

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.12.2016

Coram:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P.No.3635 of 2003

M/s.Jagadeeswaran Textiles Ltd.,
rep.by its Managing Director,
P.Govindasamy

... Petitioner

vs.

1. Appellate Authority for
Industrial & Financial Reconstruction,
10th Floor, Jeevan Prakash,
25, Kasthurba Gandhi Marg,
New Delhi 110 001
2. Board for Industrial & Financial
Reconstruction,
22-B Floor, Jawahar Vyapar Bhavan,
No.1, Tolstoy Marg,
New Delhi-110 001
3. Tamil Nadu Industrial Investment
Corporation Ltd.,
Anna Salai, Nandanam,
Chennai-600 035
4. Indian Bank,
rep.by its Chairman,
31, Rajaji Road,
Chennai-1
5. The Collector,
Central Excise,
6/7, A.T.O.Street,
Race Course Road,
Coimbatore.

6. The State of Tamil Nadu,
rep.by its Secretary to Government,
Commercial Tax Department,
Fort St.George,
Chennai-9

7. National Labour Organisation,
Nehru Street,
Udumalpet 641 126
Coimbatore District

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari calling for the records of the respondent 1 in connection with the impugned order of the first respondent dated 12.12.2002 dated 16.1.2003, in appeal No.201 of 20022, in the matter of M/s.Jagadeeswaran Textiles Ltd., confirming the order of the second respondent dated 2.5.2002, in Case No.142/94, quash the same.

For Petitioner : Mr.T.S.Baskaran

For Respondents : Mr.J.Jaseem Mohammed for R3
Mr.K.S.Jayaganesan for R2
M/s.Aiyar and Dolia for R4

ORDER

M/s.Jagadeeswaran Textiles Ltd., was besieged by creditors. Therefore, they moved the Board for Industrial and Financial Reconstruction (in short 'BIFR') in Case No.142 of 1994 for reprieve. During the proceedings, several Schemes and options were touted, but to no avail. Ultimately, the BIFR, by order dated 02.05.2002, dismissed the petition filed by M/s.Jagadeeswaran Textiles Ltd., with the following direction:

"7. Accordingly, the Bench confirmed its prima-facie opinion that it would be just, equitable and in public interest if the sick company - M/s.Jagadeeswaran Textiles Ltd., was wound up in terms of Section 20(1) of the Act. Let this opinion be forwarded to the concerned High Court along with copies of all the orders passed by the Bench in the case from time to time, for further necessary action in accordance with law"

Aggrieved by the order of the BIFR, M/s.Jagadeeswaran Textiles Ltd., appealed to the appellate authority for Industrial and Financial Reconstruction under Section 25(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), in Appeal Case No.201 of 2002. The Appellate Authority confirmed the order of the BIFR by order dated 16.1.2003, the operative portion of which is as under:-

"14.A scheme was sanctioned but remained unimplemented. Efforts made through advertisements also remained unsuccessful. After making efforts BIFR found the company to be unviable and non revivable. Lingering the proceedings unnecessarily has not served any public purpose but served the private purpose of the promoters. As a result, liabilities have increased to several folds. The contentions that still opportunity should have been given to the appellant company to tie up or arrange funds and come up with a possible revival proposal is nothing but a wishful thinking and a lame excuse to further delay the proceedings for their benefit. This contention has no merit.

15. In view of the facts and circumstances noticed above, we do not find any illegality or infirmity in the impugned order. The appeal has no merit and as already ordered stands dismissed."

Challenging the order M/s.Jagadeeswaran Textiles is before this Court.

2. Heard Mr.T.S.Baskaran, the learned counsel for the petitioner.

3. The learned counsel for the petitioner contended that during the pendency of the writ petition, M/s.Jagadeeswaran Textiles have completely settled with the creditors, namely, the Indian Bank and Tamil Nadu Industrial Investment Corporation Ltd., and the company should not be wound up. He also submitted that all the statutory dues have already been paid and that the mill is now running. Therefore, he submitted that the order passed by the appellate authority and BIFR should be set aside and the winding up proceedings should be wound up.

4. Per contra, the learned counsel for the respondents refuted the submissions.

5. Admittedly, pursuant to the order of the BIFR, winding up proceedings in C.P.No.152 of 2002 is pending on the file of this Court. Though the BIFR has recommended the winding up of M/s.Jagadeeswaran Textiles, yet, it is always open to them to resist the winding up petition by contending that the liabilities have been discharged. It is also relevant to state here that the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) itself has been repealed by Notification, dated 25.11.2016, with effect from 01.12.2016, by passing the Sick Industrial Companies (Special Provisions) Repeal Act, 2003. Therefore, no purpose will be served even if the impugned orders are set aside. The nature of proceeding before BIFR is only to give a further lease of life to sick companies, by placing a moratorium on claims of creditors. The fact remains that the mills have enjoyed the protection from 1994 onwards.

6. In the result, nothing survives in this writ petition and accordingly, the writ petition stands closed. No costs.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Msk

To

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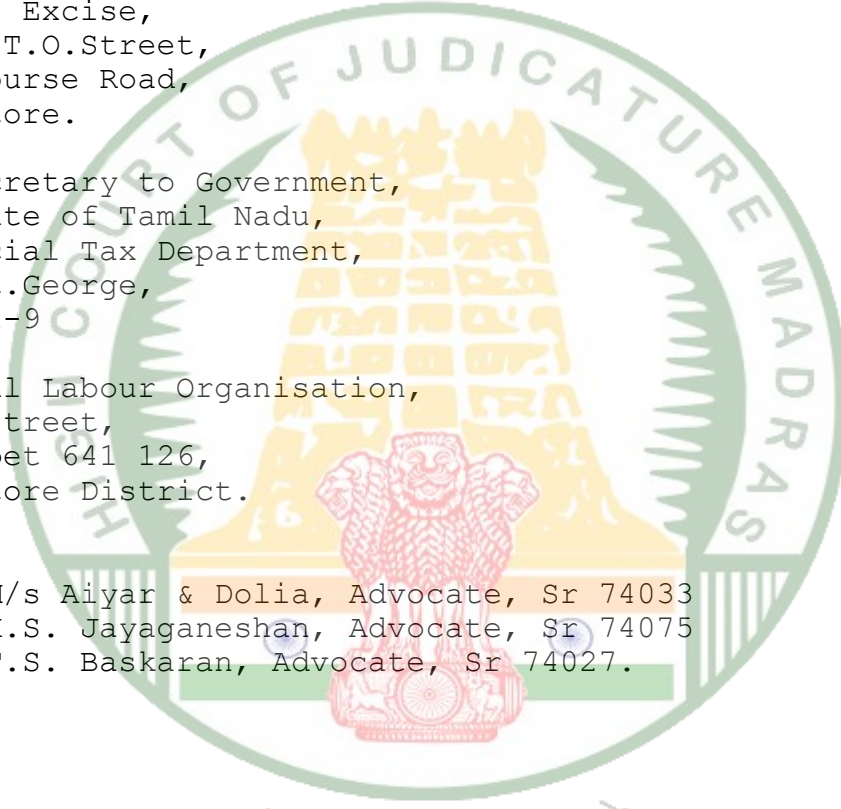
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7. National Labour Organisation,
Nehru Street,
Udumalpet 641 126,
Coimbatore District.

+1 CC To M/s Aiyar & Dolia, Advocate, Sr 74033
+1 CC To K.S. Jayaganeshan, Advocate, Sr 74075
+1 CC To T.S. Baskaran, Advocate, Sr 74027.



सत्यमेव जयते

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UG (CO)
RMP (10/02/2017)

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