
(2008) 11 RAJ CK 0027
In the Rajasthan High Court

Perfect Thread Mills

APPELLANT

Vs

None

RESPONDENT

Date of Decision : 25-11-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Companies (Court) Rules, 1959 — Rule 9

Citation : (2009) 3 RLW 2234

Hon'ble Judges : Prakash Tatia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prakash Tatia, J.—Heard learned Counsel for the petitioner.

2. The petitioner-company has submitted this application under Rule 9 of the Companies (Court) Rules, 1959 read with Section 151 CPC for seeking further directions pursuant to the order passed by this Court in S.B. Civil Petition No. 5/2000 decided on 14.10.2008.

3. It will be appropriate to narrate brief facts leading to filing of this application by the petitioner.

4. Vide order dated 28th Sept., 1999 the recommendations were sent to this Court by BIFR after rejection of appeal by AAIFR vide order dated 2.12.1999 for winding up" the petitioner-company for taking appropriate action for completion of winding up of the company. In view of the above recommendations, the S.B. Civil Petition No. 5/2000 was registered before this Court. Several proposals for revival of company were submitted and ultimately, vide order dated 14.10.2008 this Court in S.B. Company Application No. 3/2004 in terms of the prayer made in 10th additional affidavit submitted by the petitioner-company for taking note of all the subsequent events and allowed modification in scheme and held that in changed circumstances, there is no justification for winding up of the company. The company was permitted to make payment of OTS of dues amount as per the

sanctioned scheme by or before 31.10.2008. The petitioner-company submitted that the order of this Court dated 14.10.2008 has been complied with and as per the order of this Court and the amount has been paid to the various creditors. The payment made by the petitioner-company by 31.10.2008 is more than Rs. 2 crores. The petitioner submitted that this Court has already rejected the recommendations sent to the Court for winding up the petitioner-company, which is amply clear from the order passed by this Court in S.B. Civil Petition No. 5/2000.

5. According to learned Counsel for the petitioner, the petitioner was allowed to move application after 31.10.20CG so that appropriate directions can be issued after seeing the conduct of the petitioner and after seeing whether the petitioner has paid the amount in time as agreed by it. According to petitioner when the recommendations for winding up of the company has been rejected by this Court, the appropriate order and consequential order may be passed of setting aside the orders of the AAIFR dated 22nd Dec, 1999 and order passed by the BIFR dated 28.9.1999 and the matter may be remanded back to BIFR with direction to the BIFR to reconsider the matter afresh for revival of the company in accordance with law- under the changed circumstances and in the light of observation made by this Court in detailed order passed in S.B. Company Application No. 3/2006 dated 14.10.2008.

6. Learned Counsel for the petitioner submitted that the recommendations sent by BIFR dated 28.9.1999 has already been rejected by this Court by detailed order, which amount to setting aside the order dated 28.9.1999 but the petitioner feels that there may be necessity of specific order setting aside the order dated 28.9.1999 and mere rejection of the recommendations sent to this Court may not help the petitioner in getting further relief for which the petitioner became entitle, in the changed circumstances. It is ted that petitioner"s conduct is bona fide and petitioner has paid the huge amount and is making all efforts for running the company, which has been demonstrated by the petitioner and which has been taken note of by this Court in its order dated 14.1C.:03. It is submitted that after setting aside the orders dated 28.9.1999 and 22nd Dec, 1999, the matter may be remanded back to BIFR. Learned Counsel for the petitioner relied upon the judgment of the Madhya Pradesh High Court delivered in the case of Board for Industrial and Financial Reconstruction Vs. Gwalior Synthetics Pvt. Ltd., and another judgment delivered by the Bombay High Court in Foard For Industrial & Financial Reconstruction v. B.R. Steel Products Ltd. reported in (2001) 103 Comp Cas 133 (Bom.).

7. Learned Counsel Shri Dinesh Mehta, seriously opposed the prayer and submitted that the company application has been disposed of by this Court vide order dated 14.10.2008 passed in S.B. Civil Petition No. 5/2000 and the petitioner is seeking review of the order dated 14.10.2u08 in the garb of the application filed u/s 151 CPC as well as under Rule 9 of the Rules of 1959. It is also submitted that this Court rightly and consciously merely rejected the

recommendations for winding up of the company and did not choose to remand the matter back to the BIFR by order dated 14.10.2008. It has been done so consciously because of the reason that sending back the matter to the BIFR has its serious and several consequences, which will result prejudicial and disadvantageous to the number of unsecured creditors, who 5 obtained the degrees or who may seek the recovery of the amount of debts from the petitioner company. There will be bar against those recovery proceedings. It is also submitted that if the company is willing to move any fresh petition before the BIFR, then they may do so then that matter may be BIFR, under their, assumed right to move application before considered by the BIFR afresh, but there will be no stay or injunction against the recovery proceedings and particularly, recovery proceedings in a case where one of the unsecured creditor whose petition is pending before this Court is seeking recovery from the petitioner-company. Learned Counsel Shri Mehta also submitted that the petitioner paid amount to secured creditors, but that also has been paid out of the fund which it received because the acquisition of land of petitioner company. Learned Counsel Shri Mehta also submitted that the company will have to show very many factors for maintaining the petition before the BIFR if they would move fresh.

8. Learned Counsel Shri P.K. Bhansali also supported the contention submitted by learned Counsel Shri Mehta and in addition to the above, submitted that the company-petition has already been disposed of and the net worth of the company is not known so as to grant any relief to the petitioner-company and if the matter is sent back to the BIFR then that will be seriously prejudicial to the interest of all other creditors.

9. I considered the submissions of learned Counsel for the parties. This Court was conscious of the fact that petitioner-company assured for payment to the secured creditors and took some time and earlier defaulted also, but this Court finding some bonafide in the fresh offer of the petitioner-company gave opportunity to the petitioner to make the payment as per their 10th additional affidavit for which other party agreed. Therefore, this Court while accepting the proposal of the company granted permission to both the parties vide order dated 14.10.2008 that in case of moving any application by any of the secured creditor referred in the order dated 14.10.2003, upon failure of the company in complying with the order dated 14.10.20.08 further proceedings will be taken in accordance with law and the Company Petition No. 5/2000 will revive automatically. At the same time, it was made clear that in case there will be need of any further order for the company then the company will be free to move appropriate application after 31.10.2008 upon which appropriate order will be passed. The public interest, interest of share holders and creditors, the company's employees etc. are the paramount consideration in the company matters when any relief of winding up or its re-structure or sanction of any settlement is prepared for. So far as company's position is concerned, that cannot be disputed to be better than the position, which was in existence before

14.10.2008. The company was facing the winding up proceedings and it continued for long several years, more than decade. Thereafter, the company paid the amount to the secured creditors as per its Commitment submitted before this Court and this Court held that "...there will be no need to wind up the company because of the sanction approval and modification of the scheme/ arrangement by the order dated 14.10.2003 passed in S.B. Company Application No. 3/2006...." The company further got the better position as the recommendations sent by the AAIFR was rejected by this Court.

10. In the case of Board For Industrial Financial Reconstruction v. Gwalior Synthetics Pvt. Ltd. (supra) the directors of the respondent-company filed an application u/s 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, for a declaration that the Company was a sick unit and for steps to be taken for its Rehabilitation., On this application, the BIFR passed an order recommending that action be taken u/s 20 of the Act. Proceedings were initiated for winding up of the company by the court. Pending these proceedings, the company moved the BIFR for reconsideration of the matter on the ground that the financial position of the company has since improved and it had satisfied the demands of several of its creditors including the M.P. Financial Corporation. The BIFR refused to reconsider the matter on ground that it had no jurisdiction to review its earlier decision. In the background of these facts, the sick company submitted petition before the M.P. High Court and sought relief that BIFR may be directed to reconsider the matter in changed circumstances. It will be worthwhile to mention here that in the case of Gwalior Synthetics Pvt. Ltd. (supra) the High Court did not reject the recommendations of the BIFR for winding up of the company, yet the M.P. High. Court after relying upon the judgment of the Hon"ble Apex Court delivered in the case of Crescent Iron & Steel Corporation Ltd. v. Union of India reported in (1992) 2 SCC 680 issued direction to the Board to reconsider the matter in the light of changed circumstances after observing that the observation of BIFR that it had no jurisdiction to review its order shall not subsist, the M.P. High Court directed that the BIFR would now proceed in the entire matter in accordance with law.

11. In the case of Board For Industrial Financial Reconstruction v. B.R. Steel Products Ltd. (supra) the facts were that the BIFR recommended winding up of the company after holding that it was not in position to make its net worth positive. That finding was affirmed by the appellate authority by rejecting the company's appeal on 15th March, 1994. On August 14, 1997, two persons purchased the entire share capital of the company and took over it. The new management inducted funds to the extent of Rs. 3,17,00,00/- into the company. Out of this sum, Rs. 1,67,55,000 was paid to the bank the secured creditors of the company, in full and final settlement of their dues. The new management also paid a sum of Rs. 1,35,00,000/- to the workers in full and final settlement of their dues and. taking note of these facts, the Bombay High Court observed that the facts showed that the new management had made genuine efforts to rehabilitate the company. The circumstances as they prevailed at the time when

the order-was passed by the BIFR and by the Appellate Authority did not exist at present. The Bombay High Court also held that order passed by the BIFR and the Appellant Authority had lost their relevance at present stage and thereafter, held that in above circumstances, it would not be just and equitable to order the winding up of the company and directed the BIFR to reconsider the whole issue by taking into account the changed fortunes of the company.

12. As observed above, the paramount consideration, which rappsports the interest of all not only the company, but it supports the welfare of the employees, creditors" interest, may there be secured or unsecured creditors. The fact situation in the present case is also that there were genuine efforts of the company in making the payment to the creditors referred in the order dated 14.10.2008 passed in S.B. Civil Company Application No. 3/2006.

13. Now whether granting any relief to the petitioner will amount to review of the order passed in Company Petition No. 5/2000 is concerned, a bare reading of the order dated 14.10.2008 will show that by order dated 14.10.2008 all the parties were given liberty for seeking appropriate directions and orders. That order was passed in the presence of all the parties and that order dated 14.10.2008 passed in Company Petition No. 5/2000 has not been challenged by any of the parties. By same order, the company was permitted to move appropriate application of any appropriate order. Therefore, there is no bar against pertaining the application of petitioner company at the stage. It is true that if company moves application before the BIFR afresh then the entire procedure will have to be followed. The matter was pending before the BIFR since 1987 and asking the company now to submit a fresh application and initiate afresh proceeding will be a futile exercise in the changed circumstances referred hereinabove. The BIFR is competent to look into ail the facts, which are relevant in the changed circumstances, which may be favourable to the company and which may be favourable to the creditors, which may be disadvantageous the. company, which may be disadvantageous, to the creditors and other all factors and may pass an appropriate order in accordance with law because of the reason that the order passed by the BIFR dated 28th Sept., 1999 and AAIFR dated 22nd Dec., 1999 lost their all significance and effect in view of the order passed by this Court in Company Petition No. 5/2000 dated 14.10.2008 and holding that there will be no need to wind up the company because of sanction approval and modification of the scheme/arrangement by order dated 14.10.2008 further passed in S.B. Civil Company Application No. 3/2006. That order clearly rejected the recommendations of the BIFR dated 28.9.1999 and which were upheld by AAIFR vide order dated 22nd Dec, 1999, which amount to setting aside of the said two orders.

14. In view of the above, the application is allowed. The petitioner is permitted to submit a proper petition before the BIFR to brought to the notice of the BIFR all the changed circumstances on the basis of which, the BIFR may reconsider the petitioner"s prayer. The BIFR shall Give full opportunity to all concerned before

deciding the prayer of the petitioners accordance with law.