

*** THE HIGH COURT OF DELHI AT NEW DELHI**

+ REVIEW APPLN. 1/2013, C.M. 2 & 3 of 2013 in
CM(M) 1010/2012

Date of Decision: 04.01.2013

M/S. RALSON INDUSTRIES LTD.
(NOW KNOWN AS DA RUBBER INDUSTRIES LTD.)

..... Petitioner

Through: Mr. Tarun Diwan, Adv. with
Ms.Kavita Goel, Adv.

Versus

M/S. ADHUNIK TRANSPORT ORGANISATION LTD.

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J. (Oral)

1. This review application is filed seeking review of the order dated 10.09.2012 passed in CM (M) 1010/2012 directed against the order dated 6.08.2012 of Addl. District Judge (Central), Tis Hazari Courts, whereby the leave to defend application filed by the petitioner was allowed, subject to deposit of 50 % of the suit amount.

2. The present application is filed seeking review on the ground that the petitioner company was entitled of benefits under Section 22 of the Sick Industries Companies Act, 1985 (for short the 'SICA'), which

stipulates that no coercive action could be taken against the sick company. It is submitted that the imposition of condition of deposit of 50% of the suit amount was contrary to the provisions of Section 22 of SICA, and thus, the order of this court dated 10.09.2012, whereby the condition of deposit of 50% of the suit amount was maintained, may be recalled.

3. Having heard the learned counsel for the petitioner, I do not see any reason or merit in the instant review application. The law as to the continuation of a suit filed against a sick company is no longer res integra, and is well laid by the Division Bench of this court in **Saketh India Ltd. Vs. W. Diamond India Ltd., 2010 (119) DRJ 190** as also by the Supreme Court in **Raheja Universal Ltd. Vs. NRC Ltd., (2012) 4 SCC 148**. The ratio of the judgment in Saketh India Ltd. (supra) is that unless the dues are admitted by the sick company in a sanctioned scheme or is admitted before the court where the same suit is filed, no permission is required under Section 22 of SICA. It was held that before Section 22 could be invoked, the proceedings against the company are necessarily to be of the nature of ‘execution, distress or the like’. Paras 6 and 14 of the said judgment being relevant are reproduced here-in-under:

“6. Courts, however, have always been alive to the possible mischief that invocation of SICA can lead to. In a nutshell, where the net worth of a company is reduced to a negative, and the amelioration that is sought is for reviving the company

rather than winding it up, the recourse to the Act would be legitimate. There is no justifiable reason, therefore, for all legal proceedings to be immediately even held in abeyance, if not dismissed. We are mindful of the fact that Parliament has incorporated an amendment in the Section with effect from 1.2.1994 in these words - "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". It appears to us that the phrase "recovery of money" must be construed ejusdem generis and accordingly recovery proceedings in the nature of execution or any other coercive enforcement that has been ordained to be not maintainable. We do not find any logic in holding legal proceedings to be not maintainable, or to be liable to be halted unless, even if the debt sought to be proved in the Plaint has not been admitted. Given the delays presently endemic in the justice delivery system if a creditor is disallowed even from proving the indebtedness of a recalcitrant debtor SICA company, it would cause unjustified hardship. Whichever way we look at the matter, there can be no logic in denying legal recourse to a party for proving its debt. In the event that at least the principal amount, or a substantial part of it stands admitted, either in the suit or by means of a mention in the Scheme placed before the BIFR, the aggrieved party must be permitted to prove its claim. In holding so, the only prejudice that we can conceive of is incurring expenditure in legal fees. When this is weighed against the interests of a person claiming that the company is indebted to it, the balance tilts in favour of the latter. A holistic reading of Section 22(1) of SICA makes it manifestly clear that Parliament's intention was to insulate sick companies only against proceedings for winding-up or for execution, or distress or the like or for enforcement of any security or guarantee. In the case in hand, despite several opportunities granted to the Appellant, it has miserably and perhaps deliberately failed to substantiate that the claim mentioned in the Suit has been reflected in the Scheme placed before the BIFR but even more poignantly, that a scheme was, in fact, pending before BIFR. If an Appeal is pending, has BIFR failed to

grant or has withdrawn registration under SICA. We see the conduct of the Appellant as nothing more than an abuse of SICA.

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14. The discussion contained above leads to the thesis that as soon as a claim stands admitted, either because it has been reflected in the Scheme, or because it stands favourably adjudicated in a Court of law, the protection of Section 22 of SICA would automatically have to be implemented. This is the watershed between the present and the preceding case. Having obtained a decree, further proceedings fall within the protective mantle of Section 22 of SCIA as they cannot but be in the nature of "execution, distress or the like". A plain reading of the provision cannot but lead to any other conclusion. If there are unique circumstances, which would justify the execution of the decree, even in the face of the registration of a Scheme under SICA, the proper recourse possible would be to obtain the permission or consent of the Board or the Appellate Authority as the case may be. Any other interpretation would completely annihilate and defeat the intendment of Parliament".

4. There being no credible admission by the petitioner of the amount in the present suit, in view of the aforesaid decision in Saketh India Ltd. (supra), no permission is required under Section 22 of SICA to continue the present suit. The ratio of the decision of the Supreme Court in the case of Raheja Universal Ltd. (supra) is that the proceedings, which are affected by Section 22 (1) of the SICA are the proceedings in the nature of execution, distress or the like, and that it was to depend upon the facts of each case as to whether the suit was hit

by Section 22. In other words, all suits including that of recovery are not hit by Section 22 (1) of the SICA, but, only those suits which have the effect of execution, distress or like action against the properties of sick company, which would be hit by this provision. In a simple suit for recovery of money where the properties of sick company are not threatened by the proceedings including the interim ones such as appointment of receiver, execution, distress or the like, such suits could continue without the permission under Section 22. In the present suit for recovery, it cannot be said that the suit is of a nature which has the impact of or threat to the properties of the petitioner to affect the scheme of its revival. Thus, the present suit being the simple suit of recovery under Order 37 CPC, would not be hit by the provision of Section 22 of the SICA. There is no cogent reason warranting review of the said order. The review application along with the miscellaneous applications stand dismissed.

M.L. MEHTA, J.

JANUARY 04, 2013

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