
(1995) 08 AP CK 0038

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7564 of 1995

K. Sitarama Raju

APPELLANT

Vs

Board For Industrial and Financial Reconstruction and Others

RESPONDENT

Date of Decision : 14-08-1995

Acts Referred:

Companies Act, 1956 — Section 169, 193, 228

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 13, 13(3), 14, 15, 15(2)

Citation : (1996) 87 CompCas 22

Hon'ble Judges : S.V. Maruthi, J

Bench : Single Bench

Advocate : Vedula Venkata Ramana and Vedula Srinivas, for the Appellant; V.S. Raju, P.V. Rama Raju, M. Adinarayana Raju, Koka Satyanarayana Rao, S. Ravi and A. Sanjay Kishore, for the Respondent

Judgement

S.V. Maruthi, J.—The question involved in this writ petition is, whether the Board for Industrial and Financial Reconstruction constituted u/s 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "the Act"), has the power to restrain the company from effecting any change in the composition of the board of directors including top managerial personnel pending decision on the question of rehabilitation of the company? The facts, in brief, are as follows :

2. The petitioner is one of the promoters of the second respondent-company, namely, Delta Paper Mills Limited. The company was incorporated in the year 1975 as a public limited company under the Companies Act. Mr. Bh. Vijayakumar Raju, was the managing director from 1975 till May 10, 1985, and Mr. P.V. Narasimha Raju, was the managing director of the second respondent-company between May, 1985, and September, 1991. Mr. Bh. Vijayakumar Raju, became the managing director from September 28, 1991, and continued till his death on November 20, 1994. There was no managing director for the respondent-company on the date of filing of the writ petition. The total number of directors is

eight out of which six were nominated by the financial institutions and Mr. P.V. Narasimha Raju, was appointed by the shareholders and Smt. Bh. K.K. Kasturi, wife of the late Sri Vijayakumar Raju, was appointed on November 27, 1994, by the board of directors as an additional director.

3. The second respondent-company incurred losses and after the death of Mr. Vijayakumar Raju, there was total chaos in the management of the company which resulted in mismanagement and also pilferage of funds. On account of the accumulated losses of the company, the company has been declared a sick industrial company by the Board for industrial and Financial Reconstruction u/s 15 of the Act. The first respondent initiated further proceedings u/s 17(2) of the Act. On October 30, 1990, the first respondent directed the second respondent to make its net worth positive u/s 17(2) of the Act. However, the second respondent could not improve its position even after following the condition laid down by the first respondent and consequently the matter of rehabilitating the second respondent is again before the first respondent. Since the package paid u/s 17(2) did not work out the first respondent has decided to take action u/s 17(3) of the Act and directed the operating agency to prepare the scheme of rehabilitation by its order dated February 23, 1995. Since the second respondent was functioning without any managing director a section of the shareholders representing more than 10 per cent. of the paid-up capital of the company have lodged a requisition on February 1, 1995, before the second respondent requesting to convene an extraordinary general body meeting of the shareholders for the purpose of appointment of Sri P.V. Narasimha Raju, as managing director of the company. On receiving the requisition the second respondent-company had issued a notice on February 15, 1995, convening the extraordinary general body meeting on March 16, 1995. The notice was sent to all the shareholders of the company. However, some of the directors filed civil suits in O.S. Nos. 56 and 62 of 1995, before the Principal District Munsiff, Bhimavaram, seeking injunction restraining the holding of the meeting. Against the orders of the Principal District Munsiff, C.R.P. Nos. 772 and 773 of 1995, were filed under article 227 of the Constitution of India and the suits were stayed. However, the first respondent on March 14, 1995, directed the company secretary of the second respondent not to conduct the meeting on March 16, 1995, and threatened the directors with the imprisonment if its orders are violated. Therefore, on March 16, 1995, the meeting was not held. The petitioner and the other shareholders came to know of the order passed by the first respondent on March 16, 1995 at 10.45 a.m. through the notice of the company secretary of the company. Questioning the validity of the order dated March 14, 1995, the present writ petition was filed on various grounds.

4. One of the shareholders of the second respondent-company got himself impleaded as he and his relatives who are also the promoters of the company hold 45,000 equity shares of Rs. 10 each in the second respondent-company. He filed a counter-affidavit stating that the first respondent has sanctioned the rehabilitation scheme for the revival of units by its order dated October 30, 1990.

Since the second respondent failed to revive the company as per the package, the first respondent reviewed its order, by order dated February 23, 1995, and appointed the Industrial Credit and Investment Corporation of India Limited as the operating agency u/s 17(3) and (4) of the Act to prepare a scheme for rehabilitation and revival of the company. The first respondent directed the promoters to furnish all the necessary material along with the minutes of the general body meeting to the operating agency by March 24, 1995. Pending report by the operating agency the first respondent directed "not to effect any change in the composition of the board of directors including top managerial personnel". The operating agency by its letter dated March 9, 1995, directed the second respondent-company to obtain prior approval of the financial institutions for the appointment of the managing director. It was also directed that the second respondent should inform the institutions if there is any change in the composition of the board of directors for their approval since the company's rehabilitation scheme is pending with the first respondent that the petitioner is a third party who filed the above writ petition for the benefit of one of the directors and, therefore, it is not in good faith and the petitioner has also an alternative remedy under the Act and, therefore, the writ petition is not maintainable; that one of the directors filed a Statutory Appeal No. 38 of 1995 before the appellate authority and while admitting the same the said authority had not granted any stay and the appeal was posted on June 2, 1995. The second respondent-company constituted a managing committee consisting of chairman and some of the directors of the second respondent-company including representatives of the financial institutions, chief executive officer and senior vice-president (technical) in order to take a decision on all the important problems. A full-time finance director was also appointed on May 6, 1995, who happened to be a nominee of A.P. Industrial Development Corporation in compliance with the memorandum of understanding. Therefore, there is no urgency for the appointment of a managing director as the affairs of the company are conducted by various professional people under the managing committee constituted for that purpose. Once a reference is made u/s 15 of the Sick Industrial Companies (Special Provisions) Act, 1985, by virtue of section 32, the provisions of the Act will prevail notwithstanding anything contained in the Companies Act. Therefore, the first respondent is competent to pass the impugned order. Further, on a reference made u/s 15 an inquiry was conducted u/s 16 and the first respondent suggested a package by requesting the management of the company to make its net worth exceed accumulated losses u/s 17(2) of the Act on October 30, 1990. Since the company failed to revive the way it was expected, the first respondent appointed the Industrial Credit and Investment Corporation of India as operating agency u/s 17(3) and (4) of the Act to prepare a report on rehabilitation and reviving of the company as per guidelines. The operating agency was directed to examine the measures including the change of management, amalgamation of the company with other companies as stipulated u/s 18 of the Act. Since the matter is seized by the first respondent in view of section 32 of the Act, the question of holding general body meeting in accordance with section 169 of the

Companies Act does not arise. In other words, one of the shareholders supports the action of the first respondent directing the management not to effect any change of management till a view is taken on the rehabilitation of the company.

5. Sri P.V. Narasimha Raju, who was elected as the managing director of the second respondent-company in the extraordinary general body meeting conducted on June 15, 1995, got impleaded himself in the writ petition and filed a counter-affidavit disputing the power of the first respondent to issue the impugned proceedings.

6. Mrs. Vijayakumar Raju, wife of late Vijayakumar Raju, who was appointed as a director on November 27, 1994, also got impleaded as a party to the writ petition. She also adopted the stand that the first respondent is competent to pass the impugned proceedings.

7. Before referring to the issues raised by various parties the facts which are not disputed are as follows :

The managing director of the second respondent-company was Mr. Vijayarama Raju, who expired on November 20, 1994. There are eight directors on the board of directors, out of which six directors are nominated by the financial institutions and out of the remaining two directors are Mr. P.V. Narasimha Raju, appointed by the shareholders and Mrs. B.H.K.K. Kasturi, wife of late Sri Vijayakumar Raju, appointed on November 27, 1994, by the board of directors as an additional director. The second respondent has been declared as a sick industrial company by the first respondent u/s 15 of the Act. The first respondent suggested a package for the purpose of reviving the second respondent-company u/s 17(2) of the Act. However, the second respondent-company could not revive itself and, therefore, the first respondent by its order dated February 23, 1995, appointed the Industrial Credit and Investment Corporation of India Limited (ICICI) as an operating agency and directed to prepare a scheme in Case No. 67 of 1989 in accordance with the provisions of the Act for the purpose of rehabilitating the second respondent-company. By the same order while appointing the ICICI as an operating agency on the representation made by Mrs. Vijayakumar Raju, stating that no managing director was appointed after the death of the managing director and the company proposing to hold an extraordinary general body meeting on March 16, 1995, and also offering to bring funds for the purpose of rehabilitation which was opposed by the co-promoters, the Board directed that "no change of management should be made at this stage till the Bench takes a view on the rehabilitation of the company." Thereafter, on March 14, 1995, on an application filed by Mrs. Vijayakumar Raju, on March 13, 1995, complaining that despite a direction issued by the Board not to make any change in the management, the company was proceeding with the holding of the extraordinary general body meeting for the appointment of the managing director, the Bench passed the following order :

"The Bench has directed you and the board of directors of the company to ensure

that the directions given by it at the hearing held on February 23, 1995, restraining the company from effecting any change in the composition of board of directors including top managerial personnel, should be strictly carried out and in the case of failure to comply with the directions Shri B.K. Satyanarayana Rao, company secretary, who has convened the extraordinary general meeting or any member of the board of directors of the company holding the extraordinary general meeting contrary to the orders of the BIFR shall be liable for action."

8. The petitioner challenges the above proceedings on the ground that the action of the first respondent is contrary to the judgment of the Supreme Court in *Life Insurance Corporation of India Vs. Escorts Ltd. and Others*, . Counsel Submitted that u/s 169 of the Companies Act it is an absolute right of the shareholders of the company to call for an extraordinary general body meeting and the action of the first respondent is contrary to section 169 of the Companies Act. Counsel also submitted that the first respondent has no power to restrain the company from holding the extraordinary general body meeting as the stage has not yet arisen. Section 32 of the Act, no doubt, says that the provisions of the Act have application notwithstanding anything contained in the Companies Act, but it will be applicable only from the stage when the scheme is framed and not at the stage before framing of the scheme. Counsel submitted in this case the first respondent appointed the ICICI and the ICICI has not yet framed the scheme and it is in the process of framing the scheme and, therefore, the impugned proceedings are without jurisdiction and are liable to be set aside.

9. The question, therefore, is whether the first respondent is competent to issue the impugned proceedings directing the second respondent-company not to make any change in the management of the company.

10. In order to consider the issue, it is necessary to refer to the provisions of the Act. The Sick Industrial Companies (Special Provisions) Act, 1985, was constituted for the purpose of detecting the sick and potentially sick companies owning industrial undertakings and to determine preventive, ameliorative, remedial and other measures and for expeditious enforcement of those measures. Section 4 of the Act provides for appointment of a Board known as the "Board for Industrial and Financial Reconstruction" to exercise the jurisdiction and powers and discharge the functions and duties conferred or imposed on the Board by or under the Act. It consists of a chairman and not less than two and not more than fourteen other members, to be appointed by the Central Government. An appeal lies against the decision of the Board to the Appellate Authority constituted u/s 5 of the Act. The Appellate Authority consists of a chairman and not more than three other members, who is or has been a judge of the Supreme Court or who is or has been a judge of the High Court for not less than five years, and a person who is or has been a judge of a High Court or who is or has been an officer not below the rank of secretary to the Government of India or who is or has been a member of the Board for not less than three years respectively. Section 13 provides for the procedure of the Board and the

Appellate Authority. u/s 14, the proceedings before the Board or the Appellate Authority are deemed to be judicial proceedings within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code. Section 15 provides for a reference to be made to the Board where an industrial company has become a sick industrial company, the board of directors of the company within sixty days from the date of finalisation of the duly audited accounts of the company for the financial year as at the end of which the company has become a sick industrial company for the purpose of determining the measures to be adopted for its revival. u/s 15(2), the Central Government or the Reserve Bank or a State Government or a public financial institution or a State level institution or a scheduled bank is authorised to make a reference to the Board for determination of the measures to be adopted if it has reason to believe that any industrial company has become sick. On such reference having been made the Board has to make an inquiry u/s 16 for determining whether any industrial company has become a sick industrial company. The Board is also competent to entrust the inquiry to an operating agency and requesting the operating agency to submit a report. The Board is also empowered to appoint a special director notwithstanding anything contained in the Companies Act u/s 16 pending inquiry into the sickness of the company either by itself or by the operating agency. u/s 17, the Board is empowered to make suitable orders on the completion of the inquiry. u/s 17(1), after making an inquiry u/s 16 if the Board is satisfied that a company has become a sick industrial company it shall after considering all the relevant facts and circumstances, decide by order in writing whether it is practicable for the company to make its net worth positive within a reasonable time. The Board shall by order in writing and subject to such restrictions or conditions as may be specified in the order, give such time to the company as it may deem fit to make its net worth positive. Under sub-section (3) of section 17, if the Board decided under sub-section (1) that it is not practicable for a sick industrial company to make its net worth positive within a reasonable time and that it is necessary or expedient in public interest to adopt all or any of the measures specified in section 18 in relation to the said company it may, as soon as may be, by order in writing, direct any operating agency specified in the order to prepare, having regard to such guidelines as may be specified in the order, a scheme providing for such measures in relation to such company. u/s 18 the operating agency has to prepare a scheme providing for various measures mentioned in the said section. u/s 32, the provisions of the Act and of any rule or schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law except the provisions of the Foreign Exchange Regulation Act, 1973 (46 of 1973), and the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976), for the time being in force or in the memorandum or articles of association of an industrial company or in any other instrument having effect by virtue of any law other than this Act.

11. The scheme of the Act is, therefore, in the case of a sick industrial company, the board of directors of the company have to make a reference to the Board for

the determination of the measures to be adopted for its revival. On a reference being made u/s 15 either by the board of directors or the Government or the Reserve Bank or the State Government or a public financial institution or a State level institution or a scheduled bank, the Board has to hold an inquiry or it may appoint an operating agency for the purpose of holding an inquiry to determine whether the company has become a sick industrial company or not. On such inquiry being made and on consideration of the relevant facts and circumstances of the case and the report submitted by the operating agency if the Board is of the view that the company can be revived on its own a reasonable time should be given for making its net worth positive. This is known as package u/s 17(1) of the Act. If the company fails on its own or fails to make its net worth positive, within a reasonable time mentioned in the package, the Board has to appoint an operating agency for the purpose of preparing a scheme for its revival. The operating agency taking into account various circumstances has to suggest measures for its revival. One of the measures to be suggested by the operating agency u/s 18 is the change of management of the company. u/s 14 of the Act, the proceedings before the Board are judicial proceedings, and the provisions of the Act will apply u/s 32 of the Act notwithstanding anything contained in any other law for the time being in force except the provisions of the Foreign Exchange Regulation Act, 1973 (46 of 1973), and the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976).

12. The facts narrated above disclose that a reference was made by the second respondent-company to the first respondent and the first respondent after holding an inquiry u/s 16 of the Act found that the second respondent is a sick industrial company, suggested a package to make its net worth positive within a reasonable time by its order dated October 30, 1990. However, the second respondent-company could not revive itself and, therefore, by its order dated February 23, 1995, the first respondent reviewed its order and appointed ICICI as the operating agency for the purpose of framing a scheme u/s 18 of the Act. While doing so, the Board directed the second respondent not to bring about any change in the management which was confirmed by its proceedings dated March 14, 1995.

13. However, in spite of the directions issued by the first respondent not to effect any change in the management, the shareholders called for an extraordinary general body meeting for the purpose of electing the managing director and, in fact, the election was held on May 16, 1995, and Sri Narasimha Raju, one of the respondents who was sought to be impleaded was elected as managing director.

14. From the facts referred to above, on a reference being made u/s 15 of the Act, the Board is seized of the matter. When the Board is seized of the matter by virtue of section 32, the provisions of the Act will prevail notwithstanding anything contained in section 169 of the Companies Act. The argument of learned counsel for the petitioner that section 32 will apply only after the framing of the scheme u/s 17 read with section 18 cannot be countenanced as the first

respondent enters the picture the moment a reference is made by the board of directors of the company u/s 15 or by any financial institutions referred to in section 15(2) for determining the measures to be adopted for reviving the company. The interpretation sought to be placed that section 32 is applicable only when a scheme is framed in accordance with section 17(2) read with section 18 by the operating agency cannot be accepted in view of the express language that "the provisions of this Act shall have effect notwithstanding anything inconsistent therewith in any other law for the time being in force." On the facts of the instant case, a reference was made by the board of directors of the company, an inquiry was conducted and the first respondent found that the company is a sick company and suggested a package and the company could not revive itself and, therefore, the Board appointed the ICICI as the operating agency. In other words, the company, i.e., the second respondent-company invoked the provisions of the Act by making a reference u/s 15 of the Act. The first respondent is seized of the matter when a reference is made u/s 15 of the Act. The Act is applicable from the day on which a reference is made u/s 15 of the Act, i.e., the first stage. It does not say that the provisions of this Act shall have effect after the framing of the scheme. If the intention of the Legislature is to give effect to the provisions of the Act notwithstanding anything contained in any other law only after the framing of the scheme then the section would have been differently worded. On the face of the language used in the section, it cannot be said that the provisions of this Act will effect notwithstanding anything inconsistent in any other law only after the framing of the scheme and not before that.

15. The next question to be considered is, whether the Board is exercising quasi-judicial powers? I have already pointed out that an appeal lies to the Appellate Authority from the decision of the Board u/s 25 of the Act. The Board or the Appellate Authority shall, for the purposes of any inquiry or for any other purpose under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying suits as well as Appellate Authority are conferred with the powers of the Civil Procedure Code, 1908, namely, summoning and enforcing the attendance of any witness and examining him on oath; the discovery and production of document or other material object producible as evidence; the reception of evidence on affidavit and requisitioning of any public record from any court or office; the issuing of any commission for the examination of witness and any other matter which may be prescribed. I have already pointed out that u/s 14 of the Act the proceedings before the Board or the Appellate Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code. The question, therefore, is whether the Board can be held to be exercising quasi-judicial powers on the ground that the provisions of the CPC were made applicable for various purposes mentioned in section 13 of the Act and that the proceedings before the Board are judicial proceedings within the meaning of sections 193, 228 and 196 of the Indian Penal Code and that an

appeal lies to the Appellate Authority against any order of the Board. In this context a classic judgment in *Shell Co. of Australia v. Federal Commissioner of Taxation* [1931] AC 275 is relevant, wherein it was observed :

"1. A Tribunal is not necessarily a court in this strict sense because it gives a final decision. 2. Nor because it hears witnesses on oath. 3. Nor because two or more contending parties appear before it between whom it has to decide. 4. Nor because it gives decisions which affect the rights of subjects. 5. Nor because there is an appeal to a court. 6. Nor because it is a body to which a matter is referred by another body. See *Rex v. Electricity Commissioners* [1924] 1 KB 171."

16. The above, no doubt, are the negative propositions for the purpose of determining whether it is a court or a Tribunal.

17. The next decision is the judgment in *Cooper v. Wilson* [1937] 1 KB 309. The relevant observations are as follows :

"In the Report of the Minister's Power Committee (Command Paper 4060 of 1932), P. 73 (S. III, Para. 3) an attempt was made to define the words "judicial" and "quasi-judicial" : "A true judicial decision pre-supposes an existing dispute between two or more parties, and then involves four requisites : (1) The presentation (nor necessarily orally) of their case by the parties to the dispute; (2) if the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence; (3) if the dispute between them is a question of law, the submission of legal argument by the parties; and (4) a decision which disposes of the whole matter by a finding upon the facts in dispute and an application of the law of the land to the facts in dispute and an application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law. A quasi-judicial decision equally pre-supposes an existing dispute between two or more parties and involves (1) and (2), but does not necessarily involve (3) and never involves (4). The place of (4) is in fact taken by administrative action, the character of which is determined by the Minister's free choice."

18. The next decision to be considered is *Rola Co. (Australia) Pty. Ltd. v. The Commonwealth* 69 CLR 185. The brief facts of the case are as follows :

The Women's Employment Regulations set up a Women's Employment Board, with power to decide whether females may be employed on certain classes of work and to decide matters with respect, inter alia, to their hours and conditions of employment and their rates of pay. The board's decision is to be binding on specified employers and employees and organizations of employees and upon being filed in the Commonwealth Court of Conciliation and Arbitration is to have effect as if it were an award or order of that court. Regulation 5c in its original form (as inserted into the Regulations by Statutory Rules 1943, No. 251) authorized committees of reference to determine, in relation to the decisions of the Women's Employment Board, certain facts - namely, facts as to what

females are or were employed on work specified in a decision of the board and as to the nature of the work upon which they are or were employed. The regulation made the determinations of committees binding on the employers and on females specified in the determinations, but by amendment made by Statutory Rules, 1944, No. 42, this provision was replaced by a provision that a determination of a committee should be deemed to form part of the decision of the board in relation to which it was made. It was held that neither in its original form nor as amended did regulation 5c have purport to confer judicial power upon committees of reference. The observations made by the majority was :

"These considerations are not conclusive of the case. An industrial award lays down rules of conduct for the future. It does not purport to ascertain and enforce existing rights; it is directed to the creation of new rights."

19. The next decision to be considered is the judgment in *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi*, . The majority, after referring to the judgments in *Shell Co. of Australia v. Federal Commissioner of Taxation* [1931] AC 275, *Cooper v. Wilson* [1937] 1 KB 309 and *Rola Co. (Australia) Pty. Ltd. v. The Commonwealth*, 69 CLR 185, held that the industrial tribunal is directed within the meaning of article 136 of the Constitution of India. The relevant observations are as follows (p. 196) :

"Such a dispute concerns the rights of employers and employees. Its decision affects the terms of a contract of service or the conditions of employment. Not only may the pecuniary liability of an employer be considerably affected by the adjudication of such dispute but it may even result in the imposition of punishments on him

It is difficult to conceive in view of these provisions that the industrial tribunal performs any functions other than that of a judicial nature. The tribunal has certainly the first three requisites and characteristics of a court."

20. It follows from the above decision that the fact that the Board hears the witnesses on oath or that an appeal is provided against the order of the Board or because it gives decisions which affect rights of the parties does not make it a quasi-judicial body. The Board ascertains on a reference made u/s 15 of the Act either by the financial institutions of the State or the Central Government or the Reserve Bank of India or the board of directors whether a company is a sick company and determine the measures to be adopted for its revival. The Board may delegate the power to an operating agency to inquire into and report as to the sickness of the company. If, after making such an inquiry u/s 16 of the Act, the Board is satisfied that the company has become sick, it may give an opportunity to the company to make its net worth positive within a reasonable time. If the sick company fails to revive itself on the opportunity given by the Board, the Board may appoint an operating agency to suggest measures of revival u/s 18 of the Act. The operating agency is appointed u/s 17(3) of the Act.

One of the measures of revival is any change in the board of directors. Therefore, though, no doubt, the Board comes into the picture only on an application made to it by the board of directors of the company or the Central Government or the Reserve Bank of India or a State Government or a public institution or a State level institution or a scheduled bank, the Board does not decide any dispute between the institutions referred to above or the company as u/s 15 of the Act. The object of reference is to ascertain whether the company is sick within the meaning of the Act. As stated in the earlier paragraphs, it suggests a package for its revival to relieve it of its sickness and after it fails to revive itself on the package suggested by the Board the scheme is prepared. Therefore, the Board while determining whether a company is a sick company does not exercise any judicial or quasi-judicial powers. In the language of the High Court of Australia, it lays down the rules of conduct for the future. It does not purport to ascertain and enforce existing rights. Perhaps it is directed to the creation of new rights. Therefore, the Board does not exercise quasi-judicial powers. If the Board does not exercise quasi-judicial powers the question of exercising implied or inherent power in the interest of the company does not arise. In other words, the Board exercises only an administrative function of ascertaining the sickness of the company and framing of a scheme for the purpose of its revival. However, u/s 18(1)(f) of the Act while framing a scheme for the purpose of reviving of the company the Board may exercise such incidental, consequential or supplemental measures as may be necessary or expedient in connection with or for the purposes of the measures specified in clauses (a) to (e). As pointed out, section 18 comes into the picture only when a scheme is framed. Before the scheme is framed the question of exercising incidental, consequential or supplemental measures does not arise. Evidently on the facts of the present case, the scheme has not yet been framed. It is only in the process of framing the scheme. In the light of the view that the board only exercises administrative powers, namely, ascertaining the sickness of the company and suggesting a package for its revival and appoints an operating agency for the purpose of framing a scheme, the board cannot exercise any incidental or consequential or supplemental measure of directing the company not to effect any change in the management. Therefore, the impugned action is outside the scope of sections 15, 16 and 17 of the Act. Thus it follows from the above that the impugned proceeding is without jurisdiction. In the light of the above, there is no other alternative except to allow the writ petition.

21. The writ petition is accordingly allowed. No costs.