

(2000) 12 DEL CK 0074
In the Delhi High Court
Case No : CWP No. 4212 of 1999

M/s. Allied International Products Ltd.	APPELLANT
Vs	
Appellate Authority for Industrial and Financial Reconstruction and Others	RESPONDENT

Date of Decision : 20-12-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Finance Corporation Act, 1948 — Section 30
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 20(1)

Citation : (2001) 2 AD 407 : (2001) 104 CompCas 481 : (2001) 89 DLT 414

Hon'ble Judges : Arun Kumar, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Mr. A.N. Parikh, Mr. Sidharth Srivastava, for the Appellant; Mr. Vinay Sharma, Mr. Avimukt Dar, Mr. Rajiv Shakhder and Mr. Sanjeev Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Arun Kumar, J.—This petition under Article 226 of the Constitution of India is directed against an order of the Appellate Authority for Industrial and Financial Reconstruction (for short AAIFR) dated 28th May, 1999 whereby the Appellate Authority dismissed the appeal against the order of the Board for Industrial and Financial Reconstruction (for short BIFR) dated 30th November, 1998. By the impugned orders the Authorities under the Sick Industrial Companies (special Provisions) Act, 1985 (for short SICA) directed that the sick company, namely, M/s.Allied International Products Limited (for short AIPL) be wound up u/s 20(1) of the SICA.

2. To give a brief background, AIPL was promoted in the year 1962 for setting up a plant for manufacture of industrial fasteners, components and sub-assemblies for automobiles and aircrafts including nuts, bolts, screws, brackets, couplings etc. The cost of the project was originally estimated at Rs.110 lacs which was to be financed by equity share capital amounting to Rs.75 lacs and term loan of

Rs.35 lacs. The factory was to be located at Anugrahnagar, District Muradabad, Uttar Pradesh. The promoters had entered into technical collaboration with Textron Industry Inc., U.S.A. The foundation stone for the factory premises was laid on 1st January, 1965.

3. Almost right from the beginning the company was embroiled in litigation. First litigation was on account of non-listing of shares in Delhi and Calcutta Stock Exchanges as proposed in the prospectus issued at the time of public issue in the year 1965. This litigation ended in the year 1972. The lending institutions agreed to sanction additional assistance to the company to complete the project. Therefore the implementation of the project again started in 1972. In the meanwhile the collaborator M/s. Textron Industries Inc. had withdrawn on account of delay in implementation of the project. The company had to look for another collaborator which it found in M/s. Oriental Industry Inc., U.S.A. It appears from the status report prepared by the operating Agency M/s.ICICI that the project implementation cost in the year 1977 had escalated to Rs.372 lacs. Ultimately in April 1978 the company commenced commercial production. In July 1978 the institutions agreed to the request of AIPL for grant of reliefs and concessions but before the reliefs could be given effect to, the institutions received letters from the Company Law Board revealing irregularities on the part of the promoters. The statutory auditors of the company in the year 1975-76 also reported irregularities at the company's Board meeting held in December 1978. The Industrial Financial Corporation of India (for short IFCI) and the Industrial Development Bank of India (for short IDBI) filed suits for recovery of their respective dues. Another round of litigation started. The company's bankers, i.e., Central Bank of India stopped the working capital assistance to the company in July 1980. In the result the operations of the company became marginal and ultimately came to a complete halt in 1985.

4. On 14th December, 1979 the IFCI filed an application u/s 30 of the IFCI Act in this court praying for sale of the properties mortgaged by the company which were subject matter of the Indenture of Mortgage and the various deeds of Hypothecation executed by the company in favor of the IFCI. On 18th December, 1979 an order was passed by this court appointing joint receivers to take possession of the properties mentioned in the Indenture of Mortgage. On 29th December, 1979 another order was passed directing the joint receivers to hand over possession of the property to the Superdar in order to enable the company to run the factory. A question of territorial jurisdiction of this court to entertain the petition was raised on which a preliminary issue was framed. However vide order dated 3rd August, 1981, further proceedings in the application of the IFCI were stayed by the Supreme Court. Later, the stay was vacated by the Supreme Court and the SLP was dismissed. In the said petition an ex parte order was passed on 26th November, 1985 decreeing a sum of Rs.2.70 crores including interest against AIPL and directing sale of properties mortgaged by the company as mentioned in the Indenture of Mortgage and the various deeds of Hypothecation.

5. The company was referred to BIFR in the latter part of the year 1988. The ICICI was appointed the Operating Agency (OA). The plant was lying closed at that time. The IFCI had taken over the plant as per the directive of this court. The AIPL, i.e., the sick company has filed proceedings in this court for restitution of the plant and machinery etc. The Operating Agency has stated in its report filed before the BIFR that:

"The OA submitted its report to BIFR in June 1991 after technical evaluation of the company by a consultant. The progress on the case however was held up for four years on account of the above legal cases filed by the company. No efforts were however made by the promoters for revival of the unit in the meantime. In November 1994 BIFR directed OA to revise the rehabilitation scheme. The revised rehabilitation scheme was submitted to BIFR. BIFR in March 1995 directed OA to visit the plant and revise the rehabilitation scheme again. The visit was organized in August 1995, however, the OA was excluded from the visit, as reported by OA vide its letter dated September 5, 1995. The scheme was however again revised. The revised rehabilitation scheme submitted by the OA required additional funds of Rs.21 crore besides the cost of scheme of Rs.5 crore for rehabilitation of the company. The promoters were not able to tie up the means of financing. The promoters however indicated that they were arranging foreign currency loan of USD 14 million for expansion of the facilities and to finance the scheme. No source or terms of the loan were however provided.

In the BIFR meeting held on July 9, 1996 the respected bench noted that the promoters till date had not submitted any comprehensive proposal to OA. Instead they had submitted a one page letter stating proposed expansion of capacity and raising of a loan of USD 14 million. The Bench noted that unless the company can give a scheme with assets and plant and machinery as they are in a state now, no further progress on the case can be made.

In the next BIFR hearing held on April 9, 1997 the bench noted that a lot of time had passed without anything concrete happening in the case. The bench noted that the court could not wait indefinitely for the issue of restitution to be sorted out and noted that the no progress could be made on the case unless the promoters submitted a revised updated comprehensive proposal. The bench turned down the appeal of the promoters for further time of 3-4 months for submission of a proposal to OA. They directed the company to submit its updated proposal which is techno-economically viable and whose means of finance are fully tied up to the OA with the existing plant and machinery within two months i.e., by June 9, 1997."

6. The Operating Agency expressed its inability to prepare any rehabilitation scheme for the company. It stated that it had been trying to devise a viable rehabilitation package since 1985. Due to the promoters inability and -lack of support to furnish even critical information, no scheme could be formulated.

7. We have heard the learned counsel for the parties. We note from the order of

the BIFR that before passing the impugned order dated 30th November, 1998 the Board had given a show cause notice as to why the AIPL be not ordered to be wound up u/s 20(1) of the SICA. The AIPL was given fresh opportunity to give proposals for rehabilitation. The Board noted that no specific objections have been received from anywhere regarding proposed winding up. Even during the course of hearing before this court the only submissions which were made on behalf of the AIPL were that the court should wait till the proceedings regarding restitution of the plant and machinery etc. of the company are decided by this court in separate proceedings. Secondly it was mentioned that the company had arrangements for loan in foreign exchange which could take care of all its financial obligations. In our view these are general statements being made. Nothing by way of concrete proposals or commitments was placed before the specialised authorities under the SICA nor anything has been placed before this court while challenging the orders of the authorities under the SICA. The company which was practically stillborn has been in litigation right from its inception in the year 1968. In these past more than thirty years it had commercial production for a few months only. Cost of the project in 1965 has increased many folds by now. The plant and machinery of 1978 vintage besides having become obsolete would have been reduced to junk by now on account of non-use. The loans advanced to the company at various stages by the IFCI, the IDBI and the Central Bank of India etc. are staring the sick company in its face. The interest element itself makes the problem of clearing the loans insurmountable. It is further to be noted that the Uttar Pradesh Electricity Board had disconnected the power supply to the company permanently on account of non-payment of its dues. There are huge dues on account of sales tax against the company. Keeping all these aspects in view, the Board ordered that it would be just and equitable in public interest if the sick industry i.e., Allied International Products Limited is wound up u/s 20(1) of the SICA. This order was challenged by way of appeal before the AAIFR. The Appellate Authority noted that efforts made by the BIFR/OA for revival of the sick company by change in the management did not yield any positives results. It also noted that the contention of the promoters of AIPL that they could revive the company by their own resources was without any merit. The Appellate Authority found that the promoters either did not have or they did not propose to induct their funds. For this reason, the viability report dated 30th April, 1998 was found to be unviable. Regarding the alleged foreign currency loan from some NRI which the promoters are harping upon, the Appellate Authority observed that the loan had been allegedly sanctioned on 13th December, 1995 for financing the import of capital goods subject to certain terms and conditions. Nothing has been produced before the Appellate Authority which could substantiate this loan transaction or that the loan was still available after lapse of such a long time.

8. As a result of all these factors, the Appellate Authority found that there was no feasibility of working out a scheme for rehabilitation of the sick company. The petition remained pending before the BIFR for more than ten years. Every effort

was made to explore the possibility of revival of the sick company. Even the promoters never came forward with any concrete proposals. Same situation continues till today.

9. The basic fact remains that the sick company is heavily indebted and a stage has been reached where servicing of the debts has become impossible. Assuming the plant and machinery would be restored to the sick company, that alone will not be enough to rehabilitate it. The condition of the old plant and machinery can be imagined. Today it would be almost junk. Nothing is available or forthcoming which may infuse life into this dying unit.

10. After considering the facts of the case and the decisions of the specialised authorities under SICA, i.e., BIFR and the AAIFR, we find no reason to interfere with their decisions. The facts noted above clearly show that the company has become totally unviable. All the creditors of the company are after it and servicing of the debts itself has become impossible for the sick company at this stage what to talk of going into production. There is nothing on record which calls for interference with the decisions of the SICA authorities in this petition under Article 226 of the constitution of India. The petition is accordingly dismissed.