

(2006) 04 AHC CK 0272
In the Allahabad High Court

Pradeep Jain

APPELLANT

Vs

Juggilal Kamlapat Jute Mill Co. Ltd.

RESPONDENT

Date of Decision : 25-04-2006

Acts Referred:

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15, 18, 19, 22

Citation : (2007) 137 CompCas 799

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—In this creditor's winding up petition filed after giving statutory notice, a return has been filed stating that the company was declared as "sick industrial undertakings" and the matter is still pending before the Board for Industrial and Financial Reconstruction.

2. In the counter affidavit of Arvind Kumar Dave, it is stated that reference was registered by the Board for Industrial and Financial Reconstruction as Case No. 149 of 1994. The company was declared a sick industrial company and the IFCI appointed as "operating agency". The Board for Industrial and Financial Reconstruction sanctioned a scheme for rehabilitation on November 20, 1995, u/s 18(4) read with Section 19(3) of the Sick Industrial Companies (Special Provisions) Act, 1985, to be implemented within ten years. Since the scheme could not be implemented, the Board by its order dated July 5, 2004, found that the company should be wound up on which the Misc. Company Application No. 1 of 2004 was registered in this court.

3. The order of the Board for Industrial and Financial Reconstruction was challenged in the appeal which was allowed on September 5, 2005, and the matter was sent back to the Board for Industrial and Financial Reconstruction. The MCA No. 1 of 2004 was dismissed on October 18, 2005.

4. The matter is still pending before the Board for Industrial and Financial

Reconstruction for finalisation of scheme of rehabilitation u/s 22(1) of the Act.

5. This court has already taken a view that the bar u/s 22(1) of the Sick Industrial Companies (Special Provisions) Act 1985, is applicable as soon as the reference is received u/s 15(1) of the Act and in such case no fresh company petition to wind up the company shall lie or to be proceeded with subject to the exception that it may be instituted or proceeded with the sanction of the Board for Industrial and Financial Reconstruction and thus the creditor's winding up petition, during the pendency of the proceedings before the Board for Industrial and Financial Reconstruction, is not maintainable.

6 In the present case the petitioner has not applied to the Board for Industrial and Financial Reconstruction for the permission to file company petition, and as such, no exception can be taken.

7. The company petition is accordingly dismissed at this stage with liberty to the petitioner company to either apply to the Board for Industrial and Financial Reconstruction for permission to file a company petition to wind up the company or await the conclusion of the proceedings under the Act of 1985. It goes without saying that u/s 22(5), the period of limitation during the pendency of the proceedings before the Board for Industrial and Financial Reconstruction or Appellate Authority for Industrial and Financial Reconstruction under the Act of 1985, shall remain suspended.