(2013) 03 MAD CK 0124

In the Madras High Court

Case No : Writ Petition No. 29962 of 2012 and M.P. No. 1 of 2012

United Bleachers Ltd. APPELLANT

Vs

Deputy Director (Me Cell) and Another RESPONDENT

Date of Decision : 12-03-2013

Acts Referred:

Citation : (2013) 178 CompCas 185 : (2014) 2 CompLJ 438

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : S. Jayakumar, for the Respondent

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—The petitioner prays for issuance of a writ in the nature of certiorari, to quash order No. T-11/11/56/4/2006-Rev.I dated May 18 , 2012, of the second respondent and the consequential order of the first respondent No. 56/006200/000/0109/ME/SRO/CBE/2011 dated June 14, 2012, with consequential prayer for issuance of a writ in the nature of mandamus, to direct the respondents to waive the damages for belated payment of contribution for the period up to March 31, 2003. It is not dispute that the petitioner-company was declared a "sick industrial company" by the Board for Industrial Financial Reconstruction (BIFR), New Delhi and scheme for its rehabilitation was sanctioned on March 24, 2003.

2. Under the scheme, it was decided that dues of the ESI Corporation are to be paid as under :

6.6 ESI :

6.6.1 Shall consider to waive damage charges of Rs. 0.51 lakhs.

6.6.2 Shall consider to accept the down payment of Rs. 4.85 lakhs immediately, after sanction of the rehabilitation package.

6.6.3 Shall consider to accept repayment of Rs. 24.27 lakhs over a period of 4 years, with the standard rate of interest.

3. The case of the petitioner is that thereafter, on application filed by the petitioner, cut-off date was ordered to be changed from March 31, 2001 to March 31, 2003.

4. The order dated February 12, 2007, passed by the BIFR reads as under :

Board for Industrial and Financial Reconstruction Jawahar Vyapar Bhawan, 1, Tolstoy Marg, New Delhi-1

No. 18(4)/32/B-III/BIFR/Mon/03 Dated February 12, 2007

To

1. The Central P. F. Commissioner HUDCO Vishala,

14, Bhikaji Cama Place

R. K. Puram,

New Delhi-110 066.

2. The Director General,

E. S. I. C,

ESIC Bldg, Kotla Road

Behind Foreign Post Office,

New Delhi-110 008.

Sub : BIFR Case No. 131/97 : M/s. United Bleachers Ltd. (UBL)

Sir,

1. I am directed to inform you that the company M/s. United Bleachers Ltd. (UBL) vide their letter dated December 6, 2006, has requested the Board, inter alia, to consider issuing a direction to both EPFO as well as the ESIC to consider the cut-off date (COD) for settlement/payment of the outstanding dues of EPFO and ESIC, as March 31, 2003, instead of March 31, 2001, as was considered by the Board in the scheme sanctioned on March 24, 2003, for the revival of the company M/s. UBL.

2. The representation made by the company M/s. UBL was placed before the hon''ble Bench, who noted, inter alia, that there was a time-gap of about 2 years from the date of considering the COD as March 31, 2001, for crystallisation of the due of the EPFO and ESIC till the date of sanction of the scheme by the Board on March 24, 2003 (SS-03) and consequent to this, the company could not achieve the envisaged profitability during this time period of 2 years. As the delay in sanction of the SS-03 was not attributable to the company M/s. UBL, the

hon''ble Bench was directed that both the EPFO and the ESIC would consider the COD as March 31, 2003 for settlement/payment of their outstanding dues, instead of March 31, 2001, as stipulated in the SS-03, especially as this would ensure long-term viability of the company.

5. The contention of learned counsel for the petitioner is that in spite of the order passed by the BIFR, the respondents have refused to waive the damages for belated payment, and have passed the impugned demand claiming damages not permissible in law.

6. The impugned order therefore is challenged being violative of the order passed by the BIFR which has the statutory force of law.

7. Learned counsel for the respondent opposed the writ petition by contending that a reading of the order dated February 12, 2003, shows that it was left to the discretion of the respondent to waive the part of damages by invoking regulation 31C of the Employees'' State Insurance (General) Regulations, 1950, which stipulates that waiver can be up to 60 percent and it is only in extraordinary situation, that full damages can be waived. Therefore, the petitioner cannot claim waiver as a matter of right.

8. On consideration, I find that there is no merit in the defence of the respondent. Reading of the scheme shows that the order was passed by the BIFR with the consent of the ESI Corporation. The order of the BIFR has statutory force of law and is binding on all. The object of the scheme is to reconstruct the company. Regulation 31C of the Employees'' State Insurance (General) Regulations, 1950, also does not bars the complete waiver in extraordinary circumstances, meaning thereby that the consent of the ESI Corporation was not contrary to the Regulation.

9. Even otherwise, after having consented before the ESI Corporation, it is not open to the ESI Corporation to take shelter under the Employees'' State Insurance (General) Regulations to defeat the order passed by the BIFR.

10. The demand notice therefore, on the face of it is arbitrary, being against order passed by the BIFR therefore, is not sustainable in law.

11. Consequently, this writ petition is allowed. The impugned order is set aside. No costs.