IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2024

CORAM:

THE HON'BLE MR. JUSTICE M.DHANDAPANI

W.P. No.33207 of 2007
and
M.P. Nos.1 of 2007 and 1 of 2008

Sree Nagalakshmi Textile
Mills (Madurai) Ltd.,
Rep. by its Director,
T.R. Vivekanandan .... Petitioner

Versus

1. The Appellate Authority for Industrial
and Financial Reconstruction,
10th Floor,
Jeevan Prakash,
25, Kasturiba Gandhi Marg,
New Delhi – 110 001.

2. The Indian Bank,
Rep. by its General Manager,
Industrial Revival & Rehabilitation Dept.,
66, Rajaji Salai,
Chennai – 600 001.

3. Karnataka Bank Ltd.,
Mahaveer Circle,
Kankanady,
Mangalore - 575 002.
and Several Branches throughout
India
and its Madurai Branch,
No.3941, Town Hall Road,
P.B. No.78,
Madurai – 625 001,
Rep. by its Branch Manager, V. Prakash. .... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus, calling for the records of the 1st respondent culminated in the order dated 08.08.2007 in Appeal No.184 of 2004 pending on the file of the 1st respondent and quash the same and consequently direct the 1st respondent to remand the matter to BIFR for passing orders after receiving the Draft rehabilitation Scheme from the 2nd respondent.

For Petitioner	: Mr.P. Siddharth for BFS Legal
For Respondents	: R1 – Appellate Authority R2 – No appearance Ms.Pavithra Sundarajan for R3

ORDER

This writ petition has been filed to quash the order dated 08.08.2007 passed in Appeal No.184 of 2004 on the file of the 1st respondent and for a consequential direction to the 1st respondent to remand the matter to BIFR for passing appropriate orders after receiving the Draft rehabilitation Scheme from the 2nd respondent.

2. It is averred in the petition that the petitioner Company was incorporated in the year 1995 with the main object of manufacturing cotton yarn for domestic as well as export markets, thereby the functioning of the company flourished over a period of time. While so, since 1999, the company had incurred huge losses and as such, resulted in complete erosion of funds. Thereafter, reference under Section 15(1) of the Sick

Industrial Companies Act (in short SICA) was made before the BIFR, which was taken on file as Case No.252 of 2001. Subsequently, the BIFR appointed the 2nd respondent as Operating Agency (OA) under Section 16(2) of the SICA. At that point of time, the Special Investigative Audit (SIA) was conducted by the 2nd respondent, thereby, the petitioner Company was declared as sick as required under Section 3 (1) (O) of the SICA. When such being the position, the BIFR directed the petitioner to submit a comprehensive rehabilitation proposal to revive the Company and the 2nd respondent (O.A.) was required to hold a Joint Meeting of Creditors of the petitioner Company to analyse and formulate a Draft Rehabilitation Scheme (DRS). Ultimately, the said DRS has to be placed before the Board to ascertain whether the sick unit can be revived or not.

3. It is further averred that South India Textile Research Association (SITRA) was engaged, and thereafter based on the study viz., Techno – Economic Viability Study (TEVS), the petitioner Company submitted its rehabilitation proposal to the 2nd respondent (O.A.). Later the 2nd respondent held a joint Meeting of the Creditors on 12.08.2003. The major Creditors of the petitioner Company were Karnataka Bank and TIIC, who refused to accept the said proposal as they were interested only in One

Time Settlement (OTS). It is the main grievance that due to aforesaid refusal, the 2nd respondent did not submit a DRS, within the time frame fixed by the BIFR. At this juncture, the BIFR passed an order dated 14.01.2004 directing the 2nd respondent to issue an advertisement for change in Management (COM) of the petitioner Company. Aggrieved by the order of BIFR, which according to the petitioner was passed in a mechanical manner, the petitioner Company approached the 1st respondent viz., AAIFR seeking to set aside the order of the BIFR and to remand the matter to BIFR for consideration of the rehabilitation proposals given by the petitioner afresh. The said appeal was numbered as Appeal No.184 of 2004. However, to the shock and surprise of the petitioner, the 1st respondent, mechanically passed the impugned order, dated 08.08.2007, dismissing the Appeal and by confirming the order of change of management passed by the BIFR Challenging the impugned order, dated 08.08.2007 passed by the 1st respondent, this writ petition has been filed.

4. Learned counsel for the petitioner submitted that the 1st respondent failed to see that due to non-submission of DRS by the O.A. The entire rehabilitation proposal was kept in abeyance besides it vitiates the entire efforts taken by the petitioner company. In such circumstances, AAIFR ought to have remanded the matter back to BIFR for fresh

consideration and directing the O.A. to prepare a DRS. Thus, the failure on the part of the O.A. resulted in passing of the order, dated 14.01.2004 by the BIFR for issuance of such a direction to the petitioner Company with regard to change of management, which can only be passed as a last resort. It is further submitted that without considering the issue in a proper perspective and without application of mind, the 1st respondent merely passed the impugned order, dated 08.08.2007, confirming the order of the BIFR , dated 14.01.2004. Hence, the impugned order passed by the 1st respondent is unsustainable.

5. Learned counsel for the petitioner drew the attention of this Court to a Memo filed on behalf of the petitioner, in the year 2011. Reiterating the contents of the Memo, he submitted that at the relevant point of time, the petitioner Company had three major secured creditors viz., TIIC, Karnataka Bank Ltd., and the Department of Commercial Taxes. During the pendency of this writ petition, out of three secured creditors referred to supra, the dues in respect of Karnataka Bank Ltd., and TIIC were fully settled by the petitioner Company. Finally, he submitted that the dues with the Department of Commercial Taxes would be settled by the petitioner Company in due course and therefore, he prays for issuance of appropriate directions in the above regard.

6. However, the learned counsel for the 3rd respondent submitted that the dues of the 3rd respondent has not been fully settled by the petitioner. Therefore, she seeks liberty to claim the dues from the petitioner and necessary directions in this regard may be issued by this Court.

7. Heard the arguments submitted by the learned counsel for the petitioner and the 3rd respondent and perused the materials placed on record.

8. It is not in dispute that the petitioner is a body Corporate, which earned profits for more than a decade. Later, owing to financial constraints, the petitioner Company was unable to meet out their payment schedule to their creditors. Therefore, the petitioner company made a reference under Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 before BIFR, for determination of sickness, which was subsequently declared as Sick. It is also not in dispute that BIFR appointed the 2nd respondent as Operating Agency (O.A.) and directed them to conduct Special Investigative Audit (SIA) by Chartered Accountants.

9. On a careful reading of Proceedings of BIFR it reveals that due to late deposit of SIA fees by the petitioner-Company, the OA/SIA could not

submit their report, within the stipulated period. Likewise, very many steps were duly followed, viz., ascertaining major creditors (both secured as well as unsecured), joint meeting to arrive at a viable media to formulate DRS of the company, but, all resulted in vain. Since the major Creditors of the petitioner Company i.e., Karnataka Bank and TIIC, refused to accept the proposal of the petitioner Company and they were particular in settling the debt as a One Time Settlement (OTS) the efforts made by the petitioner could not be fructified. Eventually, though sufficient opportunity was granted to the petitioner, DRS based on RBI guidelines was not submitted, which shows that there was lack of resourcefulness /seriousness on the part of the company's Promoter. In such a scenario, the order, dated 14.01.2004 was passed by the BIFR to notify change of management for expeditious revival of the company.

10. Further, aggrieved by the order of BIFR, dated 14.01.2004, the petitioner has approached the 1st respondent, the Appellate Authority. From the findings of the 1st respondent, vide order dated 08.08.2007, which is impugned herein it is clear that the settlement proposal submitted by the petitioner with their major creditors were unaccepted and thus, the O.A. could not forward DRS to the authority concerned. Hence, the 1st respondent applied its mind and passed the well considered order. This

Court does not find any infirmity in the order of the 1st respondent, dated 08.08.2007 and the same is legally sustainable.

11. Be that as it may. It is the contention of the petitioner that during the pendency of this writ petition, the petitioner Company had taken efforts and settled their dues with the two major creditors viz., Karnataka Bank Ltd and TIIC. To that effect, a Memo was filed before this Court even in the year 2011. It could be safely noted that the petitioner Company was declared as sick during the year 2003. Though there was a subsequent development viz., settlement made for two Creditors, the same cannot be taken as credit for the petitioner. The writ petition is of the year 2007 and the matter cannot be kept idle till the petitioner clears the entire dues with their creditor viz., Commercial Tax department or any other creditor. However, it is open to the petitioner to take further steps to settle the dues with their creditor. Keeping all these in mind, this Court is not inclined to issue any positive directions to the petitioner.

12. In view of the aforesaid observations, this Court does not find any merit in this writ petition and the order, impugned herein does not require any interference. Accordingly, the writ petition stands dismissed. However, liberty is granted to the 3rd respondent to work out the remedy in

the manner known to law, if any dues are yet to be cleared by the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

05.08.2024

Index : Yes / No
Internet: Yes/No
Speaking Order/Non-Speaking Order
vsi2

To
1. The Appellate Authority for Industrial
and Financial Reconstruction,
10th Floor,
Jeevan Prakash,
25, Kasturiba Gandhi Marg,
New Delhi – 110 001.

2. The General Manager,
Indian Bank,
Industrial Revival & Rehabilitation Dept.,
66, Rajaji Salai,
Chennai – 600 001.

3. The Branch Manager,
Karnataka Bank Ltd.,
Mahaveer Circle,
Kankanady,
Mangalore
575 002 .
having its Branch at
No.3941, Town Hall Road,
P.B. No.78, Madurai – 625 001,

M.DHANDAPANI, J.

vsi2

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