact on which much deliberation has been done by the BIFR as well as the AIFR. Therefore, in our opinion, the learned Single Judge was absolutely right in dismissing WPMP No. 4596/2003. Very significantly enough, the fact regarding the reference having been made and being pending before the learned Company Judge has been omitted to be stated in the writ petition. This only surfaced during the arguments which went on before us.

4. Mr. Sundar, learned counsel for the appellant argued before us that the appellant company has made honest efforts to wipe out its liabilities and has substantially reduced the liabilities, more particularly of the banks. He says that the pendency of the matter before the learned Company Judge has burnt all his boats and cut all his ropes and the appellant is not in a position to get any assistance owing to that pendency.

5. We are unable to appreciate all these arguments. Section 20(1) of the Act is the natural fall-out under the Act and in the event the BIFR comes to the conclusion that the rehabilitation of the company is not possible, that will be the natural consequence which would follow and precisely that has happened in this case. This is apart from the fact that it was the company which itself went before the BIFR and sought for rehabilitation option, but that did not unfortunately happen for them. On the other hand, the BIFR came to the conclusion that the company took the advantage of pendency of the matter before the BIFR for good long eight years and that it was not possible to rehabilitate the company. The same opinion was expressed by the AIFR also and hence the further proceedings. Under the circumstances, we do not think that the learned Judge erred in dismissing the stay application. The order is confirmed. The learned Judge dealing with the writ petition is requested to dispose of the writ petition as early as possible keeping in view our observations in this appeal. The writ appeal is dismissed with costs of Rs. 1,000/- (Rupees one thousand only). WAMP No. 6560 of 2003 is closed.

