

(1994) 08 MAD CK 0040

In the Madras High Court

Case No : Writ Petition No. 8486 of 1994

Metal Box India Ltd.

APPELLANT

Vs

Madras Telephones and others

RESPONDENT

Date of Decision : 25-08-1994

Acts Referred:

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 16, 17, 17(1), 17(3), 18

Citation : (1995) 83 CompCas 117

Hon'ble Judges : D.M. Ali Mohamad, J

Bench : Single Bench

Advocate : M. Aravind Subramaniam, for the Appellant; R. Subbiah, for the Respondent

Judgement

S.M. Ali Mohamed, J.—By consent of both the parties the main writ petition itself is taken up for final disposal.

2. The petitioner is Metal Box India Limited, public limited company registered under the Companies Act, 1956. It is stated in the affidavit filed in

support of the writ petition filed by the general manager of the company that due to certain difficulties the petitioner-company has been declared as

a sick industrial company u/s 3(1)(o) of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "the Act"), and at

present is awaiting a rehabilitation package from BIFR for its revival. The Board has further appointed ICICI as the operating agency within the

meaning of section 3(1)(i) of the Act to prepare a report for the rehabilitation of the petitioner-company. However, the report has not yet been

submitted by ICICI and by virtue of the operation of section 17(1) of the Act, section 22 gets attracted and in view of the same any execution,

distress or the like proceedings are not maintainable against the properties of the company, which has been declared as a sick industrial company

u/s 3(1)(o) of the Act.

3. It is contended by learned counsel appearing for the petitioner that the impugned order of the first respondent, directing the petitioner-company

to pay a sum of Rs. 84,445 being the alleged arrears of telephone charges for telephone No. 552183 for the period from September 7, 1982, to

October 13, 1992, failing which the other telephones of the petitioner-company will be disconnected is not maintainable in law and as such it is

liable to be quashed. In support of the said contention, learned counsel for the petitioner submitted that once the petitioner-company has been

declared a sick industrial company u/s 3(1)(o) of the Act, read with section 17(1) and (3) of the Act, section 22 of the Act gets attracted and no

proceedings for the winding up of the sick 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 shall lie or be proceeded with or for recovery of money or for enforcement of any

security against the industrial company or of any guarantee in respect of any loan 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. In support of the said contention,

learned counsel for the petitioner cited the decision in *The Gram Panchayat and another Vs. Shree Vallabh Glass Works Ltd. and others*, ,

wherein, while interpreting section 22 of the Act, the Supreme Court has observed as follows (at pages 171-173) :

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, 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 shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the appellate authority. . .

(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.

Section 22(1) provides that, in case the enquiry u/s 16 is pending or any scheme referred to u/s 17 is under preparation or consideration by the

Board or any appeal u/s 25 is pending, then certain proceeding against the sick industrial company are to be suspended or presumed to be

suspended. The nature of the proceedings which are automatically suspended are : (1) winding up of the industrial company; (2) proceedings for

execution, distress or the like against the properties of sick industrial company; and (3) proceedings for the appointment of a receiver. The

proceedings in respect of these matters could, however, be continued against the sick industrial company with the consent or approval of the

Board or of the appellate authority, as the case may be.

Section 16 authorises the Board to make such enquiry as it may deem fit for determining whether any industrial company has become a sick

industrial company. Where the Board is satisfied that a company has become a sick industrial company, it could give a reasonable time to the

company to make its net worth positive (section 17(2)). Where it is not practicable for a sick industrial company to make its net worth positive

within a reasonable time, section 17(3) steps in authorising the Board to direct any operating agency to prepare a scheme in relation to the

company. The Board may specify the various measures to be considered by the operating agency. These measures are detailed in section 18. The

operating agency has to prepare a scheme as per the order specified by the Board.

In the instant case, the Board, by order dated August 27, 1987, has stated that it was satisfied that the company has become a sick industrial

company. The Board directed that further proceedings under the Act shall be taken with respect to the company. On the same day, the Board,

after having heard the representatives of the ICICI, the company, the concerned

banks, the other public financial institutions and the State

Government of Gujarat, considered the entire material on record, held that it was not practicable for the company to make its net worth positive

within a reasonable time and that further proceedings under sub-section (3) of section 17 of the Act are, therefore, to be taken. Accordingly, in

exercise of the powers conferred u/s 17(3) of the Act, the Board appointed the ICICI as its operating agency to prepare a scheme for

rehabilitation/revival of the company keeping in view the provisions of sections 18 and 19 and the guidelines. At the same time, the Board

appointed Shri Y. V. Sivaramakrishnayya as the special director of the company for safeguarding its financial and other interests.

In the light of the steps taken by the Board under sections 16 and 17 of the Act, no proceedings for execution, distress or the like proceedings

against any of the properties of the company shall lie or be proceeded with further except with the consent of the Board. Indeed, there would be

automatic suspension of such proceedings against the company's properties. As soon as the inquiry u/s 16 is ordered by the Board, the various

proceedings set out under sub-section (1) of section 22 would be deemed to have been suspended.

4. On the authority of the ruling of the Supreme Court, it is further contended by learned counsel for the petitioner that the petitioner-company is

the owner of the telephone and the electronic messages that are sent through the same and as such it is the property of the company. In view of the

provisions of section 22 of the Act, no proceedings for execution, distress or like proceedings against any of the properties of the company can be

proceeded with further without the consent of the Board or the appellate authority. In this connection, learned counsel for the petitioner brought to

the notice of this court the decision in Commissioner of Sales Tax, Madhya Pradesh, Indore Vs. Madhya Pradesh Electricity Board, Jabalpur, ,

wherein the Supreme Court, while interpreting the term ""goods"" as given in the Madhya Pradesh General Sales Tax Act, held that the term

movable property, includes electrical energy or electricity capable of delivery which need not necessarily be in a tangible or in a physical sense.

Learned counsel contended that the petitioner-company is the owner of the electrical impulse supplied to it and, therefore, no execution

proceedings can lie as long as the petitioner-company has been declared as a sick industrial company.

5. I am unable to accept the above contentions of learned counsel for the petitioner. In the instant case, the first respondent, Madras Telephones, is

a Department of the Ministry of Telecommunications and the Government of India is the owner of the installations and the electrical systems by

which messages are transmitted from one place to another. There is no dispute that the message transmitted by the first respondent is a movable

property. However, as far as the ownership of those electronic messages are concerned, it is the Government of India, who is the owner of the

said electronic message system, and the first respondent is running a commercial activity and for their services they are charging certain amounts

and the electronic message or the installation is not the property of the petitioner-company. As such, the provisions of section 22 of the Sick

Industrial Companies (Special Provisions) Act, 1985, will not get attracted.

6. However, in the instant case, there is an infirmity in the impugned order. On a reading of the impugned order it is clear that the first respondent

has demanded a sum of Rs. 84,445 alleged to be the amounts due for telephone number 552183 for the period starting from September 7, 1992,

to October 13, 1992, which amount is disputed by the petitioner-company. In para 5 of the affidavit of the petitioner, the petitioner has questioned

the quantum stating that there has been wrong billing and wrong calculations of STD calls, resulting in abnormal wrong billing and he has questioned

the method of calculation of the first respondent. As there is a dispute with regard to the quantum of amount calculated by the first respondent, the

alleged amount of Rs. 84,445 cannot be recovered without adjudication and institution of legal proceedings. As a matter of fact, it is stated in the

impugned order that ""if the dues are not settled by April 22, 1994, this department will be constrained to institute legal proceedings against you to

enforce recovery of the dues with costs. Besides your working phone No., if any, is also liable for disconnection without any further notice"". As the

petitioner-company has been declared as a sick industrial company and as long as section 22 is in operation, the proceedings against the

petitioner-company can be instituted by the respondent only after obtaining leave from the BIFR or the appellate authority. In order to show its

bona fides, learned counsel for the petitioner has filed an affidavit stating that taking into consideration the financial position of the company, the petitioner-company is prepared to deposit a further sum of Rs. 10,000 without prejudice to its rights within eight weeks from today. The petitioner has also stated, that the matter may be referred to arbitration u/s 7B of the Indian Telegraph Act. Further, the petitioner-company has also made provision in the scheme before the BIFR giving the liability of Rs. 84,445 alleged to be due to the first respondent. In the instant case, the petitioner-company has been declared a sick industrial company u/s 3(1)(o) of the Act and in view of section 22 of the Act any proceedings for distress, execution or the like can be instituted only after obtaining leave from the BIFR or the appellate authority. It is open to the respondents concerned to obtain leave of the BIFR to refer the matter for arbitration u/s 7B of the Indian Telegraph Act and submit to arbitration proceedings in accordance with law. As the petitioner-company has filed an affidavit that it will pay a sum of Rs. 10,000 within eight weeks without prejudice to its right, the petitioner-company is directed to pay the said sum of Rs. 10,000 to the first respondent within eight weeks. In view of the above, the writ petition is dismissed. There shall be no order as to costs.

7. As the petitioner-company has stated that it is disputing the amount of Rs. 84,445 claimed by the first respondent in the impugned order and the company has stated in the affidavit that it will take effective steps to refer the matter to arbitration u/s 7B of the Indian Telegraph Act, the first respondent shall not disconnect any telephone of the petitioner-company for a period of eight weeks. However, the petitioner-company shall continue to pay all the telephone charges due on the existing phone numbers.