IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.No.1820 of 2011

The Recovery Officer
E.S.I. Corporation
143 Sterling Road
Nungambakkam
Chennai 600 034 .. Appellant/Respondent

-vs-

1. Sivananda Steels Ltd.,
No.18,19,20 Industrial Estate
Ambattur, Chennai 600 058
rep by its Managing Director

2. M/s Dhanalakshmi Bank Ltd.,
34 CSM Plaza
Venkatakrishnan Road
Mandaveli, Chennai 600 028 ..Respondents/Respondents

Appeal filed under Clause 15 of the Letters Patent against the order dated 20.01.2007 made in W.P.No.27951 of 2006.

Prayer in WP 27951/2006 : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, calling for the records in respect of the impugned notice issued by the 1st respondent on 22-8-2006 in Ref.TN/RECY/45(G) -51-9282 to the 2nd respondent quash the same directing the 1st respondent not to take coercive action to realize alleged interest without consent of the BIFR.

For Appellant	:	Mr.Lakshminarayan for Mr.K.Prabakar
For Respondents	:	Mr.C.V.Shailandhran for R1 Mr.Maduvaneswaran for Mr.K.Rajasekaran for R2

JUDGMENT

(Judgment of the Court was made by T.RAJA, J.)

This writ appeal has been filed by the Recovery Officer, ESI Corporation challenging the correctness of the impugned order dated 20.1.2007 passed in the Writ Petition No.27951 of 2006.

2. Learned counsel appearing for the appellant submitted that the first respondent/writ petitioner was dealing with manufacture of steel castings. But due to the labour problem, they declared a lockout by suspending the production from June, 1999. In the meanwhile, they approached the Board for Industrial and Financial Reconstruction, hereinafter referred to as the BIFR, for revival as well as rehabilitation. Reference of the first respondent company was registered in Case No.107 of 2000 and an enquiry under Section 16 of the Sick Industrial Companies (Special Provisions) Act, 1985 has been conducted. The scheme for rehabilitation of the company was under consideration before the BIFR. During the pendency of the BIFR proceedings, an order of attachment dated 12.12.2003 was served upon the first respondent. Aggrieved by the order of attachment, the first respondent moved this Court in W.P.No.36913 of 2003 and the said writ petition was admitted on 17.12.2003 and an order of interim injunction was granted against the appellant and his men from taking any action including the auction pursuant to the order of attachment for realisation of the amount payable under the ESI Act. In the meanwhile, the BIFR framed a scheme with a specific order granting waiver of penal interest and other charges and during the rehabilitation period, direction was issued to the appellant to accept the principal outstanding amount of Rs.12.64 lakhs and the said amount was also remitted by the first respondent on 21.6.2006. Since the interest portion has not been cleared, the notice dated 22.8.2006 impugned in the writ petition was issued. The learned single Judge, referring to Section 22(1) of the Sick Industrial Companies (Special Provisions) Act, setting aside the notice impugned, gave liberty to the appellant to approach the BIFR under Section 18(9) of the Sick Industrial Companies (Special Provisions) Act for clarification of any difficulty regarding the interest whether the same is liable to be paid or not under the sanctioned scheme. The reasoning is unacceptable and unsustainable in law, it is pleaded. Although the first respondent has remitted the entire amount that was made belatedly, they cannot escape from the payment of interest. The learned single Judge has failed to see that the first respondent is liable to pay interest as an integral part of the contribution, as per Section 39(5) of the ESI Act, against the belated payment of contribution dues. Now the first respondent has to pay the balance due of Rs.1,42,008/- along with the accrued interest of Rs.7,97,238/- as on the date

of notice. The crucial point that the term “penal interest” mentioned in paragraph 5.2 H of the sanctioned scheme enclosed in the order of BIFR dated 9.8.2005 should be taken as “damages” as enunciated under Section 85-B of the ESI Act. When the interest is payable by the first respondent as per the statutory obligatin under the provisions of Section 39(5) of the ESI Act against the belated payment of contribution which would be payable for each month within 21 days of the factory month as per Section 39 of the ESI Act read with Regulation 31 of the ESI Regulations, 1950, the order quashing the notice impugned calling upon the first respondent to pay the interest part, is liable to be set aside by allowing the appeal, he pleaded.

3. Learned counsel appearing for the first respondent submitted that admittedly the notice impugned dated 22.8.2006 issued by the appellant is without any legal sanctity, for the simple reason that the first respondent company, declaring a lockout due to the labour problem and the production was also suspended from June, 1999, approached the BIFR for rehabilitation and revival. Reference of the company was registered in Case No.107 of 2000 and an enquiry under Section 16 of the Sick Industrial Companies (Special Provisions) Act was conducted. By letter dated 27.11.2003, the appellant was intimated about the pendency of the BIFR proceedings and also the financial sickness of the company. The appellant also had served the order of attachment dated 12.12.2003. The same was questioned in W.P.No.36913 of 2003 and considering the fact that the matter has been seized by the BIFR for revival and rehabilitation and the notice of recovery cannot be issued, an order of interim injunction was granted by this Court on 17.12.2003 and the same was made absolute on 6.3.2004. When the appellant was well aware of the same, the notice impugned in the writ petition was issued to recover the amount due from the first respondent company by freezing the account, in spite of the injunction order passed against the appellant. When further action was taken for realising the amount payable under the ESI Act without the consent of the BIFR, a scheme was also sanctioned by the BIFR specifically ordering the waiver of penal interest and other charges as on the cut-off date and during the rehabilitation period, to accept the principal outstanding amount of Rs.12.64 lakhs. The said amount of Rs.12.64 lakhs was remitted on 21.6.2006 by the first respondent and the same has been acknowledged by the appellant. When the BIFR has specifically ordered to waive the penal interest, the first respondent approached the writ Court. The learned single Judge, referring to Section 22(1) of the Sick Industrial Companies (Special Provision) Act, which bars the legal proceedings as well as execution and distress proceedings in case where the sanctioned scheme is under implementation, has quashed the same. The impugned order passed by the learned single Judge is

supported by the ratio laid down by the Apex Court in Gram Panchayat v. Shree Vallabh Glass Works Ltd., AIR 1990 SC 1017, wherein the Apex Court has held that Section 22(1) of the Sick Industrial Companies (Special Provisions) Act automatically suspends the following proceedings, namely, (a) winding up of the industrial company; (b) proceedings for execution, distress or the like against the properties against the sick industrial company and (c) proceedings for the appointment of receiver. However, it has been stated that such proceedings may continue against the sick industrial company with the consent of the BIFR or the appellate authority, as the case may be. This apart, the Full Bench of this Court also, in the case of Gowri Spinning Mills (P) Ltd., rep by the Managing Director, Thokkampatti, Dharmapuri District v. Assistant Provident Fund Commissioner, Salem, 2006 (5) CTC 1, following the aforementioned judgment of the Apex Court, has held that coercive proceedings cannot be taken, for the simple reason that where the scheme is under the formation stage or where the scheme has been sanctioned, till the same is completely implemented, Section 22(1) of the Sick Industrial Companies (Special Provisions) Act suspends all sorts of distress proceedings which includes the proceedings initiated by the appellant in the present case under the impugned notice issued under Section 45-G of the ESI Act. Therefore, no fault can be found with, he pleaded.

4. We also agree with the contentions made by the learned counsel appearing for the first respondent. The reason being that when the first respondent company, dealing with the manufacture of steel castings, had declared a lockout due to the labour problem and suspended the production from June, 1999. In the meanwhile, they approached the BIFR for revival as well as rehabilitation. Reference of the first respondent company was registered in Case No.107 of 2000 and an enquiry under Section 16 of the Sick Industrial Companies (Special Provisions) Act was also conducted. The pendency of the proceedings before the BIFR was also intimated to the appellant. Now the scheme has been framed. In the said scheme, the BIFR has specifically ordered the waiver of penal interest and other charges as on the cut-off date and during the rehabilitation period, the BIFR also passed an order directing the ESI Corporation to accept the principal outstanding of Rs.12.64 laksh and the said amount was also remitted by the first respondent on 21.6.2006 and the appellant also had acknowledged the same. Therefore, when the BIFR had framed a scheme for revival and rehabilitation of the first respondent company with a direction to the first respondent to pay the entire amount of Rs.12.64 lakhs and the said amount was also paid by the first respondent and received by the appellant, the direction issued by the BIFR to waive the interest has to be clarified by the appellant with the BIFR, as directed by the learned single Judge. Hence, finding no merits whatsoever, the

writ appeal stands dismissed. However, there is no order as to costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Recovery Officer
E.S.I. Corporation
143, Sterling Road
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Chennai 600 034

+1CC to Mr.K.Prabakar, Advocate, Sr.No.28769
+1CC to Mr.C.V.Shailandharan, Advocate, Sr.No.29300

W.A.No.1820 of 2011

VG-II (CO)
K.RK. (20.09.2021)