

(2010) 08 JH CK 0097

In the Jharkhand High Court

Case No : Company Appeal No. 2 of 2010

Rajiv Sachdeva

APPELLANT

Vs

Rajhans Steel Ltd. (In liquidation), Anjane Ferro Alloys Ltd.,
Diversified Vyapar Pvt. Ltd. and Bihar State Industrial Credit
and Investment Corporation

RESPONDENT

Date of Decision : 12-08-2010

Acts Referred:

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15, 20, 20(1),
20(2), 22

Citation : (2010) 4 JLJR 521 : (2011) 3 BC 168 : (2011) 6 RCR(Civil) 1681

Hon'ble Judges : Sushil Harkauli, J;D.N. Patel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. We have heard the learned Counsel for the Appellant at length.
2. The Appellant is the promoter/ex-management of Rajhans Steel Ltd. (in liquidation) (hereinafter referred to as the Company, for short).
3. Bereft of the long drawn out facts relating to the history of this litigation which will only cause confusion, the basic facts are that the Company became sick, its case was considered by the BIFR under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as SICA). u/s 20 of SICA, the BIFR recommended that the Company be wound up as its rehabilitation was not possible.
4. Pursuant to the recommendation of the BIFR, the learned Company Judge ordered the company to be wound up. It has not been pointed out that there was any appeal u/s 25 of the SICA to the AAIFR against the said order/recommendation of the BIFR. Thus the order of BIFR which can be challenged only by way of such appeal, and thereafter by way of a writ petition, attained finality.

5. After the order of winding up, the liquidator took charge of the assets and advertised the assets for sale.

6. At this stage the promoters i.e. the Appellant submitted a scheme of rehabilitation before the learned Company Judge and sought consideration of the same. By the impugned order dated 25.06.2010 the learned Company Judge has directed that he is not inclined to sanction the revival package and that the winding up proceedings will continue, and that fresh advertisement for sale will be issued in terms of earlier orders dated 4.12.2009 and 11.12.2009. It may also be mentioned here that the winding up matter was pending before the learned Company Judge since 1999 and for about ten years which had elapsed the promoters / Ex-Management of the company in liquidation could not revive the industry and only after bids were offered pursuant to the sale notice published by the liquidators the alleged revival package was submitted by the DVPL to the prejudice of the bidders. It would also be relevant to point out here that DVPL was one of the bidders. Accordingly it was held in the impugned order by the learned Company Judge that this revival package, which was to be financed by the DVPL, was a backdoor method of acquiring the company in liquidation.

7. The basic grievance of the Appellant is firstly that the LA. No. 746 of 2010 filed by the Respondent No. 2 before the Company Judge was not listed on that particular date. This is at best a technical argument because the basic question which is discussed below in this order does not involve the Respondent No. 2 or his I.A. No. 746 of 2010.

8. The basic question to be examined in this appeal is, whether it is open to the promoters to submit a rehabilitation package before the Company Judge in proceedings for winding up initiated on the recommendation of the BIFR, at any stage of such winding up proceedings and to claim entitlement to consideration of such rehabilitation package by the Company Judge.

9. The scheme of SICA is as follows.

10. By Section 32, the Act has been given overriding effect.

11. The case of a sick company is referred to the BIFR u/s 15.

12. An enquiry is made into the working of the Sick Industrial Companies by the BIFR. During such enquiry, distress proceedings against the company remain suspended u/s 22 of the SICA.

13. The BIFR examines the feasibility of rehabilitation.

14. If the Board comes to a conclusion that rehabilitation is not possible, it recommends winding up of the sick company u/s 20(1). Such order of the Board is appealable before the AAIFR u/s 25. Section 26 bars the jurisdiction of Civil Courts or other authorities in respect of any action taken or to be taken pursuant to any power conferred by or under SICA.

15. If an interested person is not satisfied even with the appellate order of

AAIFR, the only course open to such aggrieved person is to challenge the order of BIFR or AAIFR in writ jurisdiction of the High Court.

16. It is not open to any aggrieved party to question the orders of either the BIFR or the AAIFR under the Company Jurisdiction of the High Court. Section 20(2) of the SICA mandates High Court by using the word "shall" to wind up the sick company on the basis of the opinion of the Board.

17. In this case, in the garb of the scheme of rehabilitation, the promoters are basically trying to question the order of the BIFR which says that rehabilitation is not possible and consequently the Company should be wound up.

18. Not having been questioned in appeal and thereafter in writ jurisdiction, the order and recommendation of the Board has attained finality, and the High Court by virtue of Section 20(2) of the SICA (which at the cost of repetition has overriding effect) is bound to proceed to wind up the Company.

19. We may also point out here that accepting the contention of the Appellant that it is open to the promoters or the company or other persons to continuously pester the Company Judge with one after another scheme of rehabilitation would result in indefinite stalling of the winding up proceedings to the detriment of the creditors and workers by depleting the resources of the sick company under winding up, by passage of time.

20. That being the position, we are of the opinion that learned Company Judge was right in refusing to sanction the alleged scheme of rehabilitation and to direct the winding up proceedings to continue.

21. In the above view of the matter, the reasons given in the impugned order it may not be very material, but still it can be mentioned that the learned Company Judge has come to a conclusion that the rehabilitation package offered is a ruse to dispose of the assets of the Company in liquidation, in favour of the Respondent No. 3, namely M/s. Diversified Vyapar Pvt. Ltd. (hereinafter referred as DVPL)

22. The decision of the Supreme Court in the case of Meghal Homes Pvt. Ltd. Vs. Shree Niwas Girni K.K. Samiti and Others, has been relied upon from the side of the Appellant. That case which was decided by the Supreme Court arose out of a "creditors winding up petition", and not on the recommendation-of the BIFR under the SICA. While considering the creditors winding up petition the Court is not mandated to wind up a company. The (Company Judge) Court has to be convinced that it is "just and equitable" that the company should be wound up. Several factors have to be taken into consideration by the Company Judge in such matters including the interest of the workers and other creditors. However, even in the decision cited the Supreme Court has cautioned that while considering a scheme or arrangement in terms of Section 391 to 394A and Section 466 the Court has to see the bonafides of the scheme and to ensure that the scheme which has to be forwarded is not a ruse to dispose of the assets of

the company in liquidation and whether such proposal satisfies the elements of public interest and commercial morality. The Supreme Court has further said that if the Court finds the scheme to be a ruse to dispose of the assets by a private arrangement, then it is the duty of the Court to dispose of the properties of the company in liquidation, realize the assets and distribute the same in accordance with law.

23. Therefore, the decision cited is of no benefit to the Appellant.

24. The Appellant has relied upon another decision of the Supreme Court in the case of Vijay Kumar Karwa Vs. Official Liquidator, Rohtas Inds. Ltd., , for the proposition that this appeal must be admitted and must be heard after notice to the parties. The argument basically means that this Court should not decide the appeal today but it must merely admit the appeal for hearing. We are unable to agree. In the case cited the appeal had been disposed of in limine without giving any reason as is clear from paragraph No. 4 of that law report. In that context the Supreme Court said that being a statutory appeal it should not have been disposed of in limine.

25. We are unable to interpret the decision of the Supreme Court to mean that every appeal, however frivolous, must be admitted for hearing and thereby kept pending, thus holding up the winding up proceedings which as already stated is detrimental to the valuation of the Company's assets which will get depleted by the passage of time.

26. We are of the opinion that the ratio of the Supreme Court decision is only that such appeals should not be disposed of In limine without reasons.

27. From the side of the Appellant another decision of the Supreme Court in the case of S.K. Gupta and Anr. v. K.P. Jain and Anr. reported in (1979) 49 Comp Cas 342 has been relied upon. That decision is in respect of Company Petition No. 86 of 1974 which was moved for according sanction to a scheme of arrangement. It has nothing to do with the winding up proceeding on the recommendation of the BIFR.

28. In view of what has been stated above we are of the opinion that the learned Company Judge was right in refusing to consider sanctioning the scheme of rehabilitation submitted before it in that winding up proceedings, where the winding up order had been passed on the recommendation of the BIFR, which recommendation had attained finality and which recommendation was binding upon the Company Judge in view of Section 20(2) of the SICA, and who was bound to proceed with the winding up of the company in view of the legislative mandate in Section 20(2) of the SICA.

29. Accordingly this Company Petition being without merit is dismissed.