(2003) 07 MP CK 0037

In the Madhya Pradesh High Court

Case No : Company Petition No. 5 of 1998

STI Finance Ltd. APPELLANT

Vs

Premier Industries (India) Ltd. RESPONDENT

Date of Decision : 28-07-2003

Acts Referred:

Companies Act, 1956 — Section 433, 434
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15, 22

Citation : (2003) 4 CompLJ 425 : (2004) 49 SCL 552

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : S.N. Kohli, for the Appellant;

Judgement

A.M. Sapre, J.—This is a company petition filed by the petitioner u/s 433(e) of the Companies Act seeking winding up of the respondent company - a limited company engaged in the manufacturing activities. A winding up is sought essentially on the ground of inability to pay admitted debt amounting to Rs. 15,73,038. It is the case of petitioner that they being the company engaged in the business of leasing and hire purchase, gave loan from time to time to the respondent company worth Rs. 15,73,038. It is contended that despite receipts of the payment from the petitioner company and virtually admitting the liability to repay, the respondent company did not pay the money, nor the interest accrued thereon and hence, need to file a company petition arose after serving a statutory notice u/s 434 of the Act.

2. On behalf of the respondent company a shelter of Section 22 of SICA is taken. According to respondent, since the reference u/s 15 of SICA is pending before the BIFR being case No. 128 of 1997 and hence, the proceedings be either stayed or deferred in these matters.

3. Heard Shri S.M. Kohli, learned counsel for the petitioner.

4. In a situation like the one emerging from the admitted facts mentioned supra,

in my considered view, there is no harm or any legal impediment if the petitioner who is a creditor is allowed indulgence to participate in the inquiry which is said to be going on before BIFR u/s 15 of SICA in a pending reference case No. 128 of 1997 in the matter of respondent company. Even otherwise, the O.A. which is appointed by BIFR or may be appointed in the reference case would be examining the entire financial scenario of respondent company including the cases of several debts of the creditors which will obviously include the debt of this petitioner. In a situation like the one, allowing indulgence of participation in the inquiry by the petitioner to secure their debts, can neither be regarded as illegal or against the provisions of SICA. Indeed, every creditor has a right to contend in any legal forum against their debtor that their debt be safeguarded. It is then for BIFR to decide, as to what extent and in what manner the participation of the creditor as in this case petitioner can be allowed in the inquiry which is going on u/s 15 of SICA in the case of respondent company.

5. Submission of learned counsel for the petitioner was that firstly in the absence of any provision under the SICA, the company court exercising the jurisdiction under the Companies Act may not be able to allow the petitioner to participate in the inquiry. I do not agree to this submission. When the matter relates to winding up of a company which is also subject-matter of Section 15 of SICA then this Court can always safeguard the interest of creditor and pass appropriate directions. As observed supra, there is neither any prohibtion, nor any embargo in granting such indulgence which could be pointed out to me either under Companies Act or SICA.

6. Learned counsel for the petitioner then submitted that if the reference is eventually dismissed by the BIFR under SICA then in that event, the petitioner''s right to prosecute this company petition would be taken away, I do not agree. This Court expressly reserve this right of the petitioner to file winding up petition against the respondent company on this very cause of action in the event of such eventuality arising in future inter alia for the reason that the petitioner has already approached to this Court at a proper time in filing this petition. It is, however, an eventuality which may arise or may not arise. In the event of company being declared sick company and directing its rehabilitation or winding up, this occasion may not arise. In either case, this court expressly grant liberty to the petitioner to file/renew their petition u/s 433 of the Companies Act on the same cause of action against the respondent company in the event of the reference being rejected. It is at that time, this court may examine the issue in the context of the requirement of Section 433/434 of the Companies Act on merits, as to whether any case for winding up of the respondent company qua this creditor (petitioner) is made out or not and if so, what orders can be passed keeping in view the provisions of the Companies Act and after hearing the respondent on facts. This inquiry, this court cannot at this stage go into it due to restraint put by Section 22 ibid.

7. Section 22 of SICA prohibits this Court from going ahead with the petition for

winding up. It does not in any manner restrict the power of this Court to dispose of the petition by giving certain directions or make observations to be taken note of by BIFR who has seized of the reference case. Moreover, Section 15 of SICA empowers the BIFR to hold an inquiry as it deems fit proper in relation to company in question. In such situation, if this Court has allowed indulgence of participation in the inquiry proceedings before BIFR, it will not in any way violate the mandate of Section 22 ibid,

8. Accordingly and in view of aforesaid discussion, this petition is disposed of by making aforementioned observations and liberty granted to the petitioner. The petitioner will be free to participate in the inquiry proceedings before BIFR in case No. 128 of 1997 in support of their debts. The BIFR will ensure disposal of the case No. 128 of 1997 in relation to respodent company expeditiously.

No costs.

