

(2010) 09 KAR CK 0130
In the Karnataka High Court
Case No : C.P. No. 49 of 2001

Man Takraf (India) P. Ltd.

APPELLANT

Vs

Bellary Steels and Alloys Ltd.

RESPONDENT

Date of Decision : 22-09-2010

Acts Referred:

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15 (1), 22

Citation : (2011) 166 CompCas 258

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : Vijaya Shankar, for the Appellant; F.S. Dabali, Mallikarjun C. Basareddy and Hanumantha Reddy Sahukar for Objector, for the Respondent

Final Decision : Allowed

Judgement

H.N. Nagamohan Das, J.—In this petition the Petitioner-company has prayed for winding up of the Respondent-company, to appoint the official liquidator and for other reliefs.

2. During the pendency of this petition the Respondent-company filed C.A. No. 77 of 2005 to stay further proceedings in this petition till the disposal of reference made by them to the BIFR. This Court vide order dated February 8, 2005, observed as under:

"3. The applicant has produced a copy of the proceedings dated July 5, 2004, of the BIFR in respect of the Respondent-company. It is quite evident that the matter is pending adjudication before the BIFR in the terms of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985, the proceedings before the court needs to be suspended. Application No. 77 of 2005 is allowed and the proceedings in Company Petition No. 49 of 2001 shall stand suspended until final disposal of the reference or other orders of the BIFR."

3. Subsequently this Court came to know that there are other company petitions filed for winding up the Respondent-company. By a common order dated

December 14, 2007, all the company petitions including the one in question came to be dismissed as under:

(i) These company petitions are dismissed.

(ii) Liberty is reserved to each of the Petitioners to file an application for revival of these petitions in the event of the company being revived and comes out of the BIFR.

(iii) It is made clear that limitation in respect of all the claims which are the subject-matter of these petitions, if it is within time, on the dates of these petitions those claims are fully saved and on revival of this application the Petitioners would be at liberty to prosecute these matters.

(iv) The High Court office is directed to preserve all these petitions intact for at least another period of five years or till this Court passes an order of winding up on the recommendation of the BIFR, whichever is earlier, so that in the event of revival of the company, the Petitioners should not have any difficulty in getting these applications revived and restored.

4. The Petitioner-company filed an application, C.A. No. 651 of 2010 to revive Company Petition No. 49 of 2001 on the ground that the proceedings before the BIFR came to be abated. On this application notice was issued to the Respondent-company and the same came to be returned with a postal shara as "refused". This Court vide order dated August 18, 2010, held service of notice on Respondent-company as sufficient. Subsequently on August 25, 2010, this Court allowed C.A. No. 651 of 2010 as under:

"This Court vide order dated December 14, 2007, dismissed the company petition with a liberty to the Petitioners to file application for revival of the petition, in the event of the company being revived and come out of the BIFR. Now with this application, Petitioners have produced annexure AA, the order passed by the BIFR stating that the reference made to the BIFR is abated u/s 15(1) of the SICA. In view of this development, the application is allowed. The order of this Court dated December 14, 2007, is hereby recalled and the company petition for winding up is restored."

5. Heard learned Counsel for the Petitioner and perused the entire petition papers.

6. It is seen from the record that the Respondent-company floated a tender for supply of a stacker including trailer, unloader, wheel-on-boom, reclaimer and transfer car along with supplies for two years operation and maintenance. The tender submitted by the Petitioners came to be accepted. Consequently the Respondent-company placed orders as per annexures A and B dated January 17, 1998. As per the invoices received from time to time from the Respondent-company, the Petitioner-company supplied machinery and other items to the Respondent-company. As per annexure C dated February 13, 1999, the Respondent-company specified that a sum of Rs. 1,24,97,712 was outstanding.

Again the Petitioner-company made certain supplies to the Respondent-company. Finally before issuing the statutory notice the Respondent-company was found due in a sum of Rs. 5,28,25,000. Despite repeated requests, demands letters and statutory notice dated December 5, 2000, as per annexure S the Respondent-company has not paid the amounts due to the Petitioner-company. Hence, this petition.

7. It is seen from the record that in connected C.A. No. 651 of 2010 the petition came to be admitted and the advertisement was taken out.

8. Heard arguments on both the sides and perused the entire petition papers.

9. The Respondent-company in their letter dated March 19, 1999, as per annexure F admitted their liability to pay certain amounts to the Petitioner and pleaded difficulty to pay the same. It is further seen that the Respondent-company again in their letter dated August 24, 1999, as per annexure N admitted the liability and agreed to pay the outstanding dues on or before the end of November, 1999. Further it is seen that the Respondent-company in paragraph 13 of their statement of objections stated as under:

"The averment that the company vide its letter dated August 24, 1999, promised to meet the outstanding dues by the end of November, 1999 and that the Respondent however failed and neglected to clear its dues to the Petitioner may be true."

10. From the above admission of the Respondent-company it is clear that they failed to pay the outstanding dues to the Petitioner. Despite the statutory notice the Respondent-company failed to pay the outstanding dues. Therefore, the Respondent-company is deemed to have failed to pay the debt payable to the Petitioner-company.

11. This Court as per order dated July 31, 2003, passed in C.P. No. 91 of 2000 admitted the present petition. Further the Petitioner was directed to take out advertisement in English daily The New Indian Express on or before August 31, 2003, fixing the date of hearing as September 26, 2003, as per the common order passed in C.P. No. 75 of 2000. The Petitioner complied the order of this Court and filed copy of paper publication before this Court. Pursuant to the advertisement nobody came forward either to support or to oppose the passing of winding up order. In the circumstances the following:

ORDER

(i) The petition is hereby allowed.

(ii) The Respondent-company is ordered to be wound up.

(iii) The Petitioner is directed to deposit a sum of Rs. 25,000 with the official liquidator to meet the initial expenses of the winding up proceedings.

(iv) The Petitioner is directed to serve a copy of this order on the Registrar of

Companies within 30 days.

(v) The Petitioner is further directed to take out advertisement of this order in English daily The Hindu within 14 days from the date of receipt of copy of this order.