
(2012) 09 UK CK 0060

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1839 of 2012

Kashipur Sugar Mills Ltd.

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 19-09-2012

Acts Referred:

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 16, 17, 18, 19(3), 22

Citation : AIR 2013 Utt 7 : (2013) 1 ALJ 438 : (2013) 2 BC 531

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Anil Kumar Joshi, for the Appellant; A.S. Rawat, A.A.G., Paresh Tripathi, Addl. Chief Standing Counsel and Ms. Menka Tripathi, Standing Counsel, for State of Uttarakhand, for the Respondent

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J.—Heard Mr. Anil Kumar Joshi; Counsel for the petitioners and Mr. A. S. Rawat Additional Advocate General with Mr. Paresh Tripathi, Additional Chief Standing Counsel and Ms. Menka Tripathi, Standing Counsel for the State of Uttarakhand. Petitioner in both the writ petitions is Kashipur Sugar Mills Limited. It is a sugar company which is presently in Board for Industrial and Financial Reconstruction (hereinafter referred to as "BIFR") under the purview of Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "SICA"). Meanwhile, the operation, particularly the production of sugar in the factory continues. The company was supplied sugarcane by the farmers and sugarcane cultivators in Uttarakhand. The price of sugarcane has not been given to these cultivators and consequently u/s 17(4) of the Uttar Pradesh State Sugar Cane (Regulation of Supply and Purchase) Act, 1953 (hereinafter referred to as "1953 Act"), recovery proceedings have been initiated by the Cane Commissioner, Uttarakhand against the petitioner. Section 17(4) of the 1953 Act reads as under :-

17. Payment of cane price.

(1)...

(2)...

(3)...

(4) The Cane Commissioner shall forward to the Collector a certificate under his signature specifying the amount of arrears on account of the price of cane plus interest, if any, due from the occupier and the Collector, in receipt of such certificate, shall proceed to recover from such occupier the amount specified therein as if it were an arrear of land revenue.

2. In writ petition No. (M/S) 1839 of 2012 there is a recovery of Rs. 2485.07/- lacs and in writ petition No. (M/S) 1922 of 2012 the recovery is Rs. 255.05/- lacs. The Tehsildar has issued recovery citations in both the writ petitions and the amount has to be recovered as arrears of land revenue. These two recovery citations have been challenged by the petitioner in two writ petitions.

3. Admittedly, petitioner has been declared as sick industry and is presently in BIFR for its rehabilitation. The petitioner takes reliance upon Section 22 of SICA. Section 22 of SICA reads as under :-

22. Suspension of legal proceedings, contracts, etc.-

(1) Where in respect of an industrial company, an inquiry u/s 16 is pending or any scheme referred to u/s 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal u/s 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956(1 of 1956) or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the appellate authority.

(2) Where the management of the sick industrial company is taken over or changed, in pursuance of any scheme sanctioned u/s 18, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or any other law or in the memorandum and articles of association of such company or any instrument having effect under the said Act or other law:-

(a) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;

(b) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the Board.

(3) [Where an inquiry u/s 16 is pending or any scheme referred to in section 17 is under preparation or during the period] of consideration of any scheme under section

18. or where any such scheme is sanctioned thereunder, for due implementation of the scheme, the Board may by order declare with respect to the sick industrial company concerned that the operation of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force, to which such sick industrial company is a party or which may be applicable to such sick industrial company immediately before the date of such order, shall remain suspended or that all or any of the rights, privileges, obligations and liabilities accruing or arising thereunder before the said date, shall remain suspended or shall be enforceable with such adaptations and in such manner as may be specified by the Board:

Provided that such declaration shall not be made for a period exceeding two years which may be extended by one year at a time so, however, that the total period shall not exceed seven years in the aggregate.

(4) Any declaration made under sub-section (3) with respect to a sick industrial company shall have effect notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or any other law, the memorandum and articles of association of the company or any instrument having effect under the said Act or other law or any agreement or any decree or order of a court, tribunal, officer or other authority or of any submission, settlement or standing order and accordingly, :--

(a) any remedy for the enforcement of any right, privilege, obligation and liability suspended or modified by such declaration, and all proceedings relating thereto pending before any court, tribunal, officer or other authority shall remain stayed or be continued subject to such declaration; and

(b) on the declaration ceasing to have effect-

(i) any right, privilege, obligation or liability so remaining suspended or modified, shall become revived and enforceable as if the declaration had never been made; and

(ii) any proceeding so remaining stayed shall be proceeded with, subject to the provisions of any law which may then be in force, from the stage which had been reached when the proceedings became stayed.

(5) In computing the period of limitation for the enforcement of any right, privilege, obligation or liability, the period during which it or the remedy for the enforcement thereof remains suspended under this section shall be excluded.

4. The gravamen of the argument raised by the petitioner would be that since

the petitioner is admittedly a "sick industry", before making any recovery against the petitioner, the State Government or even Cane Commissioner should have sought permission from the Board as contemplated u/s 22 of SICA. The petitioner contends that it was declared a sick industrial company u/s 3(1)(0) of SICA on 16.8.2003. Moreover, a scheme is prepared by the Board for rehabilitating the petitioner. The said scheme dated 8.1.2008 is annexed as annexure No. 2 to the writ petition (M/S) No. 1839 of 2012. The contention of the petitioner would be that it is a sick industry and presently under rehabilitation. Moreover, since it is presently under a scheme and sick industry, the State Authorities or even Cane Commissioner has first to take approval from the Board. Admittedly, this approval has not been taken and therefore any recovery against the petitioner is not permissible under the law.

5. Mr. A. S. Rawat, Additional Advocate General appearing for the State, on the other hand, defends the stand of the State for which he has filed a counter affidavit and submits that the petitioner cannot be given any protection under SICA for the simple reason that u/s 22 of SICA what is prescribed is filing of a suit for recovery of money against the petitioner or any execution of case regarding winding up of the industrial company for which such a heavy reliance has been placed by the petitioner. There is no bar u/s 22 of SICA to recover an amount u/s 17 of the 1953 Act which is infact an amount which has to be paid to the sugarcane cultivators. He further submits that even assuming that SICA has to be given precedence and preference over another special Act which is 1953 Act, yet there is no bar on the State authorities to recover the dues of the sugarcane cultivators u/s 22 of SICA. Moreover, the scheme on which such a heavy reliance has been placed by the petitioners was for a period of 4 years which started from 8.1.2008 and has now come to an end on 7.1.2012. Therefore, presently there is no such scheme. The scheme which is annexed with the writ petition has been perused.

6. Learned counsel for the petitioner has relied upon a judgment of Supreme Court in Maharashtra Tubes Ltd. Vs. State Industrial and Investment Corporation of Maharashtra Ltd. and Another, . In the said judgment, the Hon"ble Apex Court has relied upon the applicability of SICA and came to the conclusion that both the Acts are the special Acts. There is nothing with the said judgment which may help the case of the petitioner. The petitioner has also relied upon a judgment of Hon"ble Supreme Court in Paramjeet Singh Patheja Vs. ICDS Ltd., where the Supreme Court while interpreting the provision of Section 22 of SICA has given a wide definition to the word "suit". The relevant paragraph 43 (vii) of the said judgment reads as under:-

43. For the foregoing discussion we hold:

(i) to (vi)

(vii) It is a well-established rule that a provision must be construed in a manner which would give effect to its purpose and to cure the mischief in the light of

which it was enacted. The object of Section 22, in protecting guarantors from legal proceedings pending a reference to BIFR of the principal debtor, is to ensure that a scheme for rehabilitation would not be defeated by isolated proceedings adopted against the guarantors of a sick company. To achieve that purpose, it is imperative that the expression "suit" in Section 22 be given its plain meaning, namely, any proceedings adopted for realization of a right vested in a party by law. This would clearly include arbitration proceedings.

7. Counsel for the petitioner Mr. Anil Kumar Joshi also contends that the scheme has no time period and the scheme still subsists. However, on perusal of the said scheme, it appears that under the scheme there are certain directions to the State Government which are as follows:-

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(now called as Uttarakhand)

- 1) To declare the company as a "Relief Undertaking" and grant all benefits and concessions as per the State Government policy guidelines for sick industrial units.
- 2) To convert the soft loan of Rs. 787.47 lacs provided by the Uttaranchal State Government for payment of cane arrears of 2002-03 arising out of Hon''ble Supreme Court's judgment @ 4% p.a. on simple basis into a subsidy for the company.
- 3) To exempt the unit from the payment of Electricity Duty over the entire rehabilitation period of 4 years.
- 4) To waive minimum demand charges for electricity consumption over the entire rehabilitation period of 4 year.
- 5) To exempt the company from the penal provisions of Sales Tax/VAT/entry tax and Excise Duty for a period of 4 years.
- 6) To grant exemption for export of molasses out of State of Uttaranchal without any ceiling.
- 7) To restrain/not allow other sugar cane purchasing industrial undertakings from the purchase of sugarcane from the reserved area and area within 15 kilometers radius of the DSKL, whichever is higher, as prescribed by Central or State Government to any other person/entity.
- 8) To grant exemption from payment of purchase tax on cane over the entire rehabilitation period of 4 years.
- 9) To exempt the company from charge of interest on the dues to be paid to cane growers and not to initiate/take any penal action against the company or its directors/ officers with respect to the same.
- 10) To waive off the interest/penalties or any other charges under the Trade Tax

any other act for dues upto cut-off date.

8. Therefore, perusal of the scheme makes it abundantly clear that protection as claimed by the petitioner were only for in fact for a period of 4 years which came to an end on 7.1.2012. In this light, the another contention of the petitioner regarding Section 19(3) of SICA is also of little relevance as there is presently no such scheme in force in favour I of the petitioner which may help the petitioner. I Section 19(3) of SICA reads as under: -

19. Rehabilitation by giving financial assistance.-

(1)...

(2)...

(3) Where in respect of any scheme the consent referred to in sub-section (2) is given by every person required by the scheme to provide financial assistance, the Board may, as soon as may be, sanction the scheme and from the date of such sanction the scheme shall be binding on all concerned.

(3 A) On the sanction of the scheme under sub-section (3), the financial institutions and the banks required to provide financial assistance shall designate by mutual agreement a financial institution and a bank from amongst themselves which shall be responsible to disburse financial assistance by way of loans or advances or guarantees or relief's or concessions or sacrifices agreed to be provided or granted under the scheme on behalf of all financial institutions and banks concerned.

(3B) The financial institution and the bank designated under sub-section (3A) shall forthwith proceed to release the financial assistance to the sick industrial company in fulfillment of the requirement in this regard.

9. Moreover, learned Additional Advocate General appearing for the State has also pointed out Clause 14(k) of the scheme which reads as under:-

14. General Terms and Conditions:-

a) to j)

k) All current dues arising after cut off date to be paid by the company in the normal course and no special protection of SICA would be available for this purpose.

10. The cut off date as per the scheme is 8.1.2008. Therefore, from the cut off date all current dues have to given by the petitioner. Consequently looking into the present matter, the dues which are presently against the petitioner are liable to be recovered which are being presently recovered as arrears of land revenue. This amount of money is of farmers and cultivators who have admittedly supplied sugarcane to the petitioner. They must get their price. Therefore, the relief as sought by the petitioner cannot be granted.

11. Both the writ petitions are dismissed. Interim order stands vacated. No order as to costs.