

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

+ **CM(M) No.1349/2013**

% **25th September, 2014**

KUSUM PRODUCTS LTD. Petitioner

Through: None.

VERSUS

HITKARI INDUSTRIES LTD. Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.20066/2013 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

+ C.M.(M) No.1349/2013 and C.M. No.20065/2013 (stay)

2. This petition under Article 227 of the Constitution of India is filed by the petitioner-company impugning the order of the trial court dated 6.8.2013 by which the trial court has dismissed an application filed by the

petitioner under Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA).

3. A reading of the impugned order shows that earlier also an application under Section 22 of SICA was filed and the same was dismissed. The subject application was moved at the stage of final arguments again relying on Section 22 of SICA. Trial court in the impugned order also records that in spite of repeated directions to the petitioner/defendant, no document was filed to show that the debt of the respondent/plaintiff was included in the scheme of rehabilitation of the petitioner-company.

4. In any case, now the issue that a simple suit for recovery of moneys is not barred by Section 22 of SICA is clear from the judgment of the Supreme Court in the case of ***Raheja Universal Limited Vs. NRC Limited and Ors. (2012) 4 SCC 148***. I have had an occasion to apply the ratio of this judgment of the Supreme Court in the case of ***Apollo International Ltd. Vs. Supriya Pharmaceuticals Ltd. 195 (2012)) DLT 288*** and paras 2 to 5 of the judgment in the case of ***Apollo International Ltd. (supra)*** read as under:-

“2. The law is now however settled by a Division Bench judgment of three Judges of the Supreme Court in the case of ***Raheja Universal Limited Vs. NRC Limited and Ors. (2012) 4 SCC 148***. Paras 55, 58

and 77 to 81 of the said judgment are relevant and the same read as under:-

“55. Despite these judgments and with an intention to clarify the law, we would state that the matters which are connected with the sanctioning and implementation of the scheme right from the date on which it is presented or the date from which the scheme is made effective, whichever is earlier, would be the matters which squarely fall within the ambit and scope of Section 22 of the Act of 1989 subject to their satisfying the ingredients stated under that provision. This would include the proceedings before the civil court, revenue authorities and/or any other competent forum in the form of execution or distress in relation to recovery of amount by sale or otherwise of the assets of the sick industrial company. It is difficult for us to hold that merely because a demand by a creditor had not been made a part of the scheme, pre or post-sanctioning of the same for that reason alone, it would fall outside the ambit of protection of Section 22 of the Act of 1985.

58. Section 22 is the reservoir of the statutory powers empowering the BIFR to determine a scheme, right from its presentation till its complete implementation in accordance with law, free of interjections and interference from other judicial processes. Section 22(1) deals with the execution, distress or the like proceedings against the company's properties, including appointment of a Receiver. It also specifically provides that even a winding up petition would not be instituted and no other proceedings shall lie or proceed further, except with the consent of the BIFR.

77. Section 22 of the Act of 1985 is very significant and of wide ramifications and application. More often than not, the jurisdiction of the BIFR is being invoked, necessitated by varied actions of third parties against the sick industrial company. The proceedings, taken by way of execution, distress or the like, may have the effect of destabilizing the finalization and/or implementation of the scheme of revival under consideration of the BIFR. It appears that, the Legislature intended to ensure that no impediments are created to obstruct the finalization of the scheme by the specialized body. To protect the industrial growth and to ensure revival, this preventive provision has been enacted. The provision has an overriding effect as it contains non

obstante clauses not only vis--vis the Companies Act but even qua any other law, even the memorandum and articles of association of the industrial company and/or any other instrument having effect under any other Act or law. These proceedings cannot be permitted to be taken out or continued without the consent of the BIFR or the AAIFR, as the case may be.

78. The expression 'no proceedings' that finds place in Section 22(1) is of wide spectrum but is certainly not free of exceptions. The framers of law have given a definite meaning to the expression 'proceedings' appearing under Section 22(1) of the Act of 1985. These proceedings are for 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.

79. The expression 'the like' has to be read ejusdem generis to the term 'proceedings'. The words 'execution, distress or the like' have a definite connotation. These proceedings can have the effect of nullifying or obstructing the sanctioning or implementation of the revival scheme, as contemplated under the provisions of the Act of 1985. This is what is required to be avoided for effective implementation of the scheme. The other facet of the same Section is that, no suit for recovery of money, or for enforcement of any security against the industrial company, or any guarantee in respect of any loan or advance granted to the industrial company shall lie, or be proceeded with further without the consent of the BIFR. In other words, a suit for recovery and/or for the stated kind of reliefs cannot lie or be proceeded further without the leave of the BIFR. Again, the intention is to protect the properties/assets of the sick industrial company, which is the subject matter of the scheme.

80. It is difficult to state with precision the principle that would uniformly apply to all the proceedings/suits falling under Section 22(1) of the Act of 1985. Firstly, it will depend upon the facts and circumstances of a given case, it must satisfy the ingredients of Section 22(1) and fall under any of the various classes of proceedings stated thereunder. Secondly, these proceedings should have the impact of interfering with the formulation, consideration, finalization or implementation of the scheme.

81. Once these ingredients are satisfied, normally the bar or limitation contained in Section 22(1) of the Act of 1985 would apply. For instance, execution of a decree against the assets of a company, if permitted, is bound to result in disturbing the scheme, which has or may be framed by the BIFR. The sale of an asset during such execution or even withdrawing the money from the bank account of the company would certainly defeat the very purpose of the protection sought to be created by the Legislature under Section 22(1) of the Act of 1985.”

(underlining added)

3. The aforesaid paragraphs show that the proceedings for which prior permission is required under Section 22 of SICA are proceedings in the nature of execution, distress or like. It is not every suit or every suit for recovery which automatically becomes proceedings in the nature of execution, distress or like, and only such suits of recovery where there would be proceedings which cause liquidation of assets of a sick company, would be those suits which would be hit by the bar of Section 22 of SICA.

4. In the present case, the suit for recovery of money is a suit for recovery of money simplicitor. Counsel for the plaintiff does not press the interim applications under Order 38 Rule 5 of Code of Civil Procedure, 1908 (CPC) and Order 39 Rules 1 and 2 CPC. Accordingly, in the subject suit, there is no threat to the liquidation of the assets of the sick company and therefore no prior permission is required under Section 22 of SICA.

5. The suit now will have to proceed as no permission is required of BIFR/AAIFR under Section 22 of SICA. The defendant will now positively file the written statement within a period of six weeks from today failing which the right to file the written statement shall stand closed inasmuch as no written statement has been filed in this suit of the year 1999 till today i.e for about 13 years. Replication be filed within a period of two weeks of filing the written statement. Parties to file documents in their power and possession alongwith their pleadings. Admission/denial of such documents will be done by preparing an index of documents of other side and adding an additional column which will contain the endorsement of admission/denial. Affidavits be filed in support of admission/denial of documents.”

5. Therefore, looking at it from any view of the matter that earlier a similar application was dismissed, the fact that petitioner had failed to comply with the repeated directions of the court to show that debt of the respondent/plaintiff was included in the scheme of rehabilitation, that every suit for recovery of moneys does not require prior permission under Section 22 of SICA, and the fact that now since the petitioner/defendant-company is out of BIFR and as stated in the present petition, there is no merit in the petition which is therefore dismissed, leaving the parties to bear their own costs.

SEPTEMBER 25, 2014
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VALMIKI J. MEHTA, J