(2015) 08 MP CK 0070

In the Madhya Pradesh High Court

Case No : WP No. 2388 of 2015

Syncom Healthcare Ltd. — APPELLANT

Vs

Collector Cum Competent Authority — RESPONDENT

Date of Decision : 13-08-2015

Acts Referred:

Banking Regulation Act, 1949 — Section 5
Industrial Development Bank of India Act, 1964 — Section 6A
Madhya Pradesh Nikshepakon Ke Hiton Ka Sanrankshan Adhiniyam, 2000 — Section 2(b)

Citation : (2015) 08 MP CK 0070

Hon'ble Judges : S.C. Sharma, J

Bench : Single Bench

Advocate : M.L. Lahoti, Learned Senior Counsel and Varsha Gupta, Learned Counsel, for the Appellant; Rohit Mangal, Learned Counsel, Advocates for the Respondent

Final Decision : Disposed off

Judgement

S.C. Sharma, J—The present petitioner is against the show cause notice dated 05-09-2014 passed by the Collector, Indore under the provisions of Madhya Pradesh Nikshepakon Ke Hiton Ka Sanrakshan Adhiniyam, 2000 (MP Act 16 of 2001) hereinafter referred as the (''Adhiniyam of 2000'').

2. The show cause notice was issued on 05-09-2014 and the Company petitioner M/s. Syncom Healthcare Ltd., Indore has filed a detailed and exhaustive reply within forty eight hours i.e on 08-09-2014. As no order was being passed, the petitioner Company came up before this court by filing a Writ Petition and in the Writ Petition No. 9248/2014 following order has been passed on 12-01-2015:-

"Heard on the question of admission and interim relief.

This writ petition has been filed by the petitioner challenging the show-cause notice dated 5.9.2014 issued under the provisions of M.P. Nikshepakon Ke Hiton Ka Sanrakshan Adhiniyam, 2000 alleging that the petitioner has violated the provisions of the Act. It is undisputed that against the said show- cause notice the petitioner has already submitted the reply dated 8.9.2014 and the matter is pending before the Collector cum competent authority, Indore.

Learned counsel appearing for the petitioner has raised the grievance that the provisions of the Act is not attracted in the present case and the petitioner is suffering on account of the pendency of the matter before the competent authority, which is not taking any decision on the show-cause notice.

Learned counsel for the State has fairly stated that if no decision has been taken till now, the decision will be taken by the competent authority within a time bound period.

Since the writ petition is against the show-cause notice, therefore, I am not inclined to entertain the writ petition at this stage. The issue which the petitioner has raised before the Court, has already been raised before the competent authority, therefore, petitioner cannot be permitted to avail parallel remedy before this Court. The matter is now before the competent authority, reply has already been filed therefore, the competent authority is expected to consider all the relevant pleas which have been raised by the petitioner and take an appropriate decision as expeditiously as possible, preferably within a period of four weeks from the date of receipt of certified copy of this order."

Writ petition is accordingly disposed of. Certified copy as per rules. "

3. The order reflects that the Collector, Indore was granted four weeks time to pass the final order in the matter. Till date, no final order has been passed by the Collector.

4. The present petition was filed before this court on 09-04-2015 and inspite of repeated opportunities, no reply has been filed nor any order passed by the Collector has been brought to the notice of this court. The grievance of the petitioner Company is that on account of the show cause notice issued under the Adhiniyam of 2000, the Company is not able to operate at SEBI, not able to avail financial assistance and the Company is not able to expand itself. Besides this, the petitioner Company is being treated as a defaulter Company and is suffering from financial crunch in the market. It has also been argued by the Sr. Counsel that the Company is manufacturing pharmaceutical, ayurvedic and other pharmaceutical products and its 220 products are also exported to a number of countries including Sri-lanka, Nigeria and Malawai and is also in the process of exporting its product to Vietnam, Mongolia, Cambodia, Laos, Kenya and other countries. Company also undertakes contract manufacturing of well known reputed International and National Pharmaceutical and some of them are Lupin Pharma Ltd., Ranbaxy Ltd., Cipla Ltd., Cadila Pharmaceuticals, Zydus Cadila, Wockhardt Ltd., Glenmark Pharmaceuticals Ltd., Intas Pharma and Galpha Labs, etc.

5. The petitioner Company has categorically stated in the writ petition as well as

in the reply filed before the Collector that the Company is not accepting any deposits of any kind from any person nor it is giving a false commitment of return in respect of the deposits and infact the Company is manufacturing and marketing 45 ayurvedic formulations manufactured by them. The petitioner Company is having its own network and through e-commerce its products are being sold. It has been further categorically stated that the Company is having assets worth more than Rs. 230 crores and it is not a Chit Fund Company.

6. The statutory provisions governing the field known as Madhya Pradesh Nikshepakon Ke Hiton Ka Sanrakshan Adhiniyam, 2000 defines ''Deposit'' under section 2(b) and the same reads as under :-

"(b) "Deposit" includes and shall be deemed always to have included any receipt of money or acceptance of any valuable commodity by any financial establishment to be returned after a specified period or otherwise, either in a cash or any kind or in the form of a specified service with or without any benefit in the form of interest, bonus, profit, or in any other form, but does not include -

(i) amounts contributed as capital by the partners of a firm;

(ii) amounts received from a scheduled bank or a cooperative bank or any other banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);

(iii) any amount received from -

(a) the Industrial Development Bank of India (IDBI);

(b) a State Financial Corporation;

(c) any financial institution specified in or under Section 6A of the Industrial Development Bank of India Act, 1964 (18 of 1964); or,

(d) any other institution that may be specified by the Government in this behalf :

Explanation - Any credit given by a seller to a buyer on the sale of any property (whether movable or immovable) shall not be deemed to be deposit for the purpose of this clause;

The ''financial establishment'' is also defined under 2(c) which reads as under :-

(c) "Financial Establishment" means an individual, an association of individuals or a firm or a company incorporated under the Companies Act, 1956 (1 of 1956) receiving deposits under any scheme or arrangement or in any other manner but does not include, a corporation or a Co-operative Society owned or controlled by the State Government or the Central Government, or a Banking Company as defined under clause (c) of Section 5 of the Banking Regulation ACAT, 1949 (No. 10 of 1949)."

7. Keeping in view the aforesaid definition it is evident from the record that the petitioner Company is not receiving deposits and there is no condition of the

return of the same also. The petitioner Company after receiving the show cause under the provisions of the Adhiniyam of 2000 has furnished all minute details to the Collector and the learned Collector with a defiant attitude for the reasons best known to him has not passed any final order as directed by this court vide order dated 12-01-2015. Not only this, the show cause notice which is on record is one page show cause notice, reveals that the Company is receiving fund from certain individuals. However, no details of any kind are reflected in the show cause notice. One page show cause notice has been issued by the Collector without furnishing details in respect of the conclusion arrived at by the learned Collector and the petitioner being a Company has submitted a detailed and exhaustive reply alongwith the the complete documents clarifying the nature of the Company. However, as stated earlier, the learned Collector does not have time to decide and to pass an appropriate order in respect of the show cause notice issued to the petitioner.

8. It has also been argued that other Companies like the petitioner are also involved in e-commerce, like Amway, Modicare, Sami Direct, Flipkart, Snapdeal, Taper Ware etc., are also involved in the same business of e-commerce. However, for the reasons best known to the Collector, the petitioner Company has been singled out and there is no material available with the Collector on the basis of which the impugned notice has been issued.

9. This court keeping in view the record and the statutory provisions of law is of the considered opinion that once the petitioner Company is not accepting deposits and is not a financial institute and, therefore, the issuance of show cause notice itself is bad in law. Normally, this court would not have entertained a petition for quashment of the show cause notice. However, in the present case, there is no material on record to establish that the petitioner Company is accepting deposits, and the same has been stated by the Company on an affidavit filed before this court.

10. The learned Government Advocate has also not been able to point out before this court that the petitioner is accepting deposits. He has also not been able to demonstrate as to how the provisions of the Adhiniyam of 2000 are attracted in the present case.

11. In the present case a vague show cause notice has been issued by the Collector without there being any material and it does not attract the provisions of the Adhiniyam, 2000, hence this court is of the considered opinion that the show cause notice has to pave the path for extinction.

12. Resultantly, the impugned show cause notice dated 05-09-2014 passed by the Collector, Indore is hereby quashed. The respondents are directed to release the Bank guarantee furnished by the petitioner. The respondents shall be at liberty to initiate a fresh proceedings, in case need so arises in future, in accordance with law.

13. With the aforesaid the petition stands disposed of.

14. No order as to costs.

15. Certified copy as per rules.

