

(1999) 09 AHC CK 0231
In the Allahabad High Court
Case No : C.M.W.P. No. 26165 of 1997

Textile Technical Staff Association, Kanpur and others	APPELLANT
Vs	
Appellate Authority and others	RESPONDENT

Date of Decision : 21-09-1999

Acts Referred:

Companies Act, 1965 — Section 4, 617
Constitution of India, 1950 — Article 226
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 16, 19, 2, 3(1)

Citation : (1999) 4 AWC 3298 : (1999) AWC 3298

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : V.B. Singh and P.S. Baghel, for the Appellant; S.C., J.N. Tiwari, Sunil Ambwani, U.N. Sharma, S.C. Misra and S.N. Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—This writ petition has been filed by the Trade Unions against the order dated 19.1.1995 passed by the Board for Industrial and Financial Reconstruction (in short BFIR), recommending to this Court for winding up of Cawnpore Textiles Ltd., (in short CTL), respondent No. 4 and the order of the Appellate authority for Industrial and Financial Reconstruction (in short AAIFR), dismissing the appeal against the said order on 9.5.1997.

2. The effort of the petitioners is that the CTL be revived instead of winding up, as about 1700 workers will be deprived of their wages in case the company is wound up.

3. The facts leading to the present petition are that respondent No. 4 M/s. Cawnpore Textiles Ltd. carries on business of manufacture of cotton yarn, cotton fabrics mainly of course and medium varieties of yarn at Kanpur. It also manufactures cloth for general public and for Government Institutions, It was established in the year 1920. The British India Corporation Ltd. (in short BICL) held 49.10% shares in CTL. The Government acquired these shares under the

provisions of Section 3 (1) of the British India Corporation Ltd. (Acquisition of Shares) Ordinance, 1981, and that stood vested in the Central Government. In the year 1984, one percent additional share was acquired by the BICL whose holding became 50.10 per cent CTL thus became the subsidiary of BICL and a Government Company as provided u/s 617 read with Section 4 of the Companies Act, 1956. By the year 1981 CTL suffered huge loss. CTL made a reference to the Board. The BFIR found that at the end of the financial year accumulated losses were exceeding its entire net worth. It declared CTL as sick in its meeting held on 7.12.1992 with the following observation :

"Referring to the relevant Balance Sheet (s), Sri Jain stated that the financial position discussed therein is factually correct. In terms thereof at the end of the financial year ending 31.3.1992 accumulated losses suffered by the company about to Rs. 2,812.88 lakhs which had completely eroded the net worth of the company consisting of Rs. 75.34 lakhs with no free reserves. The company suffered cash loss of Rs. 582.01 lakhs during that year and cash loss of Rs. 421.78 lakhs during the preceding year ended 31.3.1991.

None else present disputed the said financial position. Accordingly, we are satisfied that the company, has become a sick industrial company in terms of the provisions of Section 3(1)(c) of the Act."

4. Admittedly the company was suffering loss every year and it was rightly declared as sick company. The BFIR was, however, concerned as to whether this company could be revived. It appointed Industrial Development Bank of India (in short IDBI) as operating agency u/s 16 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as the Act). On behalf of the Company, it was submitted that the task of preparing a viable rehabilitation proposal was entrusted to Bombay Textile Research Association (BTRA). It had submitted a draft report to the Ministry of Textiles which had accorded its approval in principle.

5. On the report of BTRA, the Operating Agency, IDBI visited the unit at Kanpur and also held the joint meeting at Bombay on 13.9.1993 and prepared a fresh rehabilitation scheme providing for-

(i)

Modernisation

Rs. 18.00 crores

(ii)

Voluntary Retirement Scheme (V.R.S.)

Rs. 07.00 crores

(iii)

Working capital

Rs. 01.00 crore

Total :

Rs. 26.00 crores

In addition, the package also envisaged the writing off a sum of Rs. 45.36 crores as the past cash losses and accumulated interest thereon. The Government was asked to provide fund for the modernisation and VRS Scheme. The Central Government took time and ultimately it did not agree to provide any fund except to release the amount for Voluntary Retirement Scheme.

6. The BFIR also directed the Operating Agency to publish and advertise inviting alternative/private promoters to rehabilitate CTL. Seven proposals were received but those proposals were not found favourable. The BFIR passed an order on 19.1.1995 recommending for winding up of the company on the finding that the company is not likely to make its net worth exceed the accumulated losses within a reasonable time while meeting all its financial obligations and as a result thereof, the company is not likely to become viable in future. It recommended for winding up of the company. CTL filed appeal against the order of BFIR dated 19.1.1995.

7. During the pendency of appeal, a draft rehabilitation scheme was prepared. It was published for securing the consent of the concerned Institutions and Authorities u/s 19(2) of the Act. The Ministry of Textiles took a decision that the reliefs and concessions sought in the draft rehabilitation scheme cannot be accepted. The appellate authority found that the rehabilitation scheme as formulated having not been accepted by any one. there was no other alternative to revive the company. It dismissed the appeal vide order dated 9.5.1997. The petitioners have filed this petition against the order of BFIR and the appellate authority.

8. I have heard Sri V. B. Singh, learned counsel for the petitioner and Sri J. N. Tiwari, learned senior counsel and Sri Sunil Ambwani, learned counsel for the respondents.

9. The main thrust of the submission of learned counsel for the petitioner is that the rehabilitation scheme was submitted by the Operating Agency and there was no justification not to accept it by the Union of India. It is submitted that the Operating Agency had after taking into account the scheme prepared by Bombay Textile Research Association, prepared a revised scheme. A joint meeting was also held. The scheme envisaged investment of the fund by the Central Government. The Government was asked to submit a reply but it did not show any interest in revival of the company. The contention of Mr. Singh is that there was no justification on the part of the Government not to have infused funds for modernisation of the unit. It was prepared to invest the amount for voluntary retirement scheme which was about 12.60 crores but for the revival of the company it further required investment of only Rs. 8 crores which was less than

the amount which was to be spent in the rehabilitation scheme. They also referred to the affidavit of S.C. Puri filed before the BFIR.

10. The appellate authority itself had directed for publication of the scheme by the Operating Agency. The copy of the draft scheme as approved by the appellate authority on 24.12.1996 has been annexed as Annexure-16 to the writ petition. The appellate authority asked for objections/suggestions in regard to the scheme. The scheme, besides other things, envisaged budgetary support of the Government of India. It provided as follows :

(i) To accept the work load and productivity stipulations as per norms prevailing in the Industry.

(ii) To accept Voluntary Retirement Scheme and reduction of staff strength to 1081.

(iii) To agree to effect rationalisation as per industry norms and abolition of surplus posts.

(iv) To agree for working on 7 days a week basis.

(v) To agree for closure of the weaving section.

11. In respect of the validity, the following report was submitted :

"The assumptions underlying the profitability estimates, projected profitability statement, cash flow statement and balance sheet are given in Annexures-I, II, III and IV respectively. It can be observed therefrom that the company would be incurring cash losses in the initial two years. From 3rd year onwards it would be making net profit. This is because first, due to modernisation, the capacity utilisation would go up substantially and secondly, the labour costs would go down due to implementation of VRS. In the optimum year of operations (i.e., 1998-99) on a sales turnover of Rs. 3.206 lakh, it would earn a net profit of Rs. 92 lakh and a cash profit of Rs. 144 lakh. At the end of 2002-03, the company would have a cash balance of Rs. 696 lakh, the improvement in capacity utilisation is dependent on the company modernising its plant and being able to rationalise its labour force. GOI, the promoter of CTL would require to bring in Rs. 2,060 lakh to finance cost of the scheme.

The financial position of the company requires restructuring of the balance sheet, with an OTS of dues to Institutions, conversion of the principal portion of GOI loans to the company into equity and waiver of the interest dues to GOI. On such restructuring net worth of the company would immediately become positive. The accumulated losses will, however, not be wiped off even at the end of the rehabilitation period."

The viability report indicates that even if the Government provided the fund, still it will suffer the loss for two years and at the end of 2002-03 the company would have a cash balance of Rs. 696 lacs. The improvement in the capacity of utilisation is dependent on the company modernising its plant and being able to

rationalise its labour force. The Government of India, the promoter of CTI would require to bring in Rs. 2.060 lakh to finance cost of the scheme. In the end. the view was that accumulated losses will, however, not be wiped off even at the end of rehabilitation period. The Government of India communicated its final decision to the appellate authority vide letter dated 9.5.1997 that the Government has decided not to extend the budgetary support. The relevant part of the letter is as follows :

"1st May. 1997 on the subject cited above I am directed to say that the reliefs and concessions sought In the draft rehabilitation scheme have been considered by the Government and it has been decided not to extend any budgetary support or concessions to the companies as indicated in the draft schemes. Further it has also been decided that the existing provisions of VRS would continue to be available to the employees workers for a period of three months after issue of order in this respect and budgetary support for continuation of payment for wages/salaries till the period of three months for exercise of VRS Option is over."

12. Sri Singh, learned counsel for the petitioner, vehemently urged that the Government having acquired the major shares of the company, it was obligation on its part to give the budgetary support and there was no justification on its part not to invest its fund in the company. In the counter-affidavit. It has been stated that the revival proposal was considered by the committee of officers under the Chairmanship of Secretary (Expenditure). The Committee of Officers met on 20.4.1995 and considered the revival package finalised by the Operating Agency (Industrial Development Bank of India). The Committee also considered a brief report prepared by Prof. P. K. Hari. Indian Institute of Technology, New Delhi. The Committee of Officers had arrived at the conclusion that the viability of the Turn Around Plan had not come out clearly, that the package involved fresh commitment of budgetary support of Rs. 23.15 crores, besides write off/ waiver of loans and interest amounting to Rs. 62.26 crores. etc. The Committee of Officers recommended that budgetary support towards payment of salary and wages might continue and that the existing Voluntary Retirement Scheme should continue. The conclusion of the Committee of Officers were placed before the Group of Ministers which at their meeting held on 11.1.1996 decided that the appeal before the appellate authority might take its own course and that budgetary support for wages and salaries should continue. The conclusions of Group of Ministers were placed before the Cabinet on 23.6.1996. The Cabinet noted that the assessment of achieving 90-95 capacity utilisation on the existing machinery is on a very high side, that the work culture in BIC Mills has deteriorated, that despite modernisation and renovation the profitability projections indicated in the revival package would not be effectively achieved and that there does not appear to be any positive sign of actual revival by implementing the package, The draft rehabilitation scheme proposed before the appellate authority, as indicated above, clearly contemplated budgetary support from the Government and it was for the Government to consider the matter as to whether it would be justifiable to invest about Rs. 23 crores and even after

investing it had a chance that the Company which was suffering loss of crores of rupees every year would turn to be a profitable company. The High Court is not to examine under Article 226 of the Constitution of India as to whether the reasons given by the Government of India for its decision in not extending the budgetary support to the company for its revival are correct. The Government of India was to invest fund and it was for it to take its decision in the matter.

13. It is next contended by learned counsel for the petitioner that the company can be sold or managed by private persons. The step in this direction was also taken which is clear from the affidavit of Sri S.C. Puri. He has stated that the company had received seven proposals from private companies in response to the publication and one of the parties, namely. Sri Pravln Agarwal promoter of M/s. Prag Agro Farm showed interest in the offer but the Operating Agency directed all the seven concerned parties to--(1) deposit at least Rs. 3 crores and (2) submit detailed proposals to Operating Agency to prove their seriousness.

14. It was for the Operating Agency to find out whether the offer made is genuine or not. The company had already suffered loss of crores of rupees and considering the entire set of circumstances if it asked such persons to deposit Rs. 3 crores. that could have shown their financial position. No person had submitted any proposal before the appellate authority. The appellate authority further noted that Operating Agency had not received any proposal from the workers for rehabilitation of the company and there was no other offer for revival of the company from any other source. It is contended that the publication was made in "Pioneer" which is not of a wide circulation. This objection was not taken before the appellate authority. The seven persons had submitted offer before the Operating Agency which had been taken into consideration by it.

15. A feeble argument has been raised that the Operating Agency was prejudiced against CTL as it had filed a suit in Bombay High Court for its amount. It is not denied that the Operating Agency had submitted a rehabilitation scheme. It envisaged budgetary support from the Government. Once the Government itself declined to give the budgetary support, the Operating Agency cannot be blamed. The petitioner had at no point of time asked the BFIR or appellate authority to appoint any other bank as Operating Agency. The petitioners have failed to show that its action was mala fide.

16. It has been further suggested that the CTL has surplus land and if such surplus land is sold, then even if the Central Government does not infuse its funds, still the company has sufficient funds to be revived after sale of its surplus land. This aspect was considered in the joint meeting of CTL and IDBI on 13th September, 1993. It was found that CTL does not have any surplus land. The land belongs to B1C. The relevant extract of the meeting is as under :

"At this juncture Company"s representative Sri Kaul, Director IFCH and Sri M. P. Jain, General Manager joined the discussions. Upon Inquiry regarding surplus land available with the company Sri Kaul stated that the BIC. the holding

company has surplus land. However, CTL does not own any surplus land."

17. The last submission of learned counsel for the petitioner is that the Central Government is considering again to revive the company. A supplementary affidavit, has been filed by Sri D. C. Gautam alleging that the Central Government is considering to revive the company. A copy of the minutes of the meeting alleged to be held on 19th August, 1997 with the Prime Minister has been annexed as Annexure-3 to this affidavit. Para 2 of the affidavit says that the Government will consider for revival of woollen mill of BIC. In the CTL, British India Corporation has about 51 per cent shares but CTL is not exclusively run by it. The British India Corporation has a woollen mill in Punjab. The CTL is not a woollen mill.

18. The Central Government has, however, taken a decision to pay the amount to the workers under the Voluntary Retirement Scheme. It has been stated in the counter-affidavit that although such voluntary scheme is normally allowed where the company is to be revived but in the case of CTI, it has to spend crores of rupees as Voluntary Retirement Scheme of about 700 workers, even though CTL is to be wound up. Out of 2,500 employees about 1,080 have already accepted Voluntary Retirement Scheme (V.R.S.)

19. In view of the above discussions I do not find any merit in this writ petition. It is accordingly dismissed.

20. Considering the facts and circumstances of the case the parties shall bear their own costs.