

Vdcs Enterprises and anr. Vs. Union of India (Uoi) and ors.

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SooperKanoon Citation : sooperkanoon.com/710497

Court : Delhi

Decided On : Nov-16-2005

Reported in : 125(2005)DLT385; 2005(85)DRJ420

Judge : Vijender Jain and; Rekha Sharma, JJ.

Acts : Sick Industrial Companies (Special Provisions) Act, 1985 - Sections 18, 19, 19(2) and 19(3A)

Appeal No. : WP(C) No. 4976 of 2003

Appellant : Vdcs Enterprises and anr.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : B.S. Sharma, Adv. for R. 1 and ; G.S. Raikhy, Adv. for R. 5

Advocate for Pet/Ap. : R.K. Khanna, Adv

Disposition : Petition allowed

Judgement :

Vijender Jain, J.

1. This writ petition has been filed, inter-alia praying for quashing/setting aside the BIFR order dated 25.7.2003 passed in case No. 4 of 1998. The BIFR vide its impugned order has ordered for winding up of the company holding that the

company is adopting dilatory tactics to enjoy undue protection under Sick Industrial Companies (Special Provisions) Act, 1985 and is not serious in reviving the company.

2. Mr. Khanna, learned counsel appearing for the petitioner, has contended that the petitioner has already settled with all the creditors and has made the payment in terms of the directions issued by BIFR except with the Operating Agency. In this case Operating Agency is Haryana Financial Corporation. As a matter of fact when this writ petition had come up AAIFR was not functioning and, therefore, certain orders were passed by this Court. On 6.8.2003 this Court had directed the petitioner to deposit a sum of Rs. 5,00,000/- and the same was deposited.

3. In this matter a very short controversy has arisen on the basis of which BIFR has pronounced the impugned order. In terms of the BIFR Scheme, the petitioner has satisfied all the borrowers as is evident from the various orders passed by BIFR itself except the respondent Haryana Financial Corporation. On 10.8.2004 it was brought to our notice that the total loan which was taken by the petitioner was Rs. 20,00,000/- against which a sum of Rs. 40,00,000/- has already been paid by the petitioner to the respondent. BIFR from time to time has issued directions under Section 19 of the SICA to the Operating Agency i.e. Haryana Financial Corporation that they may settle the amount of dues in terms of RBI guidelines. On the other hand, the stand of the Haryana Financial Corporation has been that they are not governed by the RBI guidelines as they have formulated their own guidelines.

4. The whole purpose of the SICA is to rehabilitate a sick company. In case where an Operating Agency is to take protection of SICA for bonafide purposes with the object of rehabilitation, concession and reliefs enumerated under the said Act should not be denied and where the provisions of this Act are used for malafide purpose, the Court must come on such entrepreneur with a heavy hand. The BIFR in its order passed on 19.5.1998 had directed that it was necessary and was in public interest to adopt the measures specified in Section 18 and 19 of the Act in relation to the company. The BIFR further passed an order directed the Operating Agency to prepare rehabilitation scheme as per RBI guidelines on their own and

submit it to the Board after holding a joint meeting within four weeks positively. Thereafter another order was passed by BIFR on 21.3.2000. Pursuant to the said order, again a direction was issued to the Haryana Financial Corporation to prepare a rehabilitation scheme as per RBI guidelines on the basis of available information and submit their report to be Board after holding a joint meeting. On 16.1.2002 BIFR again directed the Haryana Financial Corporation to submit status report along with draft rehabilitation scheme based on the proposal submitted by the company within one week so that the same could be circulated for consent of all the concerned. In the same order it was noticed by BIFR that the petitioner has already entered into one time settlement with Haryana State Industrial Development Corporation and had also paid the dues of State Bank of Patiala. On 15.2.2002 BIFR expressed its anguish that on 19.2.2003 BIFR directed the petitioner to deposit a sum of Rs. 1.37 lakhs with HFC with the direction to HFC to follow OTS in terms of RBI guidelines yet nothing was done.

5. As stated above, the petitioner has deposited a sum of Rs. 5 lakhs. Learned counsel appearing for the petitioner has contended that as per the RBI guidelines, the statement of which has been given to HFC, the petitioners have deposited Rs. 7 lakhs more than what was required to be paid by it. On the other hand, Mr.G. S.Raikhy, learned counsel appearing for HFC, has contended that once the Financial Corporation has got its own guidelines, RBI guidelines are not applicable and that the Operating Agency cannot be directed by BIFR to apply RBI guidelines. In this regard reliance has been placed upon a decision of Division Bench of Allahabad High Court reported in M.M. Accessories and Anr. v. U.P.Financial Corporation, Kanpur and Anr., 2002 All L.J. 967.

6. We have given our careful consideration to the arguments advanced by learned counsel for both the parties. We feel that the matter has been unnecessarily dragged in view of the stiff attitude of HFC. It is mandatory on the part of the BIFR to give direction under Section 19 of the Sick Industrial Companies (Special Provisions) Act, 1985 and that it cannot be contended as was sought to be established by learned counsel for the respondents that the BIFR has no jurisdiction to issue such directions. It will be appropriate at this stage to reproduce Section 19 of the said Act :-

'19. Rehabilitation by giving financial assistance:- (1) Where the scheme relates to preventive, ameliorative, remedial and other measures with respect to any sick industrial company, the scheme may provide for financial assistance by way of loans, advances or guarantees or relief or concessions or sacrifices from the Central Government, a State Government, any scheduled bank or other bank, a public financial institution or State level institution or any institution or other authority (any Government, bank, institution or other authority required by a scheme to provide for such financial assistance being hereafter in this section referred to as the person required by the scheme to provide financial assistance) to the sick industrial company.

(2) Every scheme referred to in sub-section (1) shall be circulated to every person required by the scheme to provide financial assistance for his consent within a period of sixty days from the date of such circulation or within such further period, not exceeding sixty days, as may be allowed by the Board, and if no consent is received within such period or further period, it shall be deemed that consent has been given.

(3) Where in respect of any scheme the consent referred to in sub-section (2) is given by every person required by the scheme to provide financial assistance, the Board may, as soon as may be, sanction the scheme and on and from the date of such sanction the scheme shall be binding on all concerned.

(3A) On the sanction of the scheme under sub-section the financial institutions and the banks required to provide financial assistance shall designate by mutual agreement a financial institution and a bank from amongst themselves which shall be responsible to disburse financial assistance by way of loans or advances or guarantees or reliefs or concessions or sacrifices agreed to be provided or granted under the scheme on behalf of all financial institutions and banks concerned.

(3B) The financial institution and the bank designated under Sub-section (3A) shall forthwith proceed to release the financial assistance to the sick industrial company in fulfillment of the requirement in this regard.

(4) Where in respect of any scheme consent under Sub- section (2) is not given by any person required by the scheme to provide financial assistance, the Board may adopt such other measures, including the winding up of the sick industrial company, as it may deem fit.'

7. From the wording and language of the SICA, it is clear that where the object is to prevent sickness in an industrial company or to ameliorate its lot and other measures are required to be taken in relation to a sick industrial company, the reliefs and concession or sacrifices can be directed by the BIFR to the Central Government, State Government, Banks, institutions and financial institutions so as to remove the sickness of such industrial company. The whole object of SICA is to arrest industrial sickness in the country. thereforee, to say, that BIFR has no jurisdiction to issue such directions is totally misplaced. The directions of BIFR while in exercise of its powers under Section 19 of the Act are mandatory, more so, when against a loan of Rs. 20 lakhs, the petitioner has paid Rs. 40 lakhs and is still prepared to settle in terms of RBI guidelines as per directions of BIFR. The dragging of matter by the respondent is totally inconsistent and contrary to the object and the scheme envisaged in SICA. The reliance placed by learned counsel for the respondent in M/s.M.M.Accessories and another's case (supra) has no application to the present case. In that case no such directions were issued in terms of Section 19 of the Act. thereforee, the ratio of that authority will not be applicable to the present case. No other point has been pressed before us. We find no infirmity in the order of the BIFR directing Haryana Financial Corporation to settle the OTS in terms of guidelines issued by BIFR under Section 19 of the Act. If the petitioner has paid some amount over and above the RBI guidelines, the same shall be refunded within four weeks to the petitioner. Accordingly, the Rule is made absolute. The writ petition is allowed.