
(2000) 08 MP CK 0031

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1276 of 1999

Kedia Distilleries Limited

APPELLANT

Vs

Board for Industrial and Financial Reconstruction and Another

RESPONDENT

Date of Decision : 22-08-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15, 22(3)

Citation : (2002) 110 CompCas 581

Hon'ble Judges : Nirmal Kumar Jain, J

Bench : Single Bench

Advocate : A.M. Mathur and V.P. Saraf, for the Appellant; S.C. Bagadia, Senior Advocate and Chhabra, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Jain J.

1. The petitioner, a public limited company, by this petition seeks extension of the order dated January 25, 1999, passed by the BIFR-- respondent No. 1--under Section 22(3) of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short, "the SICA"), for a further period of one year or until the proceedings initiated by the petitioner-company before the BIFR by application dated June 22, 1998, are concluded.

2. The petitioner-company on June 22, 1998, made a reference to the BIFR u/s 15 of the SICA. The BIFR by its order dated August 6, 1998, declared the petitioner-company, a sick industrial company and directed for taking further measures under the provisions of the SICA for its reconstruction. Respondent No. 2 went in appeal against the said order before the AAIFR. The appellate authority vide its orders dated September 26, 1999/JuIy 1, 1999, and set aside the aforesaid order of the BIFR. Against this order of the AAIFR, the petitioner has filed a writ petition (W. P. No. 903 of 1999) before this court. This court on July 13, 1999, has passed an interim order (annexure P-2) in the following terms :

"In view of the aforesaid facts, the impugned order passed by the AAIFR shall remain in abeyance."

3. This interim order was continued till August 16, 1999, and then until further orders. The court on August 16, 1999, further directed for summoning of the records of the case from the BIFR. It appears that the record was not received until September 16, 1999, and the court, therefore, directed the Registrar of the BIFR to himself bring the record.

4. Another set of relevant facts is that the petitioner on January 18, 1999, i.e., before the order in appeal was passed by the AAIFR, made an application to the BIFR for making a declaration in terms of Section 22(3) of the SICA. The BIFR on January 25, 1999, passed order (annexure P-5) making declaration that enforcement of all contracts, agreements, assurances and other instruments to which the petitioner-company is a party, against the petitioner-company shall remain suspended for a period of three months. This order (annexure P-5) was extended for a further period of three months by the BIFR by its subsequent order dated May 14, 1999 (annexure P-6). It is this order (annexure P-5) which is sought to be extended further by the petitioner through this court as according to the petitioner the BIFR is unable to pass any order in the matter in the absence of the record of the case which has now been requisitioned by this court.

5. This prayer is opposed vehemently by respondent No. 2 who has filed a suit in the High Court of Bombay for recovery of the lease property and the lease rent against the petitioner. The Bombay High Court has already passed an order for appointing a receiver of the suit property.

6. Any declaration under Sub-section (3) of Section 22 has to be made by the BIFR. Obviously, any such declaration made can be extended by the Board itself. This court does exercise superintendence over the BIFR and can, therefore, make necessary orders in exercise of its jurisdiction under Article 226/227 of the Constitution. But the occasion for making any such order would arise only when some order/declaration is first made by the BIFR. I am afraid, this court cannot assume original jurisdiction of the Board and pass an order under that Sub-section (3) straightway without the party first approaching the BIFR in the matter. That the record of the case has been requisitioned by this court, in my opinion, is no ground for the petitioner not to first make the application before the BIFR. It is only when his prayer is refused by the BIFR that the petitioner could approach this court under Article 226/227.

7. Even otherwise the ground taken by the petitioner did not actually exist on the date the petition was made.

8. As already pointed out, the record had not reached this court on or before September 16, 1999. The declaration made on January 25, 1999, had expired on April 24, 1999. It was, however, extended further by the BIFR by its order dated May 14, 1999, for a further period of three months, i.e., up to July 24, 1999, or at the most up to August 14, 1999. In the meanwhile, the order in appeal was

passed on July 1, 1999, by the AAIFR setting aside the order of the BIFR. This not only put the order dated August 6, 1999 of the BIFR to an end but the subsequent orders dated January 25, 1999 and May 14, 1999, also came to an end. It could, however, be urged that the interim writ granted by this court on July 13, 1999, revived the said orders of the BIFR at least temporarily pending decision of the writ by this court. But, in any case the petitioner was expected to move the BIFR on or immediately after August 14, 1999, for further extension of the declaration u/s 22(3) of the SICA. The record of the case was also with the BIFR until on September 16, 1999. However, the petitioner instead of approaching the BIFR has rushed to this court for the relief which could be granted to him by the BIFR itself. Under the circumstances, I am clearly of the view that the petition is not maintainable.

9. It is, however, noted that this court by its order dated April 2, 1999, has granted interim writ to the petitioner extending the said order dated January 25, 1999, of the BIFR firstly for a period of one month and then until, further orders. Keeping in view this interim order of the court, I deem it proper that while dismissing the petition, the petitioner may be granted 10 (ten) days to approach the BIFR and seek appropriate orders therefrom.

10. Accordingly I dismiss the petition but direct that the interim order passed by this court on September 24, 1999, shall remain in force for a further period of ten days to enable the petitioner to seek his remedy before the BIFR.