

(2010) 07 DEL CK 0226

In the Delhi High Court

Case No : LA No. 13842 of 2008 in CS (OS) No. 1211 of 2008

PCL Enterprises Limited

APPELLANT

Vs

Royal Cushion Vinyl Products Pvt. Ltd.

RESPONDENT

Date of Decision : 07-07-2010

Acts Referred:

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15(1), 22, 22(1)

Citation : (2010) 118 DRJ 743

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : Vikram Jetley, for the Appellant; Sanjay Sood, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Gaur, J.—This is Defendant's application for staying the proceedings in this suit for recovery of Rs. 30,40,000 pertaining to a commercial transaction between the parties. Defendant claims that its reference to the Board of Industrial and Financial Reconstruction, New Delhi (hereinafter referred to as the "BIFR") u/s 15(1) of the Sick Industrial Companies (Special provisions) Act, 1985, (hereinafter referred to as "SICA") has been registered on 14th June, 2000. Section 22 of the Sick Industrial Companies (Special provisions) Act, 1985 has been invoked for suspension of the present proceedings on the strength of registration of the aforesaid reference of the Defendant-Company,

2. In response to this application, the stand of the Plaintiff is that the subject matter of the civil suit is not covered by the proceedings pending before the BIFR and this application has been filed in November, 2008, whereas registration of the reference of the Defendant with the BIFR was way back in the year 2000. It is the specific stand of the Plaintiff in the reply to this application that the tendency of the reference of the Defendant before the BIFR is of no consequence as on 19th December, 2005 Defendant had made part payment of Rs. 5,00,000 to the Plaintiff towards the suit amount and the Defendant is very much running the business and the Defendant-Company has not become sick.

3. At the hearing of this application, Counsel for the Defendant has not disputed that part payment of Rs. 5,00,000 was made by the Defendant-Company to the Plaintiff in the year 2005 and that the Defendant-Company is doing its business in usual course.

4. How can the Defendant-Company be then treated as a sick unit? Defendant's Counsel has failed to answer and had simply stated that Defendant's reference petition is pending before the BIFR. This is not enough. The Defendant has to show that the dues, as claimed in this suit, are the part of the Scheme for rehabilitation. It is so said in view of the following dictum of the Apex Court in Deputy Commercial Tax Officer and Others Vs. Corromandal Pharmaceuticals and Others, :

it will be reasonable to hold that the bar or embargo envisaged in Section 22 (1) of the Act (SICA) can apply only to such of those dues reckoned or included in the sanctioned Scheme.

5. The aforesaid legal position stands reiterated in the decisions reported in Cement Corporation of India Ltd. and Others Vs. M.P. Joseph, .

6. Since the Defendant has failed to show that the subject matter of this suit is included in the sanctioned Scheme, therefore, the present proceedings cannot be put on hold. Resultantly, this application is dismissed with costs of Rupees ten thousand only.

7. This I.A. stands disposed of accordingly.

CS(OS) No. 1211/2008

Defendant is granted four weeks time to file written statement with documents, if any. Replication thereto, if any, be filed within two weeks thereafter. List before the Joint Registrar on 4th August, 2010 for completion of pleadings, filing of documents and admission/denial of documents.

List before the Court on 22nd September, 2010, for hearing and framing of Issues.