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*IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 3543/2007 & CM Nos. 6640/2007 & 8535/2007

RAJASTHAN TEXTFAB LIMITED Petitioner
Through: Mr. L.K. Giri, Advocate

Versus

COMMISSIONER OF CUSTOMS & ORS. Respondents
Through: Mr. Ravinder Aggarwal, Advo.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER
14.09.2009

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1. The petitioner Rajasthan Texpab Limited is a sick company under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985.
2. The petitioner had imported some machinery which the respondent Department of Customs had put to auction for recovery of their dues. In this connection learned counsel for the respondent has drawn my attention to Section 72(1)(d) of the Customs Act, 1962 which reads as under:-

“Section 72. Goods improperly removed from warehouse etc.

(1) In any of the following cases, that is to say,

(a) XXXX

(b) XXXX

(c) XXXX

(d). where any goods in respect of which a bond has been executed under [section 59 [* * *]] and which have not been cleared for home

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consumption or exportation are not duly accounted for to the satisfaction of the proper officer,

the proper officer may demand, and the owner of such goods shall forthwith pay, the full amount of duty chargeable on account of such goods together with all penalties, rent, interest and other charges payable in respect of such goods."

2. It is the case of the respondent Department of Customs that the petitioner has failed to clear the goods/machinery which are lying in the CWC Ware House and in terms of Section 72(1)(d) of the Customs Act, 1962, the petitioner was been called upon to make payment and on failure to do so they are entitle to auction the machinery. It is also stated that the petitioner had executed a bond under Section 59 of the Customs Act, 1962 in favour of the Department of Customs and, therefore, they are entitled to recover the said amount in spite of Section 22(1) of the Sick Industrial Companies(Special Provisions) Act, 1985.

3. Section 22 (1) of the Sick Industrial Companies(Special Provisions) Act, 1985 reads as under:-

"22. Suspension of legal proceedings, contracts, etc. (1) Where in respect of an industrial company, an inquiry under section 16 is pending or any scheme referred to under section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other

law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof 3*[and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company] shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority.”
(emphasis supplied)

4. The aforesaid provision applies to the petitioner company which has been declared a sick company. Section 22(1) of the Act has overriding effect over any other law or any instrument having effect under any other law. Therefore, the contention of the counsel for the respondent Commissioner of Customs that Section 22(1) is not applicable as they have to recover dues under the Customs Act, 1962 or enforce the instrument in the form of bond issued under the Customs Act, 1962 is not correct. Sale by auction of machinery for recovery of dues under the Customs Act, 1962 is by way of execution, distress or like. In these circumstances, provisions of Section 22(1) of the Sick Industrial Companies(Special Provisions) Act, 1985 are clearly applicable. The respondent Commissioner of Customs cannot auction the machinery of the petitioner without taking permission from the Board for Industrial and Financial Reconstruction (BIFR). It is open to the said respondents to make an appropriate application before the said Board under Section 22(1) of the said Act. If any such application is filed, the same will be disposed of expeditiously. The writ

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petition is allowed to the extent indicated above. No costs.

SEPTEMBER 14, 2009
RS/VKR

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SANJIV KHANNA, J.