

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (T) No.51 of 2017

Order reserved on: 12-5-2017

Order delivered on: 19-5-2017

Uniworth Textiles Limited, formerly, Fabworth (India) Limited,
through its Authorised Signatory Mr. Deep Narayan Singh, 923-
945, Urla Growth Centre, Industrial Estate, Sect-D, Urla, P.O.
Sarora, Raipur – 493221 (CG)

---- Petitioner

Versus

State of Chhattisgarh, Department of Commercial Taxes, through
Office of Commissioner, Commercial Tax, Behind Raj Bhavan,
Civil Line, Raipur (CG)

---- Respondent

Writ Petition (T) No.52 of 2017

Uniworth Textiles Limited, formerly, Fabworth (India) Limited,
through its Authorised Signatory Mr. Deep Narayan Singh, 923-
945, Urla Growth Centre, Industrial Estate, Sect-D, Urla, P.O.
Sarora, Raipur – 493221 (CG)

---- Petitioner

Versus

State of Chhattisgarh, Department of Commercial Taxes, through
Office of Commissioner, Commercial Tax, Behind Raj Bhavan,
Civil Line, Raipur (CG)

---- Respondent

AND

Writ Petition (T) No.54 of 2017

Fabworth (India) Limited, through its Authorised Signatory Mr.
Deep Narayan Singh, 923-945, Urla Growth Centre, Industrial
Estate, Sect-D, Urla, P.O. Sarora, Raipur – 493221 (CG)

---- Petitioner

Versus

State of Chhattisgarh, Department of Commercial Taxes, through
Office of Commissioner, Commercial Tax, Behind Raj Bhavan,
Civil Line, Raipur (CG)

---- Respondent

For Petitioners: Mr. Kishore Bhaduri and Mr. Chandresh
Shrivastava, Advocates.
For State/Respondent: Mr. Bhaskar Payashi, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Since common question of law and fact is involved in these writ petitions, they are heard together and are being disposed of by this common order.
2. The assessing authority by its impugned order in exercise of power under Section 26 (4) (a) of the Chhattisgarh Vanijyik Kar Adhiniyam, 1994 (for short 'the Act of 1994') imposed interest on the petitioners for the period from 1-4-2000 to 31-3-2001 and from 1-4-2001 to 31-3-2002 which was challenge in appeal before the appellate authority and the appellate authority also held that merely on the ground of registration in the Board for Industrial and Financial Reconstruction (BIFR), interest liability cannot be waived. Thereafter, the Chhattisgarh Commercial Tax Tribunal by its order held that on the basis of mere registration with the BIFR, interest liability cannot be waived and also held that statutory liability to pay interest must be expressly

waived against which these writ petitions have been filed.

3. Mr. Kishore Bhaduri, learned counsel appearing for the petitioners, would submit that tax liability has already been discharged by the petitioners and the petitioners have sufficient cause, as the matter has been registered later-on with the BIFR on 29-5-2002 and in view of Section 22 (1) of the Act of 1994, the impugned orders are liable to be set aside. He would rely upon the decision of the Supreme Court in the matter of **Tata Davy Ltd. v. State of Orissa and others**¹ and the decision of the Allahabad High Court in the matter of **J.K. Cotton Spinning & Weaving Mills Co. Ltd. v Union of India**².
4. On the other hand, learned State counsel would oppose the writ petitions and would rely upon the decision of the Supreme Court in the matter of **Voltas Ltd. v. State of A.P.**³.
5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also gone through the record with utmost circumspection.
6. It is not in dispute that interest has been imposed upon the assessee petitioners under Section 26 (4) (a) of the Act of 1994 for the period from 1-4-2000 to 31-3-2001 and from 1-4-2001 to 31-3-2002. The petitioners were registered in BIFR on 29-5-

1 (1997) 6 SCC 669

2 2017 (345) E.L.T. 27 (All.)

3 (2004) 11 SCC 569

2002. Thus, the interest liability is prior to the date of petitioners' registration with the BIFR.

7. The question for consideration would be whether merely on account of registration of the petitioners in BIFR, the petitioners would be relieved of the interest liability which is statutory in nature under Section 26 (4) (a) of the Act of 1994 under the provisions of the BIFR.
8. Section 22 (1) of the Sick Industrial Companies (Special Provisions) Act, 1985 provides 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 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.”

9. Section 22(1) of the Sick Industrial Companies (Special

Provisions) Act, 1985 provides that in case inquiry under Section 16 is pending or any scheme referred to under Section 17 is under preparation or consideration by the Board or any appeal is pending then certain proceedings against sick industrial company are to be presumed to be suspended. The nature of the proceedings which are automatically suspended are winding up of the industrial company or for execution, distress or the like against any of the properties of the sick industrial company or for the appointment of a receiver. The proceedings in respect of these matters can further be continued against the sick industrial company with the consent or with the approval of the Board or the Appellate Authority, as the case may be.

10. In the matter of **Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association CSI CINOD Secretariat, Madras**⁴, the Supreme Court has held the conditions precedent for applicability of Section 22 (1) of the Sick Industrial Companies (Special Provisions) Act, 1985 which state as under: -

“9. A perusal of the aforesaid provision shows that it is applicable, in respect of an industrial company, where (i) an inquiry under Section 16 is pending; or (ii) a scheme referred to in Section 17 is under preparation or consideration; or (iii) a sanctioned scheme is under implementation; or (iv) where an appeal under Section 25 relating to the industrial company is pending. ...”

4 (1992) 3 SCC 1

11. In the matter of **Deputy Commercial Tax Officer and others v.**

Corromandal Pharmaceuticals and others⁵, the Supreme Court has held that embargo under Section 22(1) of the SICA is applicable only to dues reckoned or included in the sanctioned scheme and not to amounts like sales tax etc. collected by the sick industrial company after the date of the sanctioned scheme and legitimately belonging to revenue. Paragraph 13 of the report states as under: -

“13. On a fair reading of the provisions contained in Chapter III of Act 1 of 1986 and in particular Section 15 to 22, we are of the opinion that the plea put forward by the Revenue is reasonable and fair in all the circumstances of the case. Under the statute, the BIFR is to consider in what way various preventive or remedial measures should be afforded to a sick industrial company. In that behalf, BIFR is enabled to frame an appropriate scheme. To enable the BIFR to do so, certain preliminaries are required to be followed. It starts with the reference to be made by the Board of Directors of the sick company. The BIFR is directed to make appropriate inquiry as provided in Sections 16 and 17 of the Act. At the conclusion of the inquiry, after notice and opportunity afforded to various persons including the creditors, the BIFR is to prepare a scheme which shall come into force on such date as it may specify in that behalf. *It is in implementation of the scheme* wherein various preventive, remedial or other measures are designed for the sick industrial company, steps by way of giving financial assistance etc. by Government, banks or other institutions, are contemplated. In other words, the scheme is implemented or given effect to, by affording financial assistance by way of loans, advances or guarantees or reliefs or concessions or sacrifices by Government, banks, public financial institutions and other

5 (1997) 10 SCC 649

authorities. In order to see that the Scheme is successfully implemented and no impediment is caused for the successful carrying out of the scheme, the Board is enabled to have a say when the steps for recovery of the amounts or other coercive proceedings are taken against sick industrial company which, during the relevant time, acts under the guidance/control or supervision of the Board (BIFR). Any step for execution, distress or the like against the properties of the industrial company or other similar steps should not be pursued which will cause delay or impediment in the implementation of the sanctioned scheme. In order to safeguard such state of affairs, an embargo or bar is placed under Section 22 of the Act against any step for execution, distress or the like or other similar proceedings against the company without the consent of the Board or, as the case may be, the appellate authority. The language of Section 22 of the Act is certainly wide. But, in the totality of the circumstances, the safeguard is only against the impediment, that is likely to be caused in the implementation of the scheme. If that be so, only the liability or amounts covered by the scheme will be taken in, by Section 22 of the Act. So, we are of the view that though the language of Section 22 of the Act is of wide import regarding suspension of legal proceedings from the moment an inquiry is stated, till after the implementation of the scheme or the disposal of an appeal under Section 25 of the Act, it will be reasonable to hold that the bar or embargo envisaged in Section 22(1) of the Act can apply only to such of those dues reckoned or included in the sanctioned scheme. Such amounts like sales tax, etc., which the sick industrial company is enabled to *collect after the date of the sanctioned scheme* legitimately belonging to the Revenue, cannot be and could not have been intended to be covered within Section 22 of the Act. Any other construction will be unreasonable and unfair and will lead to a state of affairs enabling the sick industrial unit to collect amounts due to the Revenue and withhold it indefinitely and unreasonably. Such a construction which is unfair, unreasonable and against spirit of the statute in a business sense, should be avoided.”

12.The Supreme Court in the matter of **Ghanshyam Sarda v. Shiv**

Shankar Trading Company and others⁶ has held that bar under

Section 22 (1) of the Sick Industrial Companies (Special

Provisions) Act, 1985 (for short, 'the SIC Act') would be

applicable to the entirety of the period beginning from the inquiry

under Section 16 till the implementation of sanctioned scheme

for rival or until BIFR adjudges that net worth of company has

otherwise become positive. During the entirety of that period

SICA grants protection to the company and leaves it to the

discretion of BIFR whether to permit filing and maintaining of

suit or other proceedings.

13.The Supreme Court, further, in the matter of **Jay Engineering**

Works Ltd. v. Industry Facilitation Council and another⁷ has

held that once the awarded amount has been included in the

scheme approved by the Board, Section 22 of the SIC Act would

apply and observed as under in paragraphs 17, 18 and 19:

17. The said provision, thus, mandates that no proceeding inter alia for execution, distress or the like against any of the properties of the industrial company and no suit for recovery of money or for the enforcement of any security, shall lie or be proceeded with further, except with the consent of the Board or as the case may be, the Appellate Authority. The said statutory injunction will operate when an inquiry had been initiated under Section 16 or a scheme referred to under Section 17 is under preparation and/or inter alia a sanctioned scheme is under

⁶ (2015) 1 SCC 298

⁷ (2006) 8 SCC 677

implementation. It is not disputed before us that the amount awarded in favour of Respondent 2 by the Council finds specific mention in the sanctioned scheme which is under implementation.

18. The award of the Council being an award, deemed to have been made under the provisions of the 1996 Act, indisputably is being executed before a civil court. Execution of an award, beyond any cavil of doubt, would attract the provisions of [Section 22](#) of the 1985 Act. Whereas an adjudicatory process of making an award under the 1993 Act may not come within the purview of the 1985 Act but once an award made is sought to be executed, it shall come into play. Once the awarded amount has been included in the scheme approved by the Board, in our opinion, [Section 22](#) of the 1985 Act would apply.

19. If the liabilities of the appellant are covered by the scheme framed under [Section 22](#) of the 1985 Act, the High Court was clearly in error in coming to the conclusion that the provisions thereof are not attracted only because the debt had been incurred after the Company was declared to be a sick one.”

14. Similar proposition has been laid down by this Court in the matter of **M/s. I.C.S.A. (India Limited), Hyderabad v. M/s. Swastik Wires**⁸.

15. In light of the principles laid down in the above-cited cases, if the facts of the case in hand are examined, it is quite vivid that the petitioner industry has been registered with the BIFR on 29-5-2002 whereas, the liability is prior to that and it has not been demonstrated that any scheme has been sanctioned including waiving of such an amount of interest liability by the scheme approved by the BIFR and it has not been established that the

said interest amount has been included in the scheme approved by the BIFR. Therefore, the petitioners' plea that merely because the petitioner industry has been declared as sick industry on 29-5-2002, whereas the interest liability is prior to that, the petitioners having failed to demonstrate that it has included in the sanctioned scheme (if any) by the BIFR, are not entitled for the protection of Section 22 (1) of the SIC Act. Even otherwise, liability of the petitioner under the Act of 1994 is statutory in nature in the shape of Section 26 (4) (a) of the Act of 1994. The Supreme Court in **Voltas Ltd.** (supra) has clearly held that if statutory liability has to be waived then there must be express waiver of the same.

16. This Court is of the considered opinion that since the amount in dispute i.e. the interest liability has not been demonstrated to be covered under any scheme sanctioned by the BIFR in favour of the petitioners and that amount has been included in such scheme; merely on account of registration / declaration of the petitioners industry as sick industry with the BIFR, it cannot be held that the petitioners are not liable to pay interest amount. The Tribunal is absolutely justified in rejecting the claim of the petitioners and the concurrent finding recorded by the authorities is based on material available on record. I do not find any perversity or illegality in the said finding recorded by the Commercial Tax Tribunal, Raipur and all the writ petitions

deserves to be and are accordingly dismissed leaving the parties
to bear their own costs.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma