

(2002) 08 SC CK 0013
In the Supreme Court Of India
Case No : Civil Appeal 4521 of 2002

Mardia Chemicals Ltd.

APPELLANT

Vs

Gujarat Electricity Board and Another

RESPONDENT

Date of Decision : 02-08-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Constitution of India, 1950 — Article 136, 142

Citation : (2002) 6 JT 590

Hon'ble Judges : R. C. Lahoti, J;Brijesh Kumar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Leave granted.

2. Heard finally.

3. The issue arising for decision in this appeal is short but certainly has assumed dimensions. Much was argued in favour of the appellant as also in opposition thereof. We propose to confine ourselves to the main controversy shorn of side considerations; for there is less of law and more of equity which is going to be decisive factor. Our effort is to see that an industrial unit survives and does not sink and at the same time the Gujarat Electricity Board, the only creditor and contestant before us, is also not denied its financial oars with which it sails. It should also have its dues recovered.

4. It appears that the appellant is a large scale industry which has run into voluminous arrears and the creditors are not only the Gujarat Electricity Board but several other banks and financial institutions. The appellant attempted thrice before the board for industrial and financial reconstruction ('BIFR', for short) by moving petitions u/s 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 ('SICA', for short) wherein the appellant failed but at the end on an appeal filed by the appellant against last of the orders of BIFR rejecting the

reference made by appellant the appellate authority for industrial & financial reconstruction ('AAIFR', for short) has, by its order dated 21.6.2002, allowed the appeal and remanded the matter for consideration afresh by BIFR. Those proceedings are pending thereafter.

5. So far as the Gujarat electricity board is concerned, as evidenced by the communication dated 13.1.2002, its demand outstanding against the appellant, as on that day, was as under:

1. Energy bill for the month of November 2001 billed in December, 2001 with arrears. Rs. 441569212.24

2. D.P.C. upto 30.4.2000 Rs. 192552517.44

3. Delayed payment charge from 1.5.2000 to 31.12.2001 to be charged Rs. 218743109.16

4. Total arrears of energy bill Rs. 852864838.84

6. It is clear that an amount of Rs. 44,15,69,212.24 is on account of principal charges for consumption of energy. The rest of the amount is towards delayed payment charges ('DPC', for short), the legality and propriety whereof is disputed by the learned counsel for the appellant and vehemently supported by the learned solicitor general. However, for the purpose of present proceedings we do not propose to express our opinion on the DPC inasmuch as the same is not an issue specifically before us.

7. It appears that vide communication dated 20.7.2000 the respondents allowed the appellant facility of payment of past energy bills in installments of Rs. 10 lacs per month; the principal but not the only consideration being that the appellant's case for formulation/sanction of rehabilitation scheme by BIFR at New Delhi was pending for consideration. However, once again Gujarat electricity board vide its communication dated 25.5.2001 allowed the appellant facility of payment in the installments of Rs. 25 lacs per month in place of Rs. 10 lacs per month in view of appellant's contract demand having been reduced from 35000 KVA to 24000 KVA on its prayer. On 12.12.2001, in a meeting which was presided over by the hon'ble minister of power a decision was taken to insist on lump-sum payment of arrears by the appellant and to recall for future the installment facility of Rs. 25 lacs per month. The consideration which appears to have prevailed was that payment of the amount of accumulated arrears at the rate of Rs. 25 lacs per month would take an unreasonably long time for clearance. Vide communication dated 30.1.2002 Gujarat electricity board informed the appellant to clear all the arrears including the DPC within a period of 10 days failing which the supply of electricity to the appellant shall be liable to be discontinued. Feeling aggrieved by the said communication the appellant filed a civil suit wherein the appellant did not succeed in securing any interim relief. An appeal filed before the High Court was also dismissed. Feeling aggrieved the appellant approached this Court.

8. On 29.4.2002, by an interim order passed by this Court, it was directed that

the supply of electricity to the appellant be restored subject to the appellant continuing to clear the arrears at the rate of Rs. 50 lacs per month over and above the payment of current demand as per bills issued by the respondents. It is not disputed that the appellant has not defaulted in payment of any installment at the rate at which the installments were effective i.e. initially at the rate of Rs. 10 lacs per month, later at the rate of Rs. 25 lacs per month under the orders of the Gujarat electricity board and subsequently at the rate of Rs. 50 lacs per month under orders of this Court over and above the current bills. In the course of hearing learned counsel for the appellant has handed over a chart, showing payments made by it - towards arrears as also towards the current demand, which is taken on record. However, we hasten to add that we should not be deemed to have expressed any opinion on the correctness or otherwise of the facts set out in the chart and certainly the respondents have not verified, admitted or denied the correctness of the statement so made. We proceed on an assumption that ordinarily the information supplied to the court through counsel, at the bar, would be correct.

9. Though the learned solicitor general appearing for respondents has vehemently opposed any indulgence being shown to the appellant and submitted that such defaulting industries as are running into huge arrears towards several financial institutions should not be allowed shelter under the protective umbrella of this Court. On the other hand, the learned counsel for the appellant submitted that the appellant genuinely intends to clear all its arrears and denial of judicious judicial indulgence to the industry may prove disastrous with serious implications not only for the Gujarat electricity board but also for other financial institutions and on the livelihood of about 1100 workmen which the appellant industry employs. An industry struggling for rehabilitation needs compassion and should not demand its pound of flesh, submitted the learned counsel for appellant.

10. Having heard the learned counsel for the parties and without expressing any opinion on the merits of the contentions advanced before us but keeping in view the relevant factors as available on record and guided mainly by the consideration of seeing that the Gujarat electricity board realises its arrears while the industry also survives, we dispose of this petition in terms of the directions which follow hereinafter. The respondents themselves had at times shown sympathy with the appellant.

It is directed that:

(1) With effect from the month of September 2002 the appellant shall pay an amount of Rs. 1.20 crore over and above the current demand and shall continue to do so unless and until the amount of arrears of principal consumption charges to the tune of Rs. 44, 15, 69, 212-24 p. has been cleared subject to adjustment for the amount already paid in installments towards the above said amount of Rs. 44,15, 69, 212-24p. Payment for the month of August 2002 shall be as before.

(2) The Gujarat electricity board may continue to raise demands for DPC but that demand shall not be enforced nor insisted on for payment so long as the amount of arrears is continued to be paid in installments as pointed out hereinabove. When the amount of principal arrears has been cleared the appellant shall have the liberty of making a representation to the Gujarat electricity board or the state government, as the case may be, for waiving the amount of DPC and the board or the state government shall be at liberty to take such lawful and reasonable decision thereon as it may deem fit after affording the appellant an opportunity of hearing. Needless to say, the respondents may at that stage keep in view, as one of the relevant considerations, the conduct of the appellant who paid all its dues while the financial institutions are running into accumulating non-performing assets and failing in realising their dues.

(3) In terms of the order dated 29.4.2002, it is stated at the bar, that an undertaking has been filed on behalf of the appellant by the director, marketing for compliance with that order. In addition, an undertaking to comply with this order shall be filed on the affidavit by the managing director of the company who shall also undertake that the appellant company shall not sell any assets except in normal course of business activities so long as the arrears have not been cleared.

(4) In case of default in compliance with the terms of this order it shall stand vacated without reference to the court.

11. The appeal stands disposed of in terms of the above order.