

(1985) 02 MAD CK 0020

In the Madras High Court

Case No : Company Application No. 780 of 1985 in Company Petition No. 5 of 1984

Union of India

APPELLANT

Vs

Anglo-french Textiles Ltd.

RESPONDENT

Date of Decision : 25-02-1985

Acts Referred:

Companies Act, 1956 — Section 433
Foreign Exchange Regulation Act, 1973 — Section 18FA
Industries (Development and Regulation) Act, 1951 — Section 15A, 18AA, 18FA, 18FA(10), 18FC
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 18(1)

Citation : (1985) 57 CompCas 489

Hon'ble Judges : K. Shankukham, J

Bench : Single Bench

Judgement

Shanmukham, J.—The applicant is the Union of India, represented by the Secretary, Department of Textiles, Ministry of Commerce, New

Delhi. The application is laid under s. 15A of the Industries (Development and Regulation) Act, 1951 (hereinafter referred to as "the Act").

2. It is now well-publicised that M/s. Anglo-French Textiles Ltd., Mudaliarpet, Pondicherry, had closed its business; that 7,000 worked left

jobless and that the economy of the particular part of the country has suffered to a great extent. It is in this background the applicant has come

forward with this application seeking permission to investigate/cause an investigation to be made in regard to the possibility of restarting the

manufacturing unit of the company and to give such other direction or directions as this court may deem fit:

The facts as such are not in dispute. None the less the objection is that the application is not maintainable under s. 15A of the Act. The above

objection finds support from the decision of the Calcutta High Court reported in Union of India v. Shalimar Works Ltd. [1977] 47 C.C. 664. It is,

therefore, useful to refer to s. 15A of the Act, which runs as follows:

15A. Power to investigate into the affairs of a company in liquidation. - (1) Where a company owning an industrial undertaking is being wound up

by or under the supervision of the High Court, and the business of such company is not being continued, the Central Government may, if it is of

opinion that it is necessary in the interests of the general public and, in particular, in the interests of production, supply or distribution of articles or

class of articles relatable to the concerned scheduled industry to investigate into the possibility of running or restarting the industrial undertaking,

make an application to the High Court praying for permission to make, or cause to be made, an investigation into such possibility by such person

or body of persons as that Government may appoint for the purpose.

(2) Where an application is made by the Central Government under sub-section (1), the High Court shall, notwithstanding anything contained in the

Companies Act, 1956 (1 of 1956), to in any other law for the time being in force, grant the permission prayed for.

3. Laying stress on the expression on ""being wound up by or under the supervision of the High Court"", the learned judge of the Calcutta High

Court observed that the above expression would mean that the company was directed to be wound up. Such an approach by the learned judge

cannot be doubted because it is after the order of winding up is made, the company is being wound up for the purpose of ultimate dissolution.

None the less, I do not propose to dismiss the application construing the passage as understood under the Companies Act, for the Act itself is an

enabling statute, which empowers the Central Govt., with or without the permission of the court, to sell the concern as a whole, to make

investigations for the purpose of restarting the company (vide s. 18FD of the Act). The object of the Act itself is to enable the Central Government

to deal with the company in the manner abovesaid both in the interest of securing economy of the country as also in the interest of the public at

large, in particular the working class who would be rendered jobless by the closure of the company. Sections 18FA(10), 18FC, 18FD, 18FE,

18FF, 18FG and 18FH of the Act are useful to be noticed and in fact a combined

force of these provisions persuaded me to hold that, even though the application like the present one cannot be brought literally under s. 15A of the Act, this court can construe the expression ""being wound up by or under the supervision of the High Court"" to include a case where a petition under s. 433 of the Companies Act is pending. Section 18FA of the Act enables the Government to take over the management or control of the industrial undertaking with the permission of this court when such an application is pending. Section 18FA(10) of the Act provides that the proceeding in the winding up of the company, in so far as they relate to :

(a) the industrial undertaking, the management of : which has been taken over by the authorised person under this section, or (b) the concerned part in relation to which any function of control is exercised by the authorised person under this section, shall during the period of such management or control, remain stayed, and in computing the period of limitation for the enforcement of any right, privilege, obligation or liability in relation to such undertaking or the concerned part, the period during which such proceedings remained stayed shall be excluded. Without resorting to s. 15A of the Act, the Central Govt. possesses the same right, vide s. 18AA of the Act. Under s. 18FC of the Act, the Central Govt. takes over the management either pursuant to the orders from this court. But the purpose achieved in either process is to take over the concern without the leave of the court or to restart the company after obtaining permission from this court on a compromise to be evolved thereafter and as indicated in the Act itself. Section 18FE of the Act enables the Central Govt. to move this court for winding up because the decision of the Central Govt. that the course of action specified in clause (a) of sub-s. (1) of s. 18FD should be followed in relation to a company owning an industrial undertaking shall be deemed to be a ground specified in s. 433 of the Companies Act, 1956 (1 of 1956), on which the company may be wound up by the High Court. We already the application for winding up the company is pending before this court, it may not be worthwhile to drive the Central Govt. to exercise its powers without resorting to s. 15A of the Act and then approach this court for the very same relief which could be obtained in the pending proceeding. Even if the Govt. were to dispose of the company or to make arrangement for reorganisation and for restarting the same,

ultimately it shall obtain the orders of the court. Thus, in either course, without the order of this court, nothing could be done. In view of the

foregoing circumstances, I do not find any difficulty in accepting the application. I may incidentally add that the learned judge, whose decision is

relied on by the respondent, had not considered all these provisions in the Act, particularly the fact that the Act, as a whole is an enabling one to

serve the interest of the public at large and to secure the economy of the country. The other objection that it would be against the direction of the

Supreme Court is not well founded. On the other hand, the present application is only to obey the direction made by the Supreme Court. As a

matter of fact, the applicant in its anxiety to carry out such directions has come forward with this application.

4. In the result, the application is ordered as prayed for.