

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 245 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 Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Department Of Commercial Taxes, Through Office Of Commissioner, Commercial Tax, Behind Raj Bhavan, Civil Line, Raipur (C.G.)

---- Respondent

WA No. 246 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 Chhattisgarh.

---- Appellant

Versus

- State Of Chhattisgarh Department Of Commercial Taxes, Through Office Of Commissioner, Commercial Tax, Behind Raj Bhavan, Civil Line, Raipur (C.G.)

---- Respondent

WA No. 282 of 2017

- Fabworth India Limited Through Its Director Mr. Deep Narayan Singh, 923-945, Urla Growth Centre, Industrial Estate, Sect - D, Urla, P. O. Sarora, Raipur 493221 Chhattisgarh.

---- Appellant

Versus

- State Of Chhattisgarh Department Of Commercial Taxes, Through Office Of Commissioner, Commercial Tax, Behind Raj Bhavan, Civil Line, Raipur (C.G.)

---- Respondent

For Appellants : Shri Kishore Bhaduri and Shri Pankaj Singh, Advocates
For Respondent/State : Shri Rajnish Singh Baghel, Deputy Advocate General

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per, Ajay Kumar Tripathi, Chief Justice

03.01.2019

1. Three appeals arise from a common order dated 19.05.2017 passed by the learned Single Judge in a batch of writ applications which arose from the similar kind of orders passed by the Assessing Authorities under the Chhattisgarh Vanijyik Kar Adhiniyam, 1994 (for short, 'the Act, 1994').

2. Since the Assessing Authority, in exercise of power under Section 26 (4) (a) of the Act, 1994 imposed interest on the Appellants for varied periods of assessment which in turn was upheld by the Appellate Authority, a challenge was thrown by filing a writ application primarily on the ground that delay in payment was for a valid justifiable ground as the industry in question was before the Board for Industrial and Financial Reconstruction (BIFR).
3. The argument raised before the learned Single Judge was whether an application filed and registered before the BIFR would extend protection to the Unit under Section 22 (1) of the Act, 1994.
4. The learned Single Judge considered the said submission, dealt with the provisions, especially Section 22 (1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short, 'the SIC Act') and also took note of the various decisions rendered by the Courts, especially the Hon'ble Supreme Court in following terms :

10. In the matter of **Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association CSI CINOD Secretariat, Madras**¹, 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. ...”

11. In the matter of **Deputy Commercial Tax Officer and others v. Corromandal Pharmaceuticals and others**², the Supreme Court has held that embargo under Section 22(1) of the SICA is applicable only to dues reckoned or included in the

¹ (1992) 3 SCC 1

² (1997) 10 SCC 649

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 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 others**³, 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 another**⁴, 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

³ (2015) 1 SCC 298

⁴ (2006) 8 SCC 677

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 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**⁵.

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

⁵ AIR 2017 Chhattisgarh 70

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.

5. The learned Single Judge, therefore, came to an opinion that payment of interest and the liability so created for non-compliance within the time frame of filing returns or paying taxes would not be covered under the BIFR Rehabilitation Scheme and the obligation and liability to pay interest amount as held by the Assessing Authority as well as the Appellate Authority cannot be said to be bad in law.
6. It is in this background that the appeals have been preferred. At the appellate stage, learned Counsel representing the Appellants submits that the entire case should be basically examined from the view whether the reason of non-payment was bonafide and there were justifiable reasons in existence which prevented non-payment of the outstanding tax dues within the time frame.
7. The argument made is that since the industry ran into difficult time and that was the reason why it took shelter under the BIFR and therefore, this fact cannot be overlooked or can be said not to be a valid ground or sufficient cause to not impose interest upon the Unit for delay.
8. Section 22(1) of the SIC Act is unambiguous. Unless the scheme would be extended to the extent of even non-payment of outstanding dues of various Revenue Departments, in this case, the Sales Tax Department, mere registration of an application of a sick unit before the BIFR cannot be said to be a ground for either exemption from such payment or will provide

protection as a justification for non-payment. Another thing of significance is that the registration of the application of the Appellant has been made on 29.05.2002, whereas this liability has arisen prior to the said date and we are of the opinion that in matters of obligations created under taxing statute, no leeway as such can be permitted to shy away from compliance or else the entire fiscal management of the State and the Union will go into disarray.

9. The defence taken by the Appellants before the learned Single Judge did not stand the judicial test, keeping in mind the precedents which have been taken note of in the order impugned of the learned Single Judge.
10. The appeals, therefore, have no merit. They are dismissed.

Sd/-
(Ajay Kumar Tripathi)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge