



W.P.No.20002 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.No.20002 of 2010 and M.P No.2 of 2010

M/s.Lakshmi Machine Works Limited
A company registered under Companies
Act, 1956, having its registered office
at Perianaickenpalayam
Coimbatore-641 020.

...Petitioner

Vs

- 1.Union of India, represented by
The Director General,
Employees State Insurance Corporation
ESIC Building, Kotla Road
Behind Foreign Post Office
New Delhi.
- 2.The Joint Director
Sub Regional Office
Employees State Insurance Corporation
1897, Trichy Road, Panchdeep Complex
Ramanathapuram
Coimbatore-641 045.
- 3.The Recovery Officer
Sub Regional Office
Employees State Insurance Corporation
1897, Trichy Road, Panchdeep Complex
Ramanathapuram
Coimbatore-641 045.

...Respondents



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Prayer: Writ petition filed under Article 226 of the Constitution of India, seeking to issue a Writ of Certiorari, calling for the impugned records of the third respondent issued in Letter No.56/34184-57, 56/62423-66, 56-62358-54/RRC dated 27.08.2010 and quash the same.

For Petitioner : Mr.N.Sridhar

For Respondents : Mr.S.P.Srinivasan

ORDER

This writ petition has been filed by a company known as M/s.Lakshmi Machine Works Limited, the petitioner herein, aggrieved by the impugned order of the third respondent vide his Letter No.56/34184-57, 56/62423-66, 56-62358-54/RRC dated 27.08.2010, initiating recovery proceedings requiring the petitioner's Bankers to pay a sum of Rs.19,03,339/- towards the ESI dues of another company M/s.Jeetstex Engineering Limited.

2. The brief facts necessary for the disposal of the writ petition are as follows:

A company called "Jeetstex Engineering Limited" became a



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Sick Industry. It is admitted that the said company was liable to pay a sum of Rs.25.54 lakhs to the respondents towards ESI contribution. There was a demand for a sum of Rs.29,64,917/- towards contribution, interest and damages. The said company was declared a Sick Industry by the Industrial and Financial Reconstruction (hereinafter referred to as BIFR), and a draft scheme was framed. The respondents were duly informed regarding waiver of interest and damages as per the draft scheme. Since there was no reply and response from the respondents, the BIFR proceeded further in finalising the same. As part of rehabilitation, the company known as "Jeetstex Engineering Limited" was merged with the petitioner. It is stated that with the contribution of the petitioner more than the net worth of the company namely "Jeetstex Engineering Limited", the draft scheme was approved. After the sick company was taken over by the petitioner, pursuant to the rehabilitation scheme which was put in operation under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985, the respondents came up with the demand towards liability of the former company "M/s.Jeetstex Engineering Limited" towards ESI amount. In the above background, the order of the third respondent is challenged



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before this Court by way of this writ petition.

3. The learned counsel appearing for the petitioner has produced before this Court the materials which would indicate the following facts, dates and events:

<i>DATE</i>	<i>EVENT</i>
Feb,1980	M/s.Jeetstex Engineering Ltd (JEL) had four divisions viz., machinery, Foundry, machine and Windmill. M/s.JEL was engaged in manufacturing / supply of machineries to small and medium sized spinning mills.
	M/s.JEL availed the following credit facilities. a) from IDBI, ICICI and IREDA for its expansion and created first charge over its assets. b) working capital facilities from State Bank of India and Vijaya Bank and created second charge over its assets.
30.09.1999	M/s.JEL become sick in view of textile recession which commenced during the years 1996-1997. In view of this, the net worth of JEL got eroded during the financial year 1998-1999.
12.11.1999	Board of Directors of M/s.JEL formed the opinion that M/s.JEL had become sick and reference was made to BIFR for revival of M/s.JEL and the case is taken on file as BIFR case No.378/1999.
17.02.2000	BIFR declared M/s.JEL as a sick industrial company and appointed IDBI as the Operating Agency (OA)
31.03.2005	Operating Agency prepared the details of the value of the entire assets and liabilities of M/s.JEL by taking complete inventory of all assets and liabilities of whatever nature of M/s.JEL as required under Section 21 of the SICA. As per the valuation given by the valuer the total value of the



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<i>DATE</i>	<i>EVENT</i>
	assets of M/s.JEL was Rs.25.74 crores. As per the inventory conducted by the OA the loan together with interest payable as on 31.03.2005 to IDBI, ICICI, IREDA (First charge holders amounting to Rs.3533 lakhs), SBI & Vijaya Bank (second charge holders amounting to Rs.1512 lakhs) plus interest of Rs.4437 lakhs totally comes to Rs.9482 lakhs and these institutions were agitating for SARFAESI action.
16.12.2005	M/s.JEL wrote letter to ESI to furnish the details of the ESI dues payable under the heads contribution, interest and damages.
19.12.2005	ESI under reply informed that a sum of Rs.29,64,917/- is due by way of contribution, Rs.1,96,879/- by way of interest and Rs.1,12,025/- by way of damages.
20.12.2005	M/s.JEL issued a cheque to ESI for Rs.29,64,917/- i.e the entire amount due to ESI by way of contribution. M/s.JEL was heading towards the logical conclusion of winding up, since OA could not locate any alternate bidder for M/s.JEL. Finally Operating Agency was able to locate LMW as a resourceful party and LMW after lot of persuasion finally agreed to take over the assets and liabilities of M/s.JEL for a consideration of Rs.35 crores despite the value of assets was Rs.25.74 crores.
20.02.2006	Operating Agency submitted a draft rehabilitation scheme to the BIFR on the basis of the proposal given by LMW.
23.03.2006	Based on the rehabilitation scheme submitted by Operating Agency, the draft rehabilitation scheme (DRS) prepared by the board taking cut off date as 31.03.2005 and ordered circulation of the DRS to all the concerned for consent as required under Section 19(2) read with Section 19(1) of SICA and fixed the hearing to hear objections/suggestions on 25.05.2006 and directed the Central/State Government Departments/Authorities etc to communicate their consent/objections within 60 days from the date of receipt



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<i>DATE</i>	<i>EVENT</i>																												
	of the order. DRS suggested the following reliefs and concessions, a) 1st charge holders - 60% of principal dues b) 2nd charge holders- 28.44% of principal dues c) unsecured creditors- 10% of their outstanding as per the books of M/s.JEL d) PF - 43.81 lakhs e) ESI - 25.54 lakhs f) TNGST & GST - 84.64 lakhs g) Central Excise - 0.44 lakhs h) Electricity - 1.14 lakhs i) Property Tax - 14.98 lakhs j) Pollution control board - 1.45 lakhs k) Income Tax - Principal Income Tax due + 18.22 lakhs towards TDS																												
25.05.2006	BIFR heard the objections/suggestions to the DRS, which was circulated as contemplated under section 19(2) of SICA and approved the sanction scheme by ordering merger of M/s.JEL with M/s.Lakshmi Machine Works Ltd., As per the sanctioned scheme/ merger scheme the consideration of Rs.3500 lakhs was agreed to be set apart to discharge the dues in the following manner: <table><tr><td>1) Secured creditors (1st charge holder)</td><td>2120 lakhs</td></tr><tr><td>2) Secured creditors (2nd charge holder)</td><td>430 lakhs</td></tr><tr><td>3) India Cements capital finance</td><td>5.76 lakhs</td></tr><tr><td>4) PF</td><td>43.81 lakhs</td></tr><tr><td>5) ESI</td><td>25.54 lakhs</td></tr><tr><td>6) Sales tax</td><td>84.64 lakhs</td></tr><tr><td>7) Electricity</td><td>1.14 lakhs</td></tr><tr><td>8) Property tax</td><td>14.98 lakhs</td></tr><tr><td>9) Pollution control board</td><td>1.45 lakhs</td></tr><tr><td>10) Workers</td><td>300 lakhs</td></tr><tr><td>11) Income tax</td><td>18.22 lakhs</td></tr><tr><td>12) unsecured creditors</td><td>104 lakhs</td></tr><tr><td>13) share holders @ of Rs.1 per share</td><td>32 lakhs</td></tr><tr><td>14) contingencies</td><td>317.86 lakhs</td></tr></table>	1) Secured creditors (1st charge holder)	2120 lakhs	2) Secured creditors (2nd charge holder)	430 lakhs	3) India Cements capital finance	5.76 lakhs	4) PF	43.81 lakhs	5) ESI	25.54 lakhs	6) Sales tax	84.64 lakhs	7) Electricity	1.14 lakhs	8) Property tax	14.98 lakhs	9) Pollution control board	1.45 lakhs	10) Workers	300 lakhs	11) Income tax	18.22 lakhs	12) unsecured creditors	104 lakhs	13) share holders @ of Rs.1 per share	32 lakhs	14) contingencies	317.86 lakhs
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	In the merger/sanction scheme the aforesaid details are mentioned under the heading III - salient features and rationale for merger. In the merger/sanction scheme under the heading IV - the relief and concession are mentioned. Under this heading vide clause No. 4.2 the following is mentioned <table><tr><th>Statutory dues</th><th>Amount</th></tr><tr><td>PF</td><td>43.81 lakhs</td></tr><tr><td>ESI</td><td>25.54 lakhs</td></tr><tr><td>TNGST & CST</td><td>84.64 lakhs</td></tr><tr><td>Central Excise</td><td>0.44 lakhs</td></tr><tr><td>Electricity</td><td>1.14 lakhs</td></tr><tr><td>Property tax</td><td>14.98 lakhs</td></tr><tr><td>Pollution control board</td><td>1.45 lakhs</td></tr></table> These departments shall waive interest, penal interest, damages, liquidated damages and penalty for late payments if any.	Statutory dues	Amount	PF	43.81 lakhs	ESI	25.54 lakhs	TNGST & CST	84.64 lakhs	Central Excise	0.44 lakhs	Electricity	1.14 lakhs	Property tax	14.98 lakhs	Pollution control board	1.45 lakhs
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13.06.2006	The Registrar of Companies, Coimbatore issued a Certificate of Registration of order of amalgamation dated 25.05.2006 passed by the BIFR for the amalgamation of M/s.JEL with LMW.																
24.09.2007	Appeal Nos.233/2006, 201/2007, 247/2006 and 248/2006 were filed by Vijaya Bank, ARCIL, ATE Enterprise and Income Tax before the Appellate Authority for industrial and financial reconstruction, New Delhi questioning the order sanctioning the scheme on 25.06.2007. All the appeals were dismissed.																

4. On 23.03.2006, based on the rehabilitation scheme submitted by the Operating Agency, a Draft Rehabilitation Scheme (DRS) was prepared by the Board and directed the circulation of the draft rehabilitation scheme to all the stakeholders concerned for consent as



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required under Section 19(2) read with 19(1) of the Sick Industrial Companies (Special Provisions) Act 1985 (hereinafter referred to as SICA) and fixed the hearing for objections and suggestions to 25.05.2006. Despite all the State and Central Government authorities were directed to communicate their consents and objections within 60 days from the date of receipt of the order, the respondents have not raised any objection or given any consent. It is true that the respondents have not given their consent. Later, it is admitted that the petitioner has invested money on the basis of the Sanctioned Scheme which was approved by an order of merger of "M/s.Jeetstex Engineering Limited" with the petitioner on 25.05.2006.

5. The grievance of the petitioner is that as per the Sanctioned Scheme, the contribution towards ESI as on the date of merger got nullified and all the departments including ESI shall waive interest, penal interest, damages, liquidated damages and penalty for late payments, if any. It is stated by the petitioner that the Registrar of Companies, Coimbatore issued a Certificate of Registration of order of amalgamation dated 25.05.2006 (passed by BIFR) on 13.06.2006. It is



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seen that some of the financial institutions have also challenged the order of BIFR before the AIFR in appeals. The order passed by the AIFR dated 24.09.2007 is produced before this Court, which shows that the approved scheme has been confirmed by the AIFR.

6. By the impugned order, the respondents have demanded from the petitioner a sum of Rs.19,03,339/- towards dues to "M/s.Jeetstex Engineering Limited". Referring to the provisions of Section 19(2) and other relevant provisions, the learned counsel appearing for the petitioner submitted that the Sanctioned Scheme is binding on the respondents and the demand is illegal and cannot be sustained. The learned counsel further submitted that the provisions of SICA, overwrites every earlier Act and therefore, the statutory dues even if they are admitted cannot be recovered from the petitioner, which has taken over the sick company, by virtue of an approved scheme under the provisions of SICA. The learned counsel refers to Section 19(2) of the Act which reads as follows:

*"Every scheme referred to in sub-section (1)
shall be circulated to every person required by the*



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scheme to provide financial assistance for his consent within a period of sixty days from the date of such circulation [or within such further period, not exceeding sixty days, as may be allowed by the Board, and if no consent is received within such period or further period, it shall be deemed that consent has been given.

7. The learned counsel for the respondents submitted that there is no provision under the Employees State Insurance Act for waiver of interest or damages, merely because there is an approved scheme only towards interest. The aforesaid submission cannot be countenanced in view of the specific provisions of the SICA, particularly Section 19-3A of the Act which is extracted hereunder:

On the sanction of the scheme under sub-section (3), the financial institutions and the banks required to provide financial assistance shall designate by mutual agreement a financial institution and a bank from amongst themselves which shall be responsible to disburse financial assistance by way of loans or advances or guarantees or reliefs or concessions or sacrifices agreed to be provided or granted under the scheme



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on behalf of all financial institutions and banks concerned.

8. The learned counsel appearing for the petitioner relied upon a judgment of a **Division Bench of Delhi High Court in Director General of Income Tax Vs. BIFR** dated 23.03.2011 which is held as follows:

"10. In the context of the above discussion we would like to reproduce specifically the provisions of Section 32(1) of SICA. Section 32(1) of the SICA 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.



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11. *In view of the aforesaid provision there can hardly be any doubt that once a scheme is formulated after a reference is gone through the process of Sections 17 & 18 of the SICA, the said scheme would have the force of law notwithstanding anything inconsistent therewith contained in any other law. Thus, neither the party making any concessions at the time of the formulation of the scheme nor the company at whose behest the scheme is formulated and sanctioned can get out of the scheme. As noticed above, a draft scheme is sanctioned under the provisions of Sub-section (4) of Section 18 of the SICA. Once a draft scheme is sanctioned it is binding on those concerned as is reflected in Sub-section (8) of Section 18 and Section 19(3) of SICA. Thus, once a sanctioned scheme or any of its provisions is made operable it binds the sick industrial company, and the entities referred to in Section 18(8) and 19(3) of SICA. In these circumstances, the Department cannot surely be head to argue that the provisions of the scheme are not binding on it".*

9. The above judgment is directly on the issue. By virtue of Section 19 (2) of SICA, the consent can be inferred. Therefore, it is



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not open to the ESI Corporation to revive the liability of a sick company by operation of statutory discharge.

10. In the result, this Writ Petition is allowed and the impugned order passed by the third respondent vide his Letter No.56/34184-57, 56/62423-66, 56-62358-54/RRC dated 27.08.2010 is quashed. Consequently, connected Miscellaneous Petition is closed.

06.02.2023

Index:Yes/No
Internet:Yes/No
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To

1. The Director General
Union of India
Employees State Insurance Corporation
ESIC Building, Kotla Road
Behind Foreign Post Office
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2. The Joint Director
Sub Regional Office
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3.The Recovery Officer
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