

(1998) 10 OHC CK 0023
In the Orissa High Court
Case No : O.J.C. No. 6843 of 1992

Orissa Vegetable Oil Complex Ltd.

APPELLANT

Vs

Board for Industrial and Financial Reconstruction and Others

RESPONDENT

Date of Decision : 23-10-1998

Acts Referred:

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15

Citation : AIR 1999 Ori 40 : (2001) 103 CompCas 412

Hon'ble Judges : P.K. Mohanty, J;P.C. Naik, J

Bench : Division Bench

Advocate : G.S. Rath, P.K. Mishra, S.K. Mishra and B. Prusty, for the Appellant; Addl. Govt. Pleader, B.M. Patnaik and R.N. Mishra, S.K. Padhi and S. Parida and D.P. Sarangi and G.C. Das, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Naik, J.—The prayer in this writ petition, which is by a Public Limited Company through its Managing Director, is for issuance of an appropriate writ, direction or order quashing the order under Annexure-1 whereby on a prima facie opinion that it is just and equitable that the sick industrial company, the petitioner herein, be wound up, the Board for Industrial and Financial Reconstruction (in short "BIFR") has directed issuance of notice u/s 20 of the Sick Industrial Company (Special Provision) Act, 1985 (in short "the Act") for hearing objections/suggestions or alternative proposals, if any, and the order under Annexure-2 of the Industrial Promotion and Investment Corporation of Orissa Ltd. calling upon the petitioner to clear up the dues amounting to Rs. 83,47,932/- which are outstanding against it.

2. The petitioner-company was set up for the purpose of producing and marketing sal seed oil and sal seed extracts for which the basic raw-material is sal seed. The company was established by obtaining loans from financial institutions, namely, Orissa State Financial Corporation, opp. party No. 3 (in short "OSFC"), Industrial Promotion and Investment Corporation of Orissa Ltd,

(in short "OPICOL"), opp. party No. 4, Industrial, Finance Corporation of India (in short, IFCI"), opp. party No. 5 and United Bank of India (in short "UBI"), opp. party No. 6.

3. Initially the company had art installed. capacity of 18,000 M.f. which was" gradually increased to 30,000 M.T. which, however, could not be achieved. According to the petitioner, prior to 1982, the main basic raw-material i.e. Sal seed was freely available, but thereafter, the Government took over the trade in Sal seeds and as such. the allotment had to be obtained from Government agencies on the basis of requisitions made therefor. The allotment, however, was subject to verification of actual need. Subsequently, sub-mils the petitioner, the policy was changed. The State Government invited tenders and allotment was made on the basis of acceptance thereof. It is the case of the petitioner, that due to the new policy of the Government, it became difficult for the petitioner to obtain basic raw-material in order to run the Unit to its full capacity and in course of time, the Unit became non-viable and ultimately had to be closed down. Therefore, the petitioner made a reference u/s 15(1) of the Act to the Board which on hearing the parties declared the petitioner-industrial concerned a "sick industrial company" and appointed the IFCI as the operating agency and issued directions to it to examine the viability and to prepare a scheme for rehabilitation of the company.

4. The facts leading to passing of the impugned notice Annexure-I can best be ascertained from the counter filed by the operating agency i.e. opp. party No. 5 herein wherein it is averred that pursuant !o the direction u/s 17(3) of the Act, the operating agency had prepared a scheme and submitted the same before the Board on 19-3-92. The operating agency had proposed rehabilitation of the unit at an estimated cost of Rs. 311.03 lacs which was to be shared by the financing agencies. However, in order to make the scheme successful, the operating agency wanted approval of opp. party No. I with specific terms and conditions. Thus, while considering this aspect, the order Annexure-1 was passed prima facie holding that as the promoters were not in a position to garner the fund required towards financing the cost of the Scheme, it was thought necessary to issue notice u/s 20 of the Act for hearing the objections/suggestions or alternative proposals, if any. It has also come out in the counter of opp. party No. 5 that apart from sanction of Rs. 22 lacs and direct subscription of Rs. 5 lacs in the equity for meeting a part of the project, an additional loan of Rs. 46 lacs was sanctioned by it in August, 1987. Incidentally, it may be mentioned that the Scheme for expansion of the capacity to 30,000 tonnes per annum could not be fully implemented though a sum of Rs. 98.75 lacs was invested. But despite this, the unit became sick because of non-availability of raw-material. This led to formulation of the rehabilitation scheme by opp. party No. 4 at the cost of Rs. 61 lacs. The industry restarted in September, 1988, but again due to non-availability of sal seeds, could not become viable which resulted in a further rehabilitation scheme at the cost of Rs. 39 lacs in the year 1989 with the aid of opp. party No. 4, but this was of no avail and ultimately the plant was closed down in

September, 1989 for want of capital.

5. The petition is also resisted by opp. party No. 4 which has pointed out in paragraph-8 of its counter, that the company is indebted to the extent of Rs. 11,21,133/- as on 15-8-92. It is averred that when the company became sick, in terms of rehabilitation Scheme. IPICOL had contributed a sum of Rs. 18 lacs. It is stated that though a scheme was formulated for making the company viable, it could not work out as the then Managing Director Mr. A. Samantray did not agree to raise funds by way of promoters' contribution. According to IPICOL before any rehabilitation package is worked out, it becomes necessary to identify a resourceful investor which is interested to invest Rs. 50 lacs in this company for its revival. It is submitted that time and again IPICOL had extended its co-operation and finance, but in spite of this, the Unit could not function and ultimately became sick.

6. It is clear from the counter filed by the OSFC, opp. party No. 3 that initially the petitioner availed a loan of Rs. 23-10 lacs and it was on the basis of an application filed by the petitioner before the Board for industrial and Financial Reconstruction to declare the Unit a sick and the order Annexure-1 was passed. It is also stated by this opp. party in paragraph-5 of the counter that though opp. party No. 5 prepared a draft scheme in pursuance of the order for revival of the petitioner's Unit, as the petitioner expressed inability to provide the required funds for working of the said scheme for revival of its Unit, the Board had no alternative than to pass the order Annexure-1. The impugned order, according to opp. party No. 3 is just and proper in the facts and circumstances of the case.

7. The facts that emerge from the material on record are :

A. The industry was established by taking loans from the financial institutions.

B. Initially the Unit started with an installed capacity of 18,000 M.T. which was increased to 30,000 M.T. but could not be achieved for want of raw-material.

C. The Unit, on two earlier occasions, had to be closed down for want of raw-material i.e. Sal Seeds. On both the occasions, it was revived because of additional contribution by some of the financial institutions which had already invested huge amount in the industry.

D. The Unit was again closed down in 1989 and a reference was made by the industry to the Board to declare the Unit sick.

E. The basic raw-material i.e. Sal seed is not freely available as the trade therein has been nationalised.

F. The Board appointed opp. party No. 5 as the operating agency and directed it to formulate a scheme for rehabilitation.

G. The Scheme was, accordingly, drawn up which required an additional sum of Rs. 311.03 lacs for revival/rehabilitation of the Unit.

H. The promoters of petitioner-company have expressed their unwillingness to provide promoter's share for the revival package whereafter, the Board on a prima facie view that it was not possible to revive the Unit, issued the Order under Annexure-1,

I. The Scheme u/s 18 of the Act is not found to be feasible for rehabilitation of the company.

8. The order (Annexure-1) is assailed, inter alia, on the ground that the petitioner is not responsible for the unit becoming sick and in fact, it was because of "the bankrupt policy" of the State Government, which nationalised the trade in Sal seeds and the indifferent attitude of the financial institutions which are not advancing loans. It is submitted that due to nationalisation, the petitioner could not obtain raw-material i.e. Sal seeds which naturally led to gradual fall in production. By and by, the availability of Sal seeds became lesser and lesser and ultimately, it was not possible to run the Unit which had to be closed down. Therefore, submits the learned counsel for the petitioner that the industry cannot be blamed for the present situation. But as the fault lies with the State Government, it is incumbent upon the financial institutions to take every possible step to revive the Unit which also is the intention of the Act. This submission is made obviously on the basis of the decision of the Apex Court in Maharashtra Tubes Ltd. Vs. State Industrial and Investment Corporation of Maharashtra Ltd. and Another, wherein their Lordships observed that "the main thrust of this special legislation is at revival or rehabilitation of the sick industrial undertaking and it is only when it is realised that the same is not feasible that the option of winding up of the Unit can be resorted to."

Thus, it cannot be denied that the basic idea is to revive sick units, if necessary, by extending further financial assistance after thorough examination of the Unit by experts and only when the unit is found to be no more capable of rehabilitation, the option of winding up may be resorted to. But, the question is, should financial assistance be provided time and again and every time the unit becomes sick or is there a stage at which it has to be stopped. According to the petitioner, it should go on and on, whereas according to the opp. parties it can go on up to a particular stage and no further. Indeed, keeping in mind the intention of the legislature a unit should be assisted up to a point and up to a particular limit but further assistance or rehabilitation has to be stopped at a point of time and this is a question that can best be determined by those who understand the problems--those who possess expertise in the field. In the case at hand, the Board after taking all aspects into consideration has come to a prima facie opinion that it is not feasible to revive or rehabilitate the company. It was, therefore, prima facie of the opinion that it would be just and equitable to wind up the sick industrial company as the pro moters are not in a position to garner the funds required for financing the cost of the scheme framed u/s 18 of the Act. The order has been passed after taking all relevant aspects that need to be considered in the matter like the one at hand.

9. In the aforesaid view of the matter, when the rehabilitation package on two previous occasions repeatedly failed to yield any result and the promoters of the company have failed to show any initiative for revival of the Unit, we are of the opinion that the prima facie finding of the Board that taking the stock of entire position and relevant factors into consideration, it would be just and equitable to wind up the sick unit, cannot be faulted with. The petitioners have not been able to bring anything on record to show that there has been infraction of any Rule or established procedure by the Board in coming to such a decision, or the decision/opinion is otherwise illegal calling for interference by this Court in a writ jurisdiction at this stage. Similarly, we also do not find any reason to interfere with the order in Annexure-2 whereby the IPICOL has called upon the petitioners to clear up the outstanding dues amounting to Rs, 83,47,932/- as in the facts and circumstances of the case, the petitioners, will be free to avail protection available under the Act, in case any proceeding for recovery of dues is initiated against it.

10. In the result, the writ application stands dismissed.

P.K. Mohanty, J.

11. I agree.