(2005) 10 BOM CK 0043

In the Bombay High Court

Case No : Writ Petition No. 5140 of 2005

Ravi Spinning Ltd. and Others APPELLANT

Vs

Union of India (UOI) and Another RESPONDENT

Date of Decision : 21-10-2005

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(4), 5(1)
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15, 16, 17, 18, 20

Citation : (2006) 2 MhLj 145

Hon'ble Judges : S.T. Kharche, J;D.D. Sinha, J

Bench : Division Bench

Advocate : A.C. Dharmadhikari, for the Appellant; S.W. Deshpande and Anand Parchure, for the Respondent

Judgement

D.D. Sinha, J.—Heard Learned Counsel for the petitioner as well as Learned Counsel for the respondent.

2. Rule made returnable forthwith by consent of the parties.

3. The question which falls for consideration in the present writ petition is, whether after the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, came into force, in view of provisions of Section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985, the appeal preferred by the petitioner u/s 25 of the said Act, against the order passed by the Board u/s 20 of the Sick Industrial Companies Act is maintainable?

4. Mr. Dharmadhikari, Learned Counsel for the petitioner, contended that Section 25 of the Sick Industrial Companies (Special Provisions) Act, 1985, provides for statutory appeal for an aggrieved person against the order passed by the Board under the provisions of the Act within a stipulated period. It is submitted that in the instant case the reference u/s 15 of the Act was made to the Board and the Board passed an order u/s 20 of the Act dated 12-3-2003 and directed winding up of the petitioner-Company. The petitioner aggrieved by the said order, filed

appeal before the Appellate Authority u/s 25 of the Act which is pending for final adjudication. However, in the meantime, the respondent No. 2 issued communication dated 23rd September, 2005, for sale of the property of the petitioner situated at Plot No. C-16, 17, 18 and 18, MJ.D.C, Village Shivar, Tq. and Distt. Akola, for recovery of outstanding loan amount against the petitioner. It is further contended that at the later point of time the respondent-Sicom issued the public notice dated 27-7-2005 for sale of the said property and the auction sale is scheduled on 5th October, 2005.

5. Mr. Dharmadhikari, Learned Counsel for the petitioner, contended that the provisions of Section 15 of the Sick Industrial Companies Act are not applicable so far as the appeal preferred u/s 25 of the Act and are attracted only in respect of pending reference before the Board at the time of commencement of the Act and fresh reference if filed after the commencement of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. It is contended that the pending reference stands abated and fresh reference is prohibited under the provisions of Section 15 of the Act. It is, therefore, contended that, in view of the abovereferred legal position, the appeal preferred by petitioner u/s 25 of the Act does not stand abated.

6. Mr. Dharmadhikari, Learned Counsel for the petitioner further contended that, in view of Section 22 of the Sick Industrial Companies Act, where an appeal u/s 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956, or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority. It is, therefore, contended that in the instant case, the proceedings initiated by respondent-Sicom for sale of the property of the petitioner in view of provisions of Section 22 are not valid, particularly when the same are not initiated by the respondent-Sicom with the consent of the Appellate Authority, and therefore, the public notice for sale dated 27-7-2005 as well as auction of sale of property which is scheduled on 5th October, 2005, both are invalid in law and may kindly be quashed and set aside.

7. Mr. Dharmadhikari, Learned Counsel for the petitioner further contended that in the instant case, though the reference was initiated u/s 15 of the Sick Industrial Companies Act, the inquiry is completed in view of Section 16 and the final order of winding of the petitioner-company is passed on 12-3-2003 by the Board u/s 20 and therefore, it will not be correct to say that when the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, came into force on 21-6-2002, the proceedings under reference can be said to be pending before the Board and would stand abated in

view of second proviso to Section 15 of the Act.

8. Mr. Parchure, Learned Counsel for respondent-Sicom, on the other hand, contended that in view of proviso to Section 15 of the Act, no reference is permissible to the Board for industrial and financial reconstruction after the commencement of the Securitisation Act, 2002, where financial assets have been acquired by any Securitisation company or reconstruction company under Sub-section (1) of Section 5 of that Act. Similarly, in view of second proviso, if, on or after the commencement of the Securitisation Act, 2002, where a reference is pending before the Board for Industrial and Financial Reconstruction, such reference shall abate if the secured creditors, representing not less than three-fourth in value of the amount outstanding against financial assistance disbursed to the borrower of such secured creditors, have taken any measures to recover their secured debt under Sub-section (4) of Section 13 of that Act. Mr. Parchure, Learned Counsel further contended that in view of the abovereferred proviso to Section 15, it is apparent that the reference pending at the time of the commencement of the Act stands abated and there is a prohibition for preferring reference to the Board, and appeal being a continuation of the reference, by necessary implications, also stands abated. Hence, the action which is initiated by the respondent Sicom is just and proper and is also sustainable in law.

9. Mrs. S. W. Deshpande, Learned Counsel for respondent No. 1, also adopted the contentions canvassed by the Learned Counsel for respondent No. 2 -Sicom and states that the action is just and proper.

10. We have considered the contentions canvassed by the respective counsel and perused the relevant provisions of the Act. The second proviso to section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985, reads thus:--

Provided also that on or after the commencement of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, where a reference is pending before the Board for Industrial and Financial Reconstruction, such reference shall abate if the secured creditors, representing not less than three-fourth in value of the amount outstanding against financial assistance disbursed to the borrower of such secured creditors, have taken any measures to recover their secured debt under Sub-section (4) of Section 13 of that Act.

The plain reading of the abovereferred proviso makes it implicitly clear that after the commencement of the Securitisation Act, 2002, which came into force on 21st June, 2002, reference u/s 15 if was pending before the Board of Industrial and Financial Reconstruction, the said reference stands abated in view of the abovereferred proviso.

11. In the instant case, it is not in dispute that on 21-6-2002 the reference made by the petitioner Company u/s 15 of the Act was pending, though the order in the said reference was passed on 12-3-2003 u/s 20 of the Act. Since by operation of provisions of section 15 of the Sick Industrial Companies (Special

Provisions) Act, 1985, all references pending before the Board on 21-6-2002 stands abated, the question of further inquiry u/s 16 or passing of order u/s 17 or preparation of scheme u/s 18 or passing of any order u/s 20 in such reference proceedings does not arise. After the reference stands abated, the proceedings under reference automatically comes to an end and question of any inquiry or passing of order or preparation of scheme as contemplated under Sections 16, 17, 18 etc. of the Act cannot be undertaken in the proceedings which are already abated.

12. In the instant case, since the reference itself stands abated in view of the second proviso to Section 15 of the Sick Industrial Companies Act on 21-6-2002, the subsequent order, passed in the same proceedings u/s 20 on 12-3-2003 is an order passed in the proceeding which was already abated and therefore, the same is totally invalid order, which, in our view, is unsustainable in law. The contentions canvassed by the Learned Counsel for the petitioner in this regard, in our view, are misconceived, devoid of substance and therefore, rejected.

13. Similarly, since the order dated 12-3-2003 passed u/s 20 of the Act is being invalid in law, the appeal which is preferred against the said order u/s 25 of the Act is an appeal against the invalid order and in our view also cannot be sustained in law. Therefore, we answer the question in negative.

14. At this stage the Learned Counsel for the petitioner has submitted that under the R.B.I, guidelines there is a scheme for one time settlement of the outstanding dues and therefore, proposal dated 20th September, 2005, is already made to Sicom. It is, therefore, prayed that direction be given to the respondent-Sicom to consider the said proposal as per R.B.I, guidelines and take a decision in this regard.

15. Mr. Parchure, Learned Counsel for the Hemilal states that if the decision is not taken already on the said proposal, the same would be taken by Sicom as per R.B.I, guidelines as well as any other law or rules applicable in this regard within ten days from the date of receipt of this judgment. Mr. Parchure, Learned Counsel for the respondent-Sicom further stated that till the decision is taken on the abovereferred proposal, the auction proceedings will be deferred.

16. For the reasons stated hereinabove, rule is discharged. No order as to costs.

