(1993) 12 MAD CK 0020

In the Madras High Court

Case No : Writ Petition No. 21065 of 1993 and W.M.P. No. 32994 of 1993

Renowned Auto Products Mfrs. Ltd. APPELLANT

Vs

Board for Industrial and Financial Reconstruction RESPONDENT

Date of Decision : 17-12-1993

Acts Referred:
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 14, 15(1)

Citation : (1995) 82 CompCas 646

Hon'ble Judges : Janarthanam, J

Bench : Single Bench

Advocate : R. Krishnamurthy, for the Appellant;

Judgement

Janarthanam, J.—Renowned Auto Products Mfrs. Ltd. (for short, ""the petitioner-company"") it is said is a public limited company

incorporated under the Companies Act, 1956, on May 17, 1977, having its registered office at No. 144, Old Mahabalipuram Road,

Kottivakkam, Madras-41. the authorised share capital of the company is Rs. 150 lakhs and paid-up capital is Rs. 114 lakhs of which 65 per cent.

of the equity capital is held by the promoters and its associates and the remaining 35 per cent. by the public. It is engaged in the business of

manufacture and sale of automobile ancillary components, namely, shock absorbers, dampers, door lifters and other allied automobile components.

it has its manufacturing unit at SIPCOT Industrial Complex, Hosur, Dharmapuri district in Tamil Nadu.

2. It commenced commercial production in the year 1983 and it could not make much headway with the project of manufacture of gas filled shock

absorbers and started incurring continuous losses. Consequently, it decided to retool the factory and rearrange the production facilities for manufacture of the conventional type hydraulic shock absorbers. Despite that, it could not make much progress and had become a sick unit and

for rehabilitation, a scheme had been framed and referred to the Board for Industrial and Financial Reconstruction (BIFR), the first respondent

constituted u/s 15(1) of the sick Industrial Companies (Special Provisions) Act, 1985 (Act No. 1 of 1986 - for short SICA) on April 28, 1988.

3. The Board for Industrial and financial Reconstruction, after deliberation and consultation with the consortium members, namely, (1) Canara

bank, (2) Syndicate Bank, (3) SIPCOT, (4) State Government of Tamil Nadu, and (5) petitioner-company, formulated a draft scheme for

rehabilitation on April 17, 1990, envisaging the following finance funding by the consortium members :

4. Defence of collection of sales tax was made for a period of three years from April 1, 1990, for being recovered in three years from 1993-94.

Despite such rehabilitation scheme coming into operation, the company could not prosper on the expected lines and was unable to honour its

commitments and its entire venture became a colossal failure.

5. The company again sent a modified or revised rehabilitation scheme to the Board for Industrial and Financial Reconstruction which, on

consideration of the same, came to the conclusion that a prima facie case had been made out to wind up the company''s industrial unit. The

company, as against such a decision of the Board for Industrial and Financial Reconstruction, filed Writ Petition No. 17728 of 1993, on the file of

this court seeking the relief of a certiorarified mandamus for issuance of a direction calling for the minutes of the first respondent, the Board for

Industrial and Financial Reconstruction contained in its notice communication dated September 10, 1993, in Case No. 166 of 1988, Bench III,

and to quash the same and further to direct the first respondent-Board for Industrial and Financial Reconstruction - to call for a detailed report

from Canara Bank operating agency on the reasons for failure of the sanctioned rehabilitation scheme and in the light of the report, consider the

revised or modified scheme of rehabilitation put up by the petitioner-company by its letter dated August 19, 1993, and consider the same on the

merits, while the petitioner-company is permitted to continue its operations normally as before. It also filed a W. M. P. No. 27664 of 1993 along with the said writ petition, wherein interim stay of the proceedings pursuant to the order of the Board for Industrial and Financial Reconstruction

contained in the communication dated September 10, 1993, in Case No. 166 of 1988, Bench III, had been granted on September 27, 1993,

pending disposal of the said writ petition.

6. Deferral of payment of the sales tax arrears to the tune of Rs. 16 lakhs came to an end by the lapse of three years by April 1, 1993. The

company, it is said, further submitted an application to the Government of Tamil Nadu praying for extension of the deferral of the payment of the

sales tax for a further period of two years and the government sympathetically considering such a request, sent a letter dated August 17, 1993 to

the Board for Industrial and Financial Reconstruction stating that it had been decided to grant extension of the deferral of sales tax for a further

period of two years from three years to five years, provided the above concession is approved by it. The Board for Industrial and Financial

Reconstruction did not at all consider such a request, which resulted in the filing of the present action, impleading the State of Tamil Nadu, the

Commercial Tax Officer, Hosur, and the Commissioner of Commercial Taxes, Madras-5, as respondents Nos. 2 to 4, praying for issue of a writ

of mandamus directing the first respondent-Board for Industrial and Financial Reconstruction - to consider on the merits the concession granted by

the second respondent for deferral of sales tax for a further period of two years.

7. The company also filed W. M. P. No. 32994 of 1993 praying for interim stay of further proceedings to be initiated by the third respondent

against the petitioner-company, pending consideration by the first respondent on the merits the concession granted by the second respondent for

deferral of sales tax for a further period of two more years.

8. The petitioner-company, which commenced its commercial production in the year 1983, could not successfully thrive and what happened was

that it started incurring heavy losses culminating in its becoming a sick industrial unit and thereby a need arose for the filing of the application for its

rehabilitation to the Board for Industrial and Financial Reconstruction which in turn under a scheme prepared by it rehabilitated it on April 17,

1990, by granting various concessions and getting financial funding from the consortium members, as indicated above. In such process of rehabilitation, the accumulated sales tax arrears were deferred for a period of three years from April 1, 1990.

9. Despite such a concession and financial funding, the petitioner-company could not at all march forward in the sense of a profit earning concern

but on the other hand it started running into losses with no fond hope of making it a viable company, even after considering all possible measures.

The petitioner-company, at that juncture, sought a modified rehabilitation scheme and the Board for Industrial and Financial Reconstruction in turn

after having consultation with the consortium members once and for all, decided to wind up the petitioner-company as there was no possibility of

rehabilitation. Such decision of the Board for Industrial and Financial Reconstruction had become the subject of challenge by resort to the filing of a

writ petition before this court by the petitioner-company and, in fact, it was successful in getting an interim order of stay of operation of the same

pending disposal of that writ petition.

10. The personnel for the Commercial Taxes Department, however, did not keep quite and dormant and they started initiating steps for recovery

of the sales tax arrears from the petitioner-company, as the deferral period granted earlier had expired. Placed in such a predicament situation, the

petitioner-company approached the second respondent for deferral of the sales tax arrears for a further period of two years and the second

respondent, in turn, was prepared to grant such concession of deferral of sales tax as prayed for provided the Board for Industrial and Financial

Reconstruction was ready and willing for such a course. Despite the concession for deferral of sales tax earlier granted by the second respondent,

it did not at all evoke any response from the Board for industrial and Financial Reconstruction. Consequently, the petitioner-company resorted to

the present action for issuance of a mandamus to the Board for Industrial and Financial reconstruction to consider on the merits the concession

granted by the second respondent for deferral of the sales tax for a further period of two years. The moot question that arises for consideration is

whether such a direction can issue in the facts and circumstances of the case.

11. The Board for Industrial and Financial Reconstruction, it appears, had taken into consideration, while making up its mind to order winding up

the petitioner-company, all the pros and cons of the situation in the sense of one of the elements that had been taken into account in such process is

the deferral of sales tax arrears for a further period than the one contemplated earlier. The second respondent was one of the consortium members

and its functionary also participated before ever such a decision was arrived at. Being a party to such a decision, the second respondent-

Government, however, revised its opinion, for reasons best known to it, to grant the concession of deferral of sales tax payment by the petitioner-

company for a further period of two years, subject to the approval of the Board for Industrial and Financial Reconstruction.

12. I am at a loss to understand as to how the Board for Industrial and Financial Reconstruction in the present situation is capable of considering

such a request, inasmuch as the Board for Industrial and Financial Reconstruction cannot do anything towards the winding up proceedings, as a

consequence of order of stay of operation of such proceedings by this court. Consideration of such requisition does not necessarily mean approval

for the grant of such concession. It may also mean disapproval. It is worth while to note at this juncture that the proceedings before the board for

Industrial and Financial Reconstruction, as per the salient provisions, adumbrated u/s 14 of the Sick Industrial Companies (Special Provisions) Act,

are judicial proceedings, that is to say, for any decision taken by it, reasons must be forthcoming. If the Board for Industrial and Financial

Reconstruction expresses disapproval, it would tantamount to a step taken in to the process of winding up, which is not permissible in the present

circumstances, as already indicated. In such a situation, the relief prayed for here is incapable of being granted.

13. The writ petition is, therefore, dismissed, even at the admissions stage and consequently, W. M. P. is also dismissed.

