(2008) 02 GUJ CK 0115

In the Gujarat High Court

Case No : Special Civil Application No. 8981 of 2005 and Civil Application No. 864 of 2008 in Special Civil Application No. 8981 of 2005

Shyamprakash Spinning Mills Ltd. and Another APPELLANT

Vs

Administrator Madahavpura Mercantile Co-Op. and Others RESPONDENT

Date of Decision : 26-02-2008

Acts Referred:
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 19(3), 22

Citation : AIR 2008 Guj 84 : (2009) 148 CompCas 624 : (2008) 2 GLR 1298

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : A.C. Gandhi, for Petitioners 1 - 2, for the Appellant; M.K. Vakharia, for Respondent 1 and Government Pleader for Respondent 3, for the Respondent

Judgement

Jayant Patel, J.—When the Civil Application came up for hearing, the main Special Civil Application is taken up for final hearing.

2. The facts as such are not dispute, and in brief can be narrated as under:

As per the petitioner the working capital facility of Rs. 1.50 Crores was taken from Kalupar Commercial Co-operative Bank Limited, and thereafter in January 1997, the petitioner took loan from respondent bank Madhavpura Mercantile Cooperative Bank Limited, and repaid the amount. The amount of loan taken from respondent bank remained outstanding. The petitioner filed Reference No. 192 of 1997 before BIFR. As per the petitioner the scheme is sanctioned by BIFR and the scheme inter alia includes the schedule of repayment for dues of the respondent bank too. The petitioner apprehended that the action may be taken by the respondent bank, as the suit was filed being Arbitration Suit No. H-03149 of 2003. Therefore the present petition before this Court for the relief inter alia to direct respondent bank to consider favorably and accept proposal of settlement submitted by the petitioner company in wider public interest.

3. This Court (Coram: K.M. Mehta, J.) on 11.5.2005 had admitted the petition,

and granted interim relief in terms of Paragraph 27(B), whereby the respondent bank was restrained from taking any proceedings of recovery including civil and criminal and the proceedings of the arbitration suit referred hereinabove.

4. It appears that the grievance of the respondent bank is that no representation could be made before BIFR on behalf of the bank, and in any case the suit must be allowed to proceed. Whereas contention of the petitioner is that if the scheme of BIFR is in operation, and the action is taken by the respondent bank, it would be in breach of the provisions of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as the ''Sica Act'') and therefore, such may not be permitted. Hence, the present petition.

5. I have heard Mr. Gandhi learned Counsel for the petitioner, Mr. Vakharia learned Counsel appearing for the respondent bank and Ms. Trusha Patel learned AGP for the State Government.

6. It is an undisputed position that the scheme under Sica Act approved by BIFR, is in operation in respect to the petitioner company. Therefore, so long as the BIFR is seized with the proceedings of the scheme, the protection of Section 22 of the Sica Act against coercive action to the petitioner would be continued. Merely because the respondent bank could not appear in the proceedings of the scheme and the same would not be a justifiable ground to dilute effect of the scheme of BIFR, which is in operation. If the respondent bank is desirous to seek any modification of scheme or is aggrieved by any part of the scheme, it would be for the respondent bank to move BIFR for modification. Further, until any express permission is granted by the BIFR for coercive action, the respondent bank would not be in a position to take any coercive measure against the petitioner including in the proceedings of the suit.

7. It also appears that even if the scheme under BIFR is framed, and is in operation, the figure mentioned in the scheme towards outstanding amount cannot be read as final for all time to come. At the most such amount can be considered as final up to the implementation of the scheme, or so long as the scheme is in operation. If any of the creditor has grievance, or there is dispute for quantification of the amount, such can be finally adjudicated by the appropriate forum, and BIFR is not final authority on the quantification of the amount outstanding. In a given case, if the amount is not disputed, it may stands on different footing, but if on the quantum of the amount there is dispute, even if BIFR has after considering the record before it, quantified the amount, such would at the most stand quantified so long as the scheme is in operation, and it cannot be said a conclusive decision by the competent forum on the aspect of outstanding amount for all time to come like that of the Civil Court or the Board of Nominees or Debt Recovery Tribunal etc.

8. Mr. Gandhi learned Counsel appearing for the petitioner by taking the basis of Section 19(3) of the Sica Act, attempted to submit that as per the language of Section 19(3) of the Sica Act, the scheme is binding to all concerned, and

therefore consequential effect is that no further adjudication is required.

9. I am afraid such contention can be accepted even if language of Section 19(3) of the Sica Act is literally interpreted. The language used by the legislature is that ''the scheme shall be binding of all concerned'' therefore binding effect is created of the scheme, and that at the most may apply so far as the quantification of the amount incorporate in the scheme, but thereby it cannot be said that such binding effect is to be read or generated as having being created after adjudication of rights of both the sides with full-fledged trial on the aspect of quantification of the amount. It is true that if there is no decision of the competent forum in the suit, permitting recovery of the particular amount, the scheme may include the payment of the amount, as incorporated in the scheme by BIFR. But at the same time, if out of adjudication, any higher amount is quantified as recoverable, one mode available to the creditor would be to move the BIFR for modification of the amount outstanding, and if it is so permitted by BIFR, the amount outstanding would get modified. Another mode available to the creditor may be to allow the scheme to remain in operation until the amount mentioned in the scheme is fully recovered, and after the scheme is fully implemented, the creditor may recover the remaining amount. Such can equally apply to the company in the event appropriate forum has found after adjudication any lessor amount recoverable. Therefore, Mr. Gandhi learned Counsel for the petitioner is not right in submitting that once the scheme is sanctioned by BIFR u/s 19(3) of the Sica Act, for all time to come, the binding effect is created qua rights of the company, and the creditors or cannot be upset by the decision after full-fledged adjudication in the suit proceedings, and therefore the contention cannot be accepted.

10. In any event as observed earlier so long as the scheme operates, the amount mentioned in the scheme even for the petitioner bank can be said as recoverable, unless it is modified by BIFR. It is only after the scheme fully implemented, if any amount remains outstanding as recoverable by the respondent No. 1 bank, the recovery may be effected.

11. In view of the aforesaid, I find that the following direction shall meet with the ends of justice:

1. In view of the schemed framed by BIFR and the scheme being in operation, no coercive steps shall be taken by the respondent bank, unless it is expressly permitted by BIFR in the proceedings of the reference.

2. The proceedings of Arbitration Suit No. H-03149 of 2003 will continue, and both the sides shall be at the liberty to raise their contention as available in law. However, no coercive steps shall be taken or ordered by the concerned forum before whom, the suit is pending against the petitioner company, unless it is so expressly permitted by BIFR.

3. The forum shall be at the liberty to pass an award in accordance with law, and unless it is expressly permitted by the BIFR, the execution shall be made only

after scheme is fully implemented by BIFR.

4. The respondent bank shall be at the liberty to move appropriate application to BIFR for modification or for alteration in the scheme. If such an application is made, the rights and contentions of both the sides as available in law shall remain open.

12. In view of the aforesaid observations and directions, the petitions are party allowed. Rule made absolute accordingly. No order as to cost.

13. In view of the order passed in the main Special Civil Application, no further order is required to be passed in the Civil Application. Hence, the same shall stand disposed of accordingly.

