

(2017) 03 DEL CK 0083
In the Delhi High Court
Case No : WP (C) 6300 of 2015

Rishabh Agro Industries Limited

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 17-03-2017

Acts Referred:

Constitution of India, 1950 — Article 226, Article 227
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15(1), Section 17 (3), Section 18, Section 19 (2)

Citation : (2017) 3 ADDelhi 805

Hon'ble Judges : Ms. Indira Banerjee and Mr. Anil Kumar Chawla, JJ.

Bench : Division Bench

Advocate : Ms. Purni Marwaha, Advocate, for the Petitioner; Mr. Jasmeet Singh, CGSC, for the UOI; Mr. Vishal Mahajan with Mr. S.S. Rai, Advocates, for the Respondents No. 2

Final Decision : Disposed Off

Judgement

Mr. Anil Kumar Chawla, J—The petitioner invoking the jurisdiction of this Court under Article 226 read with Article 227 of the Constitution of India seeks issuance of appropriate writ for setting aside an order dated 12.5.2015 passed by Appellate Authority for Industrial and Financial Reconstruction (AAIFR), New Delhi in short "the impugned order".

2. Facts emerging from the record are that the petitioner company had set up a plant at Roz-ka-Meo, Sohna, Haryana for processing of 2.5 lakh litres of milk per day for manufacture of milk products viz. dairy whitener, butter, ghee, condensed milk etc. The plant was so set up by the petitioner in association with Haryana State Industrial Development Corporation Limited (HSIDC) and Haryana Agro Industries Corporation Limited (HAIC). The cost of the project estimated at Rs.1395 lac was financed by term loans of Rs.450 lac comprising of Rs. 300 lac from IDBI; Rs.75 lac from State Bank of Patiala and Rs.75 lac from Punjab National Bank besides equity share capital of Rs.914 lac and state subsidy of

Rs.31 lac. Subsequent over run of Rs.392 lac was financed by additional term loan of Rs.275 lac by IDBI and equity share capital of Rs.117 lac. The petitioner commenced its commercial production in November, 1994. Initially, though, the petitioner earned profit, due to severe liquidity crunch, it could not meet the repayment obligations of the banks and the financial institutions and its performance was not satisfactory during FY 1996-97 mainly due to liquidity crunch, erratic power supply, rejection of goods by buyers etc. and it incurred losses of Rs.802 lac on overall turnover of Rs.2390 lacs, leading to complete erosion of its net worth. The petitioner thus, made reference to the BIFR under Section 15(1) of Sick Industrial Companies (Special Provisions) Act, 1985 in short "SICA" on 30.6.1997. On 1.12.1997, BIFR declared the company "sick" and appointed IDBI as its operating agency (OA) under Section 17 (3) of "SICA", to examine the viability of the petitioner company and formulate a rehabilitation scheme. It appears that prior to the petitioner company being declared sick by BIFR, the Hon"ble Punjab and Haryana High Court had passed an order of winding up of the company on 5.9.1997 but the Hon"ble Supreme Court vide its order dated 7.9.1998 ordered that no further proceeding of winding up shall be taken before the Hon"ble High Court. It also transpires that in view of the subsequent developments, AAIFR had set aside the order of BIFR and directed the promoter to submit a rehabilitation scheme with BIFR and in pursuance thereof, BIFR once again appointed IDBI as the OA under Section 17(3) of SICA to prepare the draft rehabilitation scheme. Consequently, a rehabilitation scheme came to be prepared. As for the unsecured loan of HSIDC, the DRS provided that the dues of HSIDC (outstanding bridge loan against State subsidy) be settled at RS.30 lac on receipt of state subsidy of Rs.30 lac from the Govt. of Haryana. In case, the State Subsidy is not received, the same was proposed to be settled at Rs.6 lac (@ 20% at par with the secured creditors) against the principal outstanding of Rs. 30 lac, without interest and Rs. 6 lac, being the shortfall if created in future will be brought in by the Strategic investor as unsecured loans. Upon consideration, BIFR approved the scheme with certain modifications and directions inter-alia providing for the settlement of the dues of unsecured creditors (including HSIDC and MMTC) at 20% of the principal outstanding in terms of the DRS. Aggrieved thereof, HSIDC preferred an appeal before AAIFR. Vide order dated 12.5.2015, AAIFR deleted the scheme approved for HSIDC and substituted it to the effect that the dues of HSIDC in respect of its bridge loan be settled at Rs.30 lac i.e.100% of the principal within 60 days from the date on which such payment became due and that, the petitioner company to also pay interest on the principal amount on account of delayed payment, if any, in accordance with the HSIDC policy for such settlements/payments. Aggrieved thereof, the petitioner company has now filed the instant petition for setting aside of the impugned order dated 12.5.2015 of AAIFR. According to the petitioner, the petitioner company had arrived at settlement with all other secured creditors like IDBI, PNB and State Bank of Patiala at 20% of the outstanding amounts as One Time Settlement (OTS) and that, HSIDC - the respondent No.2 represented only 1% of the debts of the total secured creditors

and as per the settled principles of law, the dues accepted by the majority creditors have to be accepted by the minority creditors. Reliance in support thereof is placed upon 2010 (157) Comp. Cas. 149 (Delhi) Oman International Bank S.A.O.G v. Appellate Authority for Industrial and Financial Reconstruction and 2011 SCC Online Kar 367 Canara Bank v. Shimoga Steel Limited. HSIDC—respondent No.2 on its part, however, has taken a plea that it never consented to the proposal in DRS for settling its dues @ 20% of the principal amount and it was so objected to during the course of hearing before BIFR. Also, according to the respondent No.2, the consent of HSIDC was required in terms of Section 19 (2) of SICA and that, there was no linkage between the subsidy payable to the petitioner company by Government and the settlement of the dues of the respondent No.2- HSIDC. It is also a plea of the respondent No.2 that no provision of SICA compels an unsecured creditor to provide concession or write off a part of its dues. Reliance in support thereof, is placed upon (1993) 2 SCC 299 U.P. Financial Corporation v. Gem Cap (India) Pvt. Ltd. and Ors. and 2012 (131) DRJ 294 (DB) Continental Carbon India Ltd. v. Modi Rubber Ltd.

3. It is a matter of record that HSIDC was an unsecured creditor and it did not consent for settlement of its dues for any sum less than payable as per its policy, which provided for the settlement at 100% of the principal within 60 days without interest or payable within one year with interest @ 13%. BIFR however approved a scheme, which provided for settlement of dues of HSIDC at 20% of the principal amount of Rs.30 lacs, which comes to Rs.6 lacs. Having considered the ratio of Oman International Bank's case (supra), the concurrent bench of this Court in Continental Carbon's case (supra) held that an unsecured creditor has the option not to accept the scaled down value of its dues and wait, till the scheme of rehabilitation of the sick company has worked itself out, with an option to recover its debt post such rehabilitation. In a subsequent judgment in Singer India's case (supra), a concurrent bench of this Court however, made a reference to a larger bench on the following questions :

"Whether the decision in Modi Rubber case has not properly appreciated the mandate and scope of Section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 ("SICA"). Which would subsume the questions; Whether the Section vests BIFR with broad and extensive powers to take such measures as are necessary for revival of a sick company; and Whether without consent of unsecured creditors, the scheme for rehabilitation envisaging reduction of their debt its binding on them."

The issue involved in case in hand falls within the purview/scope of the questions referred to a Larger Bench in Singer India's case (supra). We therefore, consider that the case in hand be also referred to the Larger Bench to be considered alongwith Singer India's case.

4. The matter for the purpose, be placed before Hon''ble the Chief Justice for necessary directions.