THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.9202 of 2008

ORDER:

Petitioner No.1 - Mill is the unit of petitioner No.2 – National Textiles Corporation (APKK & M) Ltd., a Government of India undertaking. It was declared as a sick industrial company under Section 3(1)(o) of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short 'SICA'), as its net worth had been completely eroded. On a reference made by petitioner No.2 under Section 15 of the SICA, the Board for Industrial and Financial Reconstruction (BIFR) formulated a Scheme under BIFR Case No.534 of 2002. In terms of Clause 5.3(v) of the said Sanctioned Scheme, the Government as well as other entities falling within the definition of 'creditors' is required to extend certain benefits including waiver of part of their dues.

It is the case of the petitioners that respondent No.1 – Commissioner, Adoni Municipality, Adoni, vide letter, dated 28.03.2007, demanded petitioner No.1 to pay a sum of Rs.17,46,937/- towards municipal taxes including interest of Rs.6,69,624/- for the period from 1997-98 to 2006-07; that respondent No.1 addressed another letter, dated 22.11.2006 demanding petitioner No.1 to pay the property tax due of Rs.12,46,301/- with interest of Rs.19,31,844/- and vacant land tax due of Rs.1,32,740/-; that the principal tax amount due had already been paid; that respondent No.1 vide letter, dated 01.06.2007 demanded petitioner No.1 for payment of balance property tax of Rs.6,69,624/- as early as possible; that in terms of the Sanctioned Scheme, the authorities including the State of Andhra Pradesh and its instrumentalities shall extend the benefit of waiver of interest component; that the said Scheme was communicated to the respondent authorities; that in terms of the letter, dated 17.05.2006, the Scheme was extended up to 31.03.2008, as such, petitioner No.1 is entitled for waiver of interest up to the extended period and that when the petitioners did not make such payment, respondent No.1 again sent a letter, dated 03.03.2008 to petitioner No.1 for payment of interest amount of Rs.6,69,624/- by stating that there is no provision for waiver of interest on property tax under the Andhra Pradesh Municipalities Act, 1965, and aggrieved by the same, the petitioners filed this Writ Petition seeking to set aside the said letter, dated 03.03.2008.

Respondent No.1 filed a counter-affidavit, in which, it is asserted that the petitioners had already paid arrears of tax up to 1997-98 and that a revised notice was issued for Rs.17,46,937/- towards vacant land tax for 2004-05 and 2006-07 as per rules. It is admitted that as against the said total tax due amount, a sum of Rs.10,77,313/- had been paid by the petitioners leaving a balance amount of Rs.6,69,624/- towards interest. It is further asserted that in terms of Rule 29 of the Taxation & Finance Rules in the Schedule of Andhra Pradesh Municipalities Act, 1965, a simple interest of 2% per mensum is leviable for failure to pay the property tax within 15 days from the date of service of the bill and that the vacant land tax was levied on the capital value of the land in terms of G.O.Ms.No.23, dated 17.01.2007, in which, the Government had fixed the rate of vacant land tax @0.20% on the market value. It is also asserted that the demand made by respondent No.1 in the letter, dated 01.06.2007 is in accordance with the provisions of the Act only.

Heard learned counsel for the petitioners and learned Standing Counsel for Adoni Municipality, appearing for respondent No.1 and perused the material available on record.

A perusal of the material available on record discloses that the SICA, which is repealed by virtue of the Insolvency and Bankruptcy Code, 2016, was in operation during the period when the impugned demand was made. It is to be noted that there is no divergence with regard to the scope and binding nature of the Sanctioned Scheme formulated by BIFR in terms of Section 18 of the SICA. In other words, the Sanctioned Scheme, as formulated by BIFR in terms of Section 18 of the SICA, is binding on all the parties with respect to the reliefs/concessions in the form, in which, it is sanctioned. It is to be noted further that the respective parties/creditors, including the Governmental Agencies, were either consulted or deemed to have been consulted before formulating a scheme by BIFR and that in Clause 5.3(v) of the Sanctioned Scheme, there is a direction to the respective State Governments to waive the interest and damages on the electricity, water and municipal dues and accept payment of principal amount only during the year 2001-02. It is not in dispute that the said Sanctioned Scheme came to be extended up to 31.03.2008. In other words, implementation and operation of the Sanctioned Scheme stands extended up to 31.03.2008. The only remedy available for a party, who does not wish to abide by the Sanctioned Scheme, is to challenge the same by approaching

AAIFR, which is the appellate authority under the provisions of the SICA. It is not the contention of the respondent authorities that the Sanctioned Scheme is not binding on them or any steps were taken to challenge the said scheme.

In this context, it is apt to have a glance at the provisions of Section 18 of the SICA, which deal with preparation and sanction of Schemes. In terms of sub-section (1) thereof, the BIFR is entitled to consider a Scheme prepared by the operating agency and approve the same on such terms and conditions as it deems fit to ensure rehabilitation of the sick company and to make its net worth positive. While Section 18(3) envisages examination and circulation of the Scheme prepared by the operating agency with all the stakeholders and the persons interested with the affairs of the sick company, under Section 18(4), on such scheme being approved by the BIFR, the same shall be binding on all the concerned in terms of Section 18(6) of the SICA. Any person aggrieved, in any manner, with the sanctioned scheme or desirous of seeking modification of the same, can only take recourse to various sub-sections of Section 18, as, in terms of Section 18, the Board is empowered to monitor the implementation of the Sanctioned Scheme.

In view of the above and inasmuch as Section 18 of the SICA is binding on the respondents, the impugned letter demanding the petitioners for payment of interest amount of Rs.6,69,624/- is liable to be set aside.

So far as the demand of vacant land tax is concerned, it may be noted that the same is liable to be paid under the relevant provisions of the Municipalities Act. There is also no mention with regard to waiver of vacant land tax in the Sanctioned Scheme. Therefore, the prayer of the petitioners with respect to waiver of the vacant land tax is not tenable and they are liable to pay the same.

Accordingly, this Writ Petition is allowed setting aside the impugned letter.

Miscellaneous Petitions, if any pending, shall stand disposed of. There shall be no order as to costs.

CHALLA KODANDA RAM, J

6th SEPTEMBER, 2018.

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