
(1998) 02 PAT CK 0066

In the Patna High Court

Case No : Company Petition No. 11 of 1996

Mishrilal Jain (P.) Limited

APPELLANT

Vs

Nacro Chemicals Limited

RESPONDENT

Date of Decision : 13-02-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Companies (Court) Rules, 1959 — Rule 9

Companies Act, 1956 — Section 466

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 16, 22

Citation : (1999) 98 CompCas 280

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.N. Jha, J.—An order of winding up of the company was passed on August 1, 1997. Later an application was filed u/s 466 of the Companies Act, 1956, read with Rule 9 of the Companies (Court) Rules, 1959, and Section 151 of the Code of Civil Procedure, 1908, for recall/ modification/stay of the order in view of the provisions of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985. By order dated December 12, 1997, the application was disposed of. Operation of the order dated August 1, 1997, (supra) was stayed for a period of one year to enable the BIFR to form its opinion in the matter of commencement of enquiry u/s 16 of the said Act. It was observed that in the event the BIFR decides to formally initiate the enquiry, it will be open to the respondent-company to bring these facts to the notice of the court for further orders in the light of the decision in Testeels Ltd. v. Radhaben Ranchhodlal Charitable Trust : AIR 1988 Guj 213 : [1989] 66 Comp Cas 555 and Hig Temp Chemicals Pvt.Ltd. Vs. Satya Steel Strips (P.) Ltd.,

2. An application (flag "5") has been filed on behalf of the respondent-company stating that the BIFR has since formally commenced the enquiry and, therefore, in view of the aforesaid judgments of the Gujarat and Andhra Pradesh High

Courts the proceedings should be dropped. It was submitted that if the BIFR is not able to work out any solution and revive the company, it is supposed to send its opinion u/s 20 of the Act to this court for initiating winding up proceedings and at that stage the present proceeding may revive. It was suggested that there may be difficulties in considering the case by the BIFR during pendency of this company petition.

3. On behalf of the petitioner-company as well as the State Bank of India, one of the secured creditors, it was submitted that the order of stay (for a period of one year) does not require any modification, Counsel for the petitioner-company submitted that the case has made substantial progress inasmuch as advertisement, etc., have been published earlier pursuant to the court's order, and if the proceedings are dropped at this stage, this may cause avoidable financial burden to the company. He also submitted that the prayer for dropping the proceedings is not bona fide. In view of the order of stay already passed by this court, the respondent-company is not likely to suffer any loss, injury or inconvenience,

4. Section 22 of the aforesaid Act, inter alia, provides that where in respect of an industrial company, an enquiry u/s 16 is pending, no proceeding for winding up shall lie or be proceeded with further except with the consent of the Board (BIFR) or the appellate authority. In other words, no fresh proceeding will lie where an enquiry u/s 16 is pending and where such proceeding is already pending from before it shall not proceed further. It is true that the Gujarat and Andhra Pradesh High Courts for reasons mentioned in the respective judgments held the view that the company petition should be dismissed, that is, the proceedings should be dropped. This is certainly one possible course to adopt.

5. However, going strictly by the language of the section another can be that a pending proceeding should not proceed further. It does not suggest that the proceedings should be dropped. According to the Andhra Pradesh High Court, where the enquiry is pending before the BIFR, no purpose would be served by keeping the proceedings pending indefinitely and accordingly dismissed the winding up petition. In the present case, this court has stayed the operation of the order of winding up for a period of one year (to be reckoned from December 12, 1997). It is open to this court to modify its order, as to duration of stay, depending on the progress of the enquiry before the BIFR. Since two interpretations of Section 22 are there, it is possible and it can be legitimately argued that pending proceedings are merely to be stayed (not to be proceeded with).

6. I am not inclined to make any modification in the aforesaid order dated December 12, 1997, or pass any further positive order.

7. The application at flag "5" and the rejoinder thereto (flag "6") stand disposed of accordingly.