
(2013) 10 DEL CK 0459

In the Delhi High Court

Case No : Writ Petition (C) No. 1982 of 2013 and CM No. 12971 of 2013

Jasoka India Ltd.

APPELLANT

Vs

Official Liquidator, New Delhi

RESPONDENT

Date of Decision : 21-10-2013

Acts Referred:

Companies Act, 1956 — Section 529, 529A, 530

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15(1), 20(1)

Citation : (2014) 206 DLT 574

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Subodh K. Pathak, for the Appellant; Ashish Makhija, for the Respondent

Final Decision : Disposed Off

Judgement

V.K. Jain, J.—The petitioner-Company made a reference to BIFR u/s 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as the "SICA") which declared the petitioner-Company sick vide order dated 22.6.1999. The State Bank of India (SBI) was appointed as the Operating Agency to examine the viability of the company and formulate a rehabilitation plan for its revival, in case it was found viable. Vide order dated 7.3.2006 the BIFR confirmed its prima facie opinion formed on 22.12.2003 to wind up the Company in terms of Section 20(1) of the SICA. The BIFR also directed that the opinion formed by it be forwarded to the concerned High Court and the Company should not dispose of any of its assets without prior approval of the Board during the period beginning with the recording of opinion by it and up to the commencing of proceedings relating to winding up before the concerned High Court.

The order passed by BIFR on 7.3.2006 was challenged by the petitioner by way of an appeal before the Appellate Authority for Industrial and Financial Reconstruction (for short "AAIFR"). However, vide order dated 3.6.2009, the

appeal filed by the petitioner-Company was dismissed.

Earlier during the pendency of the proceedings before the BIFR, the petitioner had filed CW No. 3023/2003 against some interim orders passed by BIFR. When the said writ petition came up for hearing on 5.5.2003, the following interim order was passed:

CW No. 3023 of 2003 & CM 5132/2003

Ld. Counsel appearing for the petitioner submits that he has no objection in depositing Rs. 25 lakhs as directed by the AAIFR but that money must be utilized to revive or rehabilitate the sick company. We order accordingly. He undertakes to deposit this amount in a non-lien account within two weeks from today.

Notice to the respondents to show cause as to why this petition be not admitted returnable on 8th August, 2003.

In pursuance to the advertisement issued on 22nd January, 2003 in Tribune no further steps be taken for a period of two weeks.

The aforesaid writ petition was withdrawn vide order dated 8.8.2003. However, the amount of Rs. 25.00 lakh which the petitioner had deposited in a no-lien account with the SBI pursuant to the interim order dated 5.5.2003 was not withdrawn though, in view of withdrawal of the writ petition, the petitioner was entitled in law to withdraw the aforesaid amount.

2. Being aggrieved from the dismissal of its appeal before AAIFR the petitioner filed WP (C) No. 11216/2009 before this Court. When the aforesaid writ petition came up for hearing on 16.2.2010, the following order was passed:

W.P. (C) No. 11216/2009 and CM APPL Nos. 10658-59/09 and 984/2010

Learned counsel for the petitioner seeks to give up challenge to the impugned order and confines relief to the consideration of his application for one-time settlement (OTS) scheme in accordance with norms and for the amount deposited by him in no-lien account to be taken into consideration for consideration of such OTS proposal.

We are inclined to accept the said request making it clear that it is up to the respondents to examine the OTS proposal in accordance with their norms and the amount deposited in the no-lien account, which is to be transferred to the Official Liquidator, will be considered as a part of the amount required to be deposited by the petitioner for consideration of the OTS proposal.

The petition and the application stand disposed of.

3. It would, thus, be seen that the amount of Rs. 25.00 lakh which the petitioner had deposited in a no-lien account with SBI pursuant to the interim order passed in CW No. 3023/2003 and which was not withdrawn by it, was to be considered as a deposit made by the petitioner in order to enable the respondents in W.P. (C) No. 11216/2009 to consider the proposal of the said petitioner for a one-time

settlement (OTS) and was to be transferred by the Official Liquidator, to the creditors who were to consider the OTS proposal. It would be appropriate to mention here that the aforesaid amount came under the control of the Official Liquidator since it was deposited in a no-lien account with SBI which then transferred the said amount to the Official Liquidator.

4. The learned counsel for the petitioner states that the petitioner has already deposited some amount with Punjab Financial Corporation (PFC) and Punjab State Industrial Development Corporation (PSIDC) in order to enable the said Corporations to consider its proposal for an OTS. He further submits that despite the order passed by a Division Bench of this Court in W.P. (C) No. 11216/2009 on 16.2.2010 the Official Liquidator has not transferred the amount deposited in no-lien account to the aforesaid creditors of the petitioner, as a result of which the said creditors are not considering the request of the petitioner for an OTS. The petitioner has accordingly sought the following reliefs in the present writ petition:

- a. issue a writ of mandamus or any other appropriate writ directing the respondent to release the amount transferred to it by SBI in favour of the petitioner-company;
- b. the amount be released directly to PFC and PSIDC in view of OTS arrived at between the parties in their respective proportion.

5. The learned counsel for the Official Liquidator admits that PFC as well as PSIDC are also creditors of the petitioner-Company. He, however, submits that the amount of Rs. 25.00 lakh belongs to the Company and it has to be utilized for payment to the creditors of the Company in the order of preference, prescribed in terms of Sections 529, 529A and 530 of the Companies Act.

6. In my view, considering that CW No. 3023/2003 came to be withdrawn by the petitioner it had a legal right to withdraw the aforesaid amount of Rs. 25.00 lakh which it had deposited in a no-lien account with SBI, Chandigarh. Therefore, the petitioner would have a legal right to utilize the said amount for the purposes of the petitioner-Company and that would include the request of the petitioner-Company to its creditors to consider an OTS of their dues. In any case, in view of order dated 16.2.2010 passed by a Division Bench of this Court in WP (C) No. 11216/2009, the Official Liquidator has no option but to transfer the aforesaid amount to those creditors of the petitioner-Company who are to consider its request for an OTS of their dues. When this writ petition came up for hearing on 18.9.2013, the learned counsel representing the Official Liquidator sought four (4) weeks' time to consider the matter in the light of the order dated 16.2.2010 passed in W.P. (C) No. 11216/2009. It was made clear in the aforesaid order that in case the respondent is aggrieved from the order dated 16.2.2010 passed in W.P. (C) No. 11216/2009 it would either have to approach the Division Bench which passed the said order or a superior court for ventilation of its grievance. Admittedly, the Official Liquidator has neither approached the Division Bench which passed the order dated 16.2.2010 nor has it challenged the said order

before a superior court. The learned counsel for the Official Liquidator states that since the Company has not wound up so far they would have no right to challenge the aforesaid order dated 16.2.2010. Be that as it may considering that the aforesaid amount of Rs. 25.00 lakh was deposited by the petitioner pursuant to interim order passed in CW No. 3023/2003 which later on came to be withdrawn by it and the specific order dated 16.2.2010 passed by a Division Bench of this Court in W.P. (C) No. 11216/2009 directing the transfer of the aforesaid amount by the Official Liquidator to the creditors of the petitioner-Company there is no escape from the conclusion that the Official Liquidator cannot retain the aforesaid amount and it has to be transferred to the creditors which are to consider the request of the petitioner for an OTS. The learned counsel for the petitioner states that a sum of Rs. 15,76,184.00 is required to be transferred to PFC and the remaining amount to PSIDC. Accordingly, the respondent is directed to transfer an amount of Rs. 15,76,184.00 out of Rs. 25.00 lakh along with interest accrued thereon to Punjab Financial Corporation by way of a cheque in its name and the balance Rs. 9,23,816.00 along with interest accrued thereon to Punjab State Industrial Development Corporation by way of a cheque in its name within four (4) weeks from today.

The writ petition and the application stand disposed of.

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