
(1997) 02 DEL CK 0062

In the Delhi High Court

Case No : Interim Application No. 8995 of 1996 and Suit No. 171A of 1995

Lloyd Insulations (India) Ltd.

APPELLANT

Vs

Cement Corporation of India

RESPONDENT

Date of Decision : 05-02-1997

Acts Referred:

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

Citation : (1997) 2 BC 463 : (1997) 89 CompCas 483 : (1997) 41 DRJ 305

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : A.S. Chandhiok, Neelam Rathore and S.K. Taneja, for the Appellant;

Judgement

K. Ramamoorthy, J.

(1) The Respondent has filed the above application u/s 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 as amended, read with Section 151 CPC.

(2) The Arbitrator had passed the award in favor of the Lloyd Insulations (India) Pvt. Ltd. against the Cement Corporation of India Ltd. The Cement Corporation of India had filed objections against the award. Now the Cement Corporation of India had filed the above application. According to the Respondent/Applicant the Company has been referred to the Board of Industrial and Financial Reconstruction (BIFR) u/s 15 of the Act. The same has been registered as Case No. 501/96. According to the Respondent/Applicant by virtue of Section 22 of the Act, the proceedings in the suit have to be stayed and can be proceeded only with the consent of the BIFR.

(3) The Petitioner has filed the reply to the above application stating that the proceedings under the Arbitration Act, 1940 are outside the purview of Section 22 of the Act, The present proceedings are not for recovery of money.

(4) Mr. Taneja, learned counsel for the Respondent/Applicant submitted that

whatever the nature of the proceedings in Suit No. 171-A/95, in effect and in substance it is an action for recovery of money against the Respondent/Applicant and Therefore, it is a suit within the meaning of the Sick Industrial Companies Act, 1985 and Therefore, the proceedings should be stayed. He also submitted that it will be open to the Lloyd Insulations (India) Pvt. Ltd. to move the Board for appropriate orders/directions as contemplated in the Act.

(5) Mr. A.S. Chandhiok, learned counsel for the Lloyd Insulations (India) Pvt. Ltd. submitted that a reading of the provision of Section 22(3) would make the position clear and the present proceedings are outside the ambit of the Act. Section 22 speaks of suspension of legal proceedings and contracts etc. Section 22(1) reads as under: 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 (I 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. The effect of this provision is that no proceedings can be Filed and be proceeded with except with the consent of the Board against the Sick Company, when an inquiry u/s 16 is pending or any scheme referred to u/s 17 is under preparation or consideration. There is no quarrel with this.

(6) Mr. Chandhiok learned counsel for the Lloyd Insulations (India) Pvt. Ltd. would rely upon the language of Section 22(3). Sub section 3 of Section 22 reads as under: Section 22(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 u/s 18 or where any such scheme is sanctioned thereunder, for due implementation of the scheme, the Board may be 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 there under 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. According to the learned counsel for the Lloyd Insulations (India) Pvt. Ltd. the Respondent/Applicant, has not got a declaration with respect to the Sick Industry Company that the operation of all contracts, awards etc. shall remain suspended. The Respondent/Applicant has not approached the Board for such a declaration and Therefore, the application should be dismissed. It is a basic principle of interpretation that provisions of any statute should be read as a whole and in particular legislation like the one with which we are concerned which is a beneficial legislation for the benefit of Sick Industrial Undertaking with a view to keep the economy in proper shape, the provisions have to be read in the context of the primary object of the Act. If the contention of Mr. A.S. Chandhok is accepted that would create conflict between Section 22(1) and Section 22(3) which is not permissible. Section 22(3) contemplates a case where there is no matter pending before the court as mentioned in Section 22(1). Therefore, whenever a Sick Industry Company is before the Board, the Board is entrusted with the task of reconstructing or trying to help the Company to do his business in the interest of the public. When proceedings are pending before a court of law and when they are sought to be proceeded with, no declaration could be made by the Board. Therefore, on the facts and circumstances of this case, the provisions of Section 22(1) would apply.

(7) Regarding the nature of the proceedings, the arguments of Mr. Taneja that the proceedings are in the nature of suit and Therefore, Section 22(1) applies is far too wide. What this provision contemplates, is any proceedings of the recovery of money against the Sick Company and Therefore, the question whether the Arbitration proceedings would amount to a suit or not is not of any moment. Therefore, I have no difficulty in coming to the conclusion that the Respondent/Applicant is entitled to grant of stay of the proceedings. The Lloyd Insulations (India) Pvt. Ltd. is at liberty to apply to the Board for appropriate directions and if the Board permits the continuance of the suit it can apply for the hearing of the arbitration proceedings in Suit No. 171-A/95. My Lord the Hon'ble Mr. Justice Anil Dev Singh has passed the following order in Suit No. 3250/90 on 22.08.1996: Suit No. 3250/90 & IAs 13160/92 & 6504/96 It is not disputed by the learned counsel for the petitioner that the respondent has been declared a sick company by the BIFR. In view of the provisions of Section 22 of the Sick Industrial Companies (Special provisions) Act, 1985, the proceedings in the case cannot be proceeded with except with the consent of the BIFR. Since the consent of the Bifr has not been obtained by the plaintiff the proceedings will remain suspended. It will be open to the plaintiff to seek permission from the Board in accordance with law to revive the proceedings in the suit. A copy of this order will be given duly to counsel for both the parties. Suit No. 6304/96 is disposed of. With respect, I agree with My Lord the Hon'ble Mr. Justice Anil Dev Singh. Accordingly, Suit No. 171-A/95 stands stayed. The liberty is given to Lloyd Insulations (India) Pvt, Ltd. to apply to the Bifr for appropriate directions. Suit No. 8995/96 filed by the Respondent/Applicant is allowed.