
(2013) 12 P&H CK 0196
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 24390 of 2013

Satish Thapar

APPELLANT

Vs

Punjab State Industrial Development Corporation Limited

RESPONDENT

Date of Decision : 17-12-2013

Acts Referred:

Citation : (2014) 175 PLR 136

Hon'ble Judges : Sanjay Kishan Kaul, C.J.;Augustine George Masih, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, C.J.—Rule D.B.

Learned counsel for the respondent accepts notice.

At the request of learned counsels for the parties, the petition is taken up for final disposal. M/s. Thapar Foods Limited (hereinafter referred to as "the said Company"), a Company duly incorporated and registered under the Companies Act, 1956, with petitioner as one of the directors was set up with the object to carry on business of rice husking and its allied products also extraction of oils from its by products also to act as growers, buyers, sellers etc., suppliers of paddy, rice and its allied products. The said Company availed a loan from the respondent-Corporation/PSIDC under a loan agreement dated 3.5.1989 of sum of Rs. 90 lacs to be repaid by the year 1995. The loan was, however, not repaid and the financial position of the said Company became precarious to an extent that its net worth was wiped out and it was declared sick by the Board for Industrial and Financial Reconstruction (BIFR) under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "the SICA Act") on 21.2.1998. The endeavor to revive the company thereafter also failed with the result that the BIFR made a recommendation post inquiry for winding up of the said Company on just and equitable ground and the final winding up order was passed on 2.2.2001 by the learned Single Judge of this

Court.

2. It appears that the process post the winding up order being passed was in progress for a number of years and in the meantime, the promoters including the petitioner made arrangement of funds to revive the Company. It is the say of the petitioner that liability of all creditors had been settled and it is thereafter that the learned Single Judge was moved seeking revival of the Company. The application qua this issue is stated to be pending.

3. Insofar as the liability of the respondent/PSIDC is concerned, debt was also met albeit not fully, in view of an OTS (One Time Settlement) Scheme of the said respondent in pursuance where to a proposal was made by the petitioner which was accepted by the respondent, vide letter dated 25.4.2011. The total amount required to be deposited by the petitioner was quantified at Rs. 159.84 lacs to be paid within 90 days of the issuance of the letter. This was, however, made conditional on the company not being a willful defaulter as per RBI guidelines issued, vide circular dated 1.7.2008 since that was one of the condition stipulated in the OTS Policy for Loan-2009. The petitioner duly deposited the amount on 7.7.2011 and requested for issuance of an NOC certificate for submission before the Company Court and release of securities.

4. Instead of issuing an NOC certificate, the respondent, vide their letter dated 27.2.2012 recalled the OTS proposal after having appropriated the amount ostensibly for the reasons set out in the letter, contents of which are reproduced herein under:-

This has reference to your letter dated 9.12.2011 on the above subject vide which various information/documents were submitted by the company to PSIDC.

The documents/information supplied by the company has been analyzed in PSIDC and based on the analysis and the record/documents available, it has been found that the OTS offer submitted by M/s. Thapar Foods Ltd. does not fulfill the eligibility parameters stipulated in OTS Policy for Loans-2009 in terms of Clause 2(1)(i) and 2(1)(ii) of the said policy. A certified copy of the speaking order passed by PSIDC in this regard is enclosed herewith.

5. The detailed order as enclosed with this letter analyzing the financial position of the company seeks to suggest that the company during the period ended 31.12.1994 had earned profit after tax when there was no accumulated losses but net balance carried forward only after meeting depreciation and interest/finance charges for the previous years as also for the period ending 31.12.1994. On this basis, it has been found that the said Company was in a position to clear the entire dues upto the period ended 31.12.1994, but did not clear the entire interest or principal. This, however, is neither here nor there because the Company was declared sick on 21.2.1998 four years after and all revival efforts failed thereafter. RBI guidelines came into force in the year 2008 and a decade before that the net worth of the Company had become negative.

6. In nutshell, the only plea for revoking the OTS is stated to be a view formed by the respondent that the petitioner was willful defaulter. It is this letter which is sought to be impugned in the present writ petition under Article 226 of the Constitution of India and simultaneously praying for direction for issuance of No Dues Certificate.

7. We heard learned counsels for the parties.

8. In our view, the impugned action of the respondent/Corporation cannot be sustained. Infact, the matter does not even brook a debate because the facts show that the said Company infact become sick to an extent where its net worth was wiped out and became negative. Endeavors to revive the company failed. Recommendation was made by the BIFR for final winding up order and the learned Company Judge passed such an order on 2.2.2001. Thus, the question of the company being a willful defaulter does not arise.

9. The promoter like the petitioner apparently made arrangement for finances, so that the said Company could be revived and have cleared the liability of all the creditors including that of the respondent/Corporation though, based on the acceptance of the OTS proposal: Now, when the said company is on the anvil of revival, a spoke is sought to be put in the wheel by the respondent/Corporation claiming without any basis that the said Company was a willful defaulter. It is almost impossible to perceive as to how the company where net worth has become negative which was directed to be finally wound up and can be treated to be a willful defaulter. The only basis recorded is of the company being profitable four years prior to this and the RBI guidelines coming into force a decade later.

10. We are thus, of the view that the respondent/Corporation in pursuance to the OTS proposal even accepted the amount tendered on 7.7.2011 and has sought to rake up this issue after about eight months when the question came of issuance of the NOC. The impugned communication dated 27.2.2012 recalling the OTS proposal is quashed with the direction to the respondent/Corporation to issue the NOC within a period of 15 days from today. The rule is made absolute, leaving the parties to bear their own costs.