(2001) 07 KAR CK 0054

In the Karnataka High Court

Case No : Writ Petition No''s. 8073 and 8074 of 1998

MIC Cement Limited, Bangalore and Another APPELLANT

Vs

The Appellate Authority for Industrial and Financial Reconstruction, New Delhi and Others RESPONDENT

Date of Decision : 11-07-2001

Acts Referred:

Citation : (2001) 6 KarLJ 60 : (2001) 4 KCCR 188 SN

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : Kishore Mallya, for the Appellant; M. Ramaiah, Government Pleader, Aravind Kumar and V.L. Somappa, for the Respondent

Final Decision : Dismissed

Judgement

The Court

1. The petitioners in these petitions are challenging Annexure-H, an order passed by the Appellate Authority for Industrial and Financial Reconstruction, New Delhi, dated 23-12-1997.

2. The petitioners state in the petition that the first petitioner, has suffered losses due to factors beyond its control. The matter was referred to the Board for Industrial and Financial Reconstruction (for short, ''the Board''). The Board, by an order dated 10-6-1992, declared the Company to be a sick company and appointed the Industrial Development Bank of India as operating agency to examine the viability and for preparing a scheme for revival and rehabilitation. The Industrial Development Bank of India, in turn, in its report doubted the long term viability of the petitioner-Company to which the petitioner-Company objected. The BIFR, by its order dated 16-12-1993 formed a prima fade opinion to wind up the petitioner-Company concluding that the efforts of the Industrial Development Bank of India in locating an alternate management yielded no result. Thereafter, the BIFR on 21-3-1994 directed one of the interested

companies by name M/s. Madalsa International Limited to deposit a sum of Rs. 30/- lakhs before 5-4-1994 and then to work out their revival proposal. The petitioner sought for clarifications from BIFR on various aspects of the status of the deposit so required to be made in the matter. The BIFR confirmed its prima facie opinion to wind up the petitioner-Company, in the absence of any acceptable reasons in the matter. The BIFR, confirmed its order by order dated 11-5-1994. The said order of the BIFR was challenged by the petitioners before the Appellate Authority, the first respondent. The matter was posted from time to time. The appeal, as a matter of fact, has been dismissed on 17-4-1997 and the same was restored in terms of an order passed in Miscellaneous Application No. 3 of 1997. An adjournment was sought for on 23-12-1997. The Appellate Authority, in a detailed order considered the matter and also the plea and thereafter dismissed the appeal. This order is challenged by the petitioners in these petitions.

3. Heard the Counsels for either side.

4. The Counsel for the petitioners reiterated the facts and grounds stated in the petition in support of his contention. He also stated that the impugned order requires my interference.

5. Per contra, Sri V.L. Somappa, learned Counsel appearing for the contesting respondent 4 invites my attention to a detailed statement of objections filed in the case on hand. He also mentions that the petitioner has failed to deposit a sum of Rs. 30/- lakhs in terms of the orders of the Board and the Appellate Authority. The Counsel further says that this Court on 20-3-1998 directed the petitioner to deposit 50% of the awarded amount in a no-lien interest bearing account within two weeks from 20-3-1998. The Counsel says that this order has also not been complied with. The Counsel further invites my attention to an order of the Delhi High Court dated 3-3-1998 in C.W.P. No. 1033 of 1998 and C.M. No. 716 of 1998.

6. After hearing the Counsels on either side, I pass the following order.

7. The material facts reveal that the petitioner has committed default at every stage. The petitioner was directed to pay a sum of Rs. 30/- lakhs to consider its plea of revival. In respect of deposit, the petitioner sought for clarification. Thereafter, he did not deposit the same. In those circumstances, the Board in the light of a report from Industrial Development Bank of India ordered winding up of the company, in its order. When the said order was challenged before the Appellate Authority, the appeal was dismissed once which came to be restored later. The petitioner had filed another petition in the Delhi High Court challenging the very order and the Delhi High Court has dismissed the petition holding that no grounds were made out to interfere with the impugned order. The said order of dismissal is suppressed in these petitions by the petitioners. In these circumstances, I do not think that I should exercise my discretion in favour of the petitioners. The petitioners, as I mentioned earlier, have committed violation of

the orders at every point of time. The petitioners have failed to deposit the amount in terms of the to deposit the amount in terms of the order of this Court. The petitioners suppressed material factum of having filed a petition in Delhi High Court, as I see from the statement of objections.

8. In these circumstances, these petitions stand rejected. In the normal circumstances, I would not have ordered costs to the petitioners. But, in this case, from the material placed before this Court, it is very clear to me that the petitioners did file a petition in the Delhi High Court and the petition came to be dismissed on 3-3-1998. Thereafter, the petitioners have filed these petitions suppressing the factum of dismissal of the petition challenging the very order in Delhi High Court and obtained interim order at the hands of this Court. This attitude on the part of the petitioners, to say at the least, is wholly unwarranted. If the petitioners had disclosed the correct facts, probably this Court would not have interfered in the light of the order of the Delhi High Court. Therefore, taking into consideration the material suppression of facts, I deem it proper to direct the petitioners to pay a sum of Rs. 5,000/-. Since, the respondent is a Bank, I direct the petitioners to send a sum of Rs. 5,000/- to the Chief Minister''s Gujarat Relief Fund within four weeks from today.

9. Petitions are dismissed with costs.

