THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Writ Petition No.2104 of 2016

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

The proceedings under challenge in this writ petition is the attachment order issued under Section 11 of the Central Excise Act, 1944 dated 06.01.2016 ordering attachment of the amounts payable to the petitioner by M/s. DY.CCA (PP&S)/TSPPC, Vidyut Soudha, Hyderabad and credit whatever amount was due to the petitioner at present and in future to the extent of Rs.3 crores to the Government of India Account under the provisions of the Central Excise Act.

The petitioner invoked the jurisdiction of the Board for Industrial and Financial Reconstruction (BIFR) contending that it was a sick company falling within the ambit of the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short "SICA"). Their application was registered by the BIFR as Case No.17 of 2015 on 30.01.2015. On the ground that the petitioner's case is still pending consideration of the BIFR, and that Section 22 of the SICA prohibits any property of a sick industrial company from attachments, the petitioner has invoked the jurisdiction of this Court.

Sri P.Balaji Verma, learned counsel for the petitioner, would place reliance on the judgment of the Supreme Court in ***KSL and Industries Limited vs. Arihant Threads Limited***[1] in support of his submission that Section 22 of SICA brings within its ambit even the amounts due to the petitioner and prevents it from being attached.

In ***KSL and Industries Limited***[1] the Supreme Court, after extracting Section 22 of the SICA, held:

> "….**Section 22 of SICA is enacted against the backdrop of the existing multitude of remedies which creditors may avail of against an indebted company and its properties bringing them to attachments, auction sale etc., making it difficult for the authorities entrusted with its reconstruction under the SICA to evolve a scheme for reconstruction.** The Section is also given

primacy by way of a non obstante clause vide Section 32 of SICA which reads as follows:-

> *"**32. Effect of the Act on other laws**:- (1) The provisions of this Act and of any rules or schemes made there under shall have effect notwithstanding anything inconsistent therewith contained in any other law except the provisions of the Foreign Exchange Regulation Act, 1973 (46 of 1973) and the Urban land (Ceiling and Regulation) Act, 1976 (33 of 1976) for the time being in force or in the Memorandum or Articles of Association of an industrial company or in any other instrument having effect by virtue of any law other than this Act.*
>
> *(2) Where there has been under any scheme under this Act an amalgamation of a sick industrial company with another company, the provisions of Section 72A of the Income-tax Act, 1961 (43 of 1961) shall, subject to the modifications that the power of the Central Government under that section may be exercised by the Board without any recommendation by the specified authority referred to in that section, apply in relation to such amalgamation as they apply in relation to the amalgamation of a company owning an industrial undertaking with another company."*

> ....***Plainly, the purpose of laying down that no proceedings for execution and distraint or the like or a suit for recovery shall not lie, is to protect the properties of the sick industrial company and the company itself from being proceeded against by its creditors who may wish to seek the winding up of the company or levy execution or distress against its properties.*** *It protects the company from all such proceedings. It also protects the company from suits for recovery of money or for the enforcement of any security or of any guarantee in respect of any loans, or advances granted to the industrial company. But as is apparent, the immunity is not absolute. Such proceeding which a creditor may wish to institute, may be instituted or continued with the consent of the Board or the Appellate Authority. In the Section as originally enacted, the words "and no suit for the recovery of money or for the enforcement of any security ......" were not there. These words appear to have been inserted to expressly provide, rather clarify that no suits for the recovery of money etc. would lie or be proceeded with against such a company......." (emphasis supplied)*

It is evident from the aforesaid observations of the Supreme Court that, in view of Section 22 of SICA, creditors cannot attach the properties of a sick industrial company during the pendency of proceedings before the BIFR. Section 22 of SICA, however, permits a creditor to proceed against the sick industrial company with the consent of the BIFR. In view of the law declared by the Supreme Court in ***KSL and Industries Limited***[1], the impugned order of attachment dated 06.01.2016 is set aside. It is made clear that this order shall not preclude the respondents from approaching the BIFR under Section 22 of SICA to seek its leave; and, on leave being granted, to take action against the petitioner in accordance with law. As the protection under Section 22 of SICA is available only during the pendency of proceedings before the BIFR, it is always open to the respondents to take action against the petitioner on proceedings before the BIFR coming to an end.

The writ petition is disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 08.02.2016
JSU

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

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[1] (2015) 1 SCC 166