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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-25525-2018 (O&M)
Date of Decision: 25.09.2024

M/S S.B. PACKAGINGS PRIVATE LIMITED
.....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

.... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. D.S. Patwalia, Senior Advocate with
Mr. Amrinder Singh, Advocate
for the petitioner.
Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. Puneet Jindal, Senior Advocate with

Mr. Arshnoor Singh, Advocate

for respondent Nos. 2 and 3.

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<u>TRIBHUVAN DAHIYA, J. (ORAL)</u>

CM-14584-CWP-2019

Dismissed as not pressed.

CWP-25525-2018

The petition has been filed, *inter alia,* seeking a writ of *certiorari* setting aside the letter dated 26.09.2018, Annexure P-1, passed by the third respondent/Sub-Divisional Officer, Operation Sub-Division, Uttar Haryana Bijli Vitran Nigam, Sampla, asking the petitioner to deposit an amount of ₹3,10,88,197, as outstanding dues. Further, a writ of *mandamus* has been sought directing the respondents to give effect to the Scheme dated 04.04.2013, Annexure P-4, sanctioned by the Board for Industrial and Financial Reconstruction (for short, 'BIFR') for a period of five years after the cut-off date of rehabilitation proposal, i.e., from 31.03.2012 to 31.03.2017, which requires the respondents not to charge amounts over and above the energy charges by granting a waiver.

2. Succinctly, facts of the case are, the petitioner being a Sick company filed a reference with BIFR. The State Bank of India (SBI) was appointed as an operating agency under Section 16(2) of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short, 'the SICA'). Initially, a Draft Rehabilitation Scheme dated 24.01.2013, Annexure P-3 was prepared; its particulars were published in two local dailies, inviting objections/suggestions. No objections against the same were raised by the second respondent/ Uttar Haryana Bijli Vitran Nigam (for short, 'the Nigam'), which is unsecured creditor to the petitioner-Company. After considering all other objections received, the Scheme, dated 04.04.2013, was finalised for implementation by BIFR; it is hereinafter referred to as the 'Sanctioned Scheme'.

2.1. In terms of the Sanctioned Scheme, the petitioner claimed refund of electricity duty (₹10,40,055), late payment charges (₹2,58,882), sundry charges-Advanced Consumption Deposit (ACD) (₹5,38,386), peak load charges (₹15,02,942) and fixed charges (₹18,36,000) from the Nigam. The same were declined, vide order dated 17.04.2014, on the ground that in terms of regulations, the Nigam was bound to charge duties, ACD and other peak load charges, etc. for the electricity consumed by the petitioner.

2.2. The petitioner, therefore, challenged the order, dated 17.04.2014, by filing a writ petition No. CWP-13250-2014 titled *M/s S.B. Packagings Limited v. Uttar Haryana Bijli Vitran Nigam and Others*, which was allowed, vide order dated 31.07.2015, in the following terms:

> The impugned order dated 17.04.2014 (Annexure P-7) is hereby quashed. A direction is issued to the respondents to first adjust the amounts, which have been referred to in the scheme, as approved by the BIFR vide its order dated 04.04.2013, as has been modified subsequently vide order dated 04.10.2014 (Annexure P-2). After the said amounts have been adjusted by the respondents, the bills issued thereafter shall have to be deposited by the petitioner-company.
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> It goes without saying that the stand of the respondents is that the electricity duty was although deposited with the UHBVN but the same was forwarded to the State Government as the same was imposed by the State.
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> If that be so, the respondents-UHBVN may take appropriate steps, as may be permissible under law qua refund of the same from the State. The electricity connection, which was disconnected by the respondents, shall be restored forthwith. In case, there is dues to the credit of the petitioner after calculation, as has been observed above, the amount, if found due, the same shall be intimated within seven days from today which shall be

deposited by the petitioner-company within a further period of seven days. In case the petitioner fails to deposit the said amount(s) so intimated within the period of seven days, the respondents may disconnect the meter.

2.3. Since the order, dated 31.07.2015, was allegedly not implemented by the Nigam, the petitioner filed a contempt petition, COCP-2459-2015 titled *M/s S.B. Packagings Limited v. Rajan Gupta and Others*. In response, the Nigam filed a status report, dated 27.07.2017, stating that all the rebates due to the petitioner as per the Sanctioned Scheme up to 31.03.2012 had been given; and an amount of ₹3,10,88,197 was outstanding against it as on June, 2017. The status report reads as under:

> 3. That as per order of BIFR a sum of Rs-33,94,016/- was refunded by the office of SDO/OP S/Divn., UHBVN, Sampla to the consumer in electricity bill for the M/o 11/2015. As per order of Hon'ble High court a speaking order was passed by CE 'OP' UHBVN, Rohtak on dated 18.01.16 and the consumer was given all the rebates as per the order of BIFR up to 31.03.2012 (Cut off date). The consumer was asked to pay his balance amount along will running bills several times, but the consumer did not made payment of the electricity bill.
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> 4. That presently the consumer is paying his current electricity bills w.e.f. 08-2016 before the Hon'ble Court. An amount of Rs.3,10,88197/- is outstanding against the consumer ending 06-2017.

2.4. Considering the submissions, the Contempt Petition was disposed of by this Court vide order dated 04.09.2018, which is as under:

> In compliance with the order passed by this Court dated

26.04.2018 and 24.08.2018, status report by way of affidavit of SDO 'Operation' S/Division, Sampla, has been filed in Court. According to the said affidavit, the amount which was required to be adjusted, as per the order passed by the BIFR, has been so adjusted and thereafter, an amount of ₹2,83,62,940/- is due towards the petitioner, which fact is not admitted by the counsel for the petitioner.

Having considered the order passed by the BIFR, contempt of which is alleged, according to which, the cut off date was 31.03.2012, this Court is of the considered view that the order passed by the BIFR has been duly complied with by the respondents. However, the petitioner, if, is aggrieved by the subsequent development, which has taken place or that the amount, which has been charged by the respondents is not in consonance with the Rehabilitation Scheme of BIFR, it may approach the Competent Authority for redressal of its grievance.

2.5. Since the Nigam had claimed due amount from the petitioner for the electricity consumed regardless of the Sanctioned Scheme, the instant petition was filed.

3. Mr. D.S. Patwalia, learned Senior counsel for the petitioner has contended that the Sanctioned Scheme as such is binding upon all the concerned parties, including the Nigam, and in terms thereof, it is liable to pay interest amount, and grant waiver of ACD, late payment charges, peak

load charges, fixed charges, etc. during the five year period of sickness, i.e., up to 31.03.2012, as well as the Scheme period of five years therefrom. In support of the contention, reliance has been placed upon paragraph 15.0-B of the Scheme. By referring to it, learned senior counsel has submitted that after the explicit directions in the paragraph, there is no basis for the Nigam to contend that it is not liable to give any waiver/extension to the petitioner beyond the cut-off date. It is in violation of the Sanctioned Scheme, which clearly stipulates that the petitioner will be entitled to all the benefits thereunder during the rehabilitation period of five years also.

4. Mr. Puneet Jindal, learned Senior Counsel for the Nigam, on the contrary, contends that all the due benefits and rebates under the Sanctioned Scheme as admissible to the petitioner have already been granted to it. The Nigam's liability under the Scheme was only up to the cut-off date; and not during the five years' rehabilitation period. The paragraph of the Scheme relied upon by the petitioner to claim entitlement to the waivers, is not a direction to the Nigam. Instead, he has referred to Paragraph 22.0 (General terms and conditions) of the Scheme which binds the Nigam to pay the dues only up to the cut-off date.

5. Arguments advanced by learned Senior counsel for the parties have been considered.

6. There is no dispute on facts, that the petitioner had been declared a sick company and approached BIFR seeking revival and rehabilitation. And the Draft Rehabilitation Scheme, dated 24.01.2013, was finally sanctioned by the BIFR. The bone of contention between the parties

is, entitlement to rebates/waivers of dues and charges etc. in terms of the Sanctioned Scheme, which has been framed by taking 31.03.2012 as the cut-off date for crystallisation of all liabilities. The Scheme has been sanctioned for a period of five years. The petitioner claims entitlement to waivers under the Scheme not only up to the sick period/cut-off date, but during the Scheme/Rehabilitation period as well. Whereas the Nigam admits the petitioner's entitlement to such benefits only up to the cut-off date and not during the Scheme period.

7. The sole basis for the petitioner to claim entitlement to waiver of charges and duties during the Scheme period is paragraph 15.0-B of the Sanctioned Scheme which is as under;

> 15.0 RELIEF AND CONCESSIONS
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> **A.** xxxx xxxx xxxx
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> **B. Uttar Haryana Bijli Vitran Nigam (UHBVN),**
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> The Company seeks following concessions from Uttar Haryana Bijli Vitran Nigarn(UHBVN) and requests the Hon'ble Bench BIFR to direct UHBVN, as under:-
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> 1. The Company has been depositing security amounts (Advance Consumption Deposit) with UHBVN as demanded from time to time since getting the connection in 1992. By now the total amount deposited is Rs. 5.38 Lacs and the total interest accrued on the same is Rs. 11.69 Lacs. The Company requests the Hon'ble Bench to direct the UHBVN to pay this interest amount immediately and grant waiver of Advance Consumption deposit during the period of sickness and the scheme period and refund the amount of Rs. 5.38 Lacs recovered so far.
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> 2. The company requests the Hon'ble Bench BIFR to direct

UHBVN to grant waiver of late payment charges and other penalties during the period of sickness and rehabilitation and refund all such amounts recovered from the company. The amount recovered as on 31.3.12 is Rs. 2.56 lacs.

3. The company requests the Hon'ble Bench BIFR to direct UHBVN to grant waiver of peak load charges charged during the period of sickness and rehabilitation and refund all such amounts recovered from the company. The amount recovered as on 31.3.12 is Rs. 12.82 lacs.

4. The company requests the Hon'ble Bench BIFR to direct UHBVN to grant waiver of fixed charges, charged and being charged arbitrarily during the period of sickness and rehabilitation and refund all such amounts recovered from the company. The amount recovered as on 31.03.2012 is Rs.10.56 Lacs.

A perusal of this paragraph makes it apparent that it merely records *the concessions sought* by the petitioner from the Nigam in the form of waivers, both during the period of sickness as well as the Scheme period. These concessions cannot be claimed as a matter of right.

8. In the later part of the Scheme, there are General Terms & Conditions in para 22.0; the relevant clauses whereof are as under:

22.0 GENERAL TERMS AND CONDITIONS

i) to xi) xxxx xxxx

xii) All current dues arising after cut-off date to be paid by the company in the normal course and no special protection of SICA would be available for this purpose.

xiii) Dues upto cut-off date not disclosed/covered in the rehabilitation scheme to be met by the company/promoters by bringing additional interest free funds from outside sources.

Evidently, the aforementioned terms and conditions clearly stipulate that all current dues arising after the cut-off date are to be paid by the Company/petitioner in normal course, and no protection of SICA would be available for the purpose. There is no other stipulation/ condition/ direction in the entire Sanctioned Scheme which requires the Nigam to extend waiver of charges/duties to the petitioner during the Scheme period. On the contrary, explicit condition of the Scheme is that all dues arising after the cut-off date are to be paid by the Company in normal course. The reliance placed by the petitioner on Para 15.0- B to claim entitlement to the waivers during the Scheme period is misplaced, as the paragraph only records *the concession sought* from the Nigam which cannot be read as a direction or a binding condition to pay/give waivers to the petitioner. Accordingly, there is no escape from concluding that the petitioner is entitled to waiver under the Sanctioned Scheme only up to the cut-off date, and is liable to pay all the dues arising after that date to the Nigam.

9. In view of the above discussion, there is no merit in the petition, and it stands dismissed.

10. Pending miscellaneous application(s), if any, shall also stand(s) disposed of.

(TRIBHUVAN DAHIYA)
JUDGE

25.09.2024
Seema

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*