(1998) 12 KL CK 0007

In the High Court Of Kerala

Case No : W.A. No. 2524 of 1998 (C.M.P. No. 29607 of 1998 in O.P. No. 16686 of 1998-J of this court)

Modistone Ltd. APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 02-12-1998

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

Citation : (1999) 2 ILR (Ker) 327

Hon'ble Judges : K. Narayana Kurup, J;Ar. Lakshmanan, J

Bench : Division Bench

Advocate : Antony Dominic, for the Appellant; Alexander Thomas, for the Respondent

Judgement

Ar. Lakshmanan, J.—Heard both the sides. The writ appeal is directed against the interim order passed in C. M. P. No. 29607 of 1998, pending original petition. Interim stay was ordered by the learned single judge on condition that the petitioner-appellant remits one-fourth of the tax due within a period of one month from the date of the order.

2. Against the assessed tax of Rs. 1,44,00,000 the assessee/appellant has already paid a sum of Rs. 1,40,96,000 approximately leaving a balance of Rs. 3,99,000 odd. It is stated by learned counsel for the appellant that the appellant-company is in lock-out since 1997 and the appellant-company on account of the continued loss suffered by it became a sick industrial company as defined in the Sick Industrial Companies (Special Provisions) Act, 1985. Proceedings were initiated before the Board for Industrial and Financial Reconstruction (BIFR) constituted under the Act vide letter dated March 12, 1998. The BIFR, after enquiry by exhibit P-1 order dated April 15, 1998, declared the appellant-company as a sick industrial company. The Industrial Financial Corporation of India (IFCI) was appointed as the operating agency for the preparation of a scheme for revival of the appellant-company with a direction to submit their

scheme before December 51, 1998. Thus, it is seen that the registration of the reference regarding the appellant, it has been declared as a sick industrial company under the Act and the enquiry before the BIFR is pending. During 1993-94, on account of the activities of the appellant in the State of Kerala it filed returns regarding taxes due under the Kerala General Sales Tax Act and surcharge due thereof. By order dated January 4, 1998, served on the appellant, the Assistant Commissioner of Sales Tax, Special Circle assessed total tax due as Rs. 1,44,95,617. After deducting the amount of Rs. 1,40,96,465 already remitted, the Assistant Commissioner quantified the dues from the appellant as Rs. 3,99,152. An appeal has also been filed against the order of assessment and the same is pending before the Deputy Commissioner (Appeals), Ernakulam, During the pendency of the appeal exhibit P-2 notice was issued u/s 7 of the Revenue Recovery Act and coercive action was taken against the appellant. On receipt of this, the appellant informed the respondents by letter dated August 1. 1998, that the appellant is a sick industrial company under the Act and that it is entitled to the protection u/s 22 of the said Act. The letter is marked as exhibit P-3. After receiving exhibit P-3 when the appellant received a phone call from the fifth respondent requiring the appellant to remit the amount under exhibit P-2 as otherwise it was threatened that revenue recovery action will be initiated. The appellant filed the original petition challenging initiation of revenue recovery proceedings. When the original petition came up before the learned single judge he granted a conditional stay as referred to earlier. Aggrieved by the said order the appellant has preferred the above appeal. Mr. Antony Dominic submitted that Section 22 of the Act provides for suspension of all legal proceedings against a sick industrial company except with the consent of the BIFR. The fact that the company is a sick industrial company and that an operating agency has been appointed, which is preparing a scheme for the revival of the company has been informed to the respondents also. In spite of it without obtaining the consent of the BIFR when coercive action was pursued against the appellant which compelled the appellant to file the original petition. In support of his contention that Section 22 of the Act prohibits any coercive action of Real Value Appliances Ltd. Vs. Canara Bank and Others, The Supreme Court held that inquiry by the BIFR u/s 16 commences as soon as registration of reference is completed after scrutiny and from that time proceedings against the company''s assets shall remain suspended u/s 22 till final orders of the BIFR are passed. In the instant case, the BIFR has registered the reference and has also appointed an operating agency. The order passed by the BIFR could clearly show that the BIFR was satisfied that the company had become a sick industrial company in terms of Section 3(1)(o) of the SICA and that the company cannot revive on its own and that it was necessary in public interest to revive/ rehabilitate the company and accordingly the BIFR appointed the IFCI as the operating agency u/s 17(3) of the Act to examine the viability and submit its report on revival of the company. The operating agency was directed to prepare a rehabilitation report after examining the viability of the company. The BIFR has also suggested measures and guidelines for the same as set out in exhibit P-1 order. The cut-off date was fixed as December 31, 1998. Since the matter is under investigation by the operating agency, the BIFR will have to pass appropriate orders only after the final report is submitted by the operating agency which depends upon the viability of the scheme to be suggested and to be framed by the BIFR. The BIFR has also directed the company to submit a viable rehabilitation proposal under the RBI guidelines and the operating agency was also directed to examine the same and submit status report after holding a joint meeting within six weeks thereafter. The company was directed not to alienate any of its fixed assets u/s 22A of the SICA.

3. The Supreme Court has also held that the legislative intention is to see that no proceedings against the assets are taken before any decision is given by the BIFR for in case the company''s assets are sold or the company is wound up it may indeed become difficult later to restore the status quo ante. It must, therefore, be held that the inquiry must be treated as having commenced as soon as the registration of the reference is completed after scrutiny and that from that time action against the company''s assets must remain stayed as stated in Section 22 till final decisions are taken by the BIFR. In view of the above decision of the Supreme Court (paragraph 23) we are of the opinion that the sales tax authorities should stay their hands from initiating revenue recovery proceedings against the assets of the company for recovery of the arrears of sales tax under the revenue recovery proceedings till final decisions are taken by the BIFR. In view of the foregoing discussion we are of the 6pinion that the learned single judge is not right in directing the appellant to pay a portion of the sales tax. The order is therefore set aside and the matter is remitted back to the learned single judge with a request to dispose of the same in accordance with law. The Government may in the original petition file their counter affidavit in the meanwhile. Writ appeal is disposed of as above. C. M. P. No. 6792 of 1998, stands dismissed.