A YASH DEEP TREXIM PRIVATE LIMITED
v.
NAMOKAR VINIMAY PVT. LTD. & ORS.
(Civil Appeal Nos.8440-8445 of 2013 etc.)

B SEPTEMBER 23, 2013

[P. SATHASIVAM, CJI AND RANJAN GOGOI, JJ.]

Sick Industrial Companies (Special Provisions) Act, 1985 - s.3(o) - Applicability of the Act - To the foreign companies C *registered in India - Held: In view of object and scheme of the Act and the financial health of the company in question, the company does not fall within ambit of expression 'sick industrial company' defined u/s. 3(o) - Hence provisions of the Act does not apply - The question whether the Act applies to* D *foreign companies registered in India, is left open.*

The main question for consideration in the present appeals was whether the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 are applicable to the 'foreign companies' registered in India under the E **provisions of s.591 of the Companies Act, 1956 and therefore, the revival scheme framed by the Board for industrial and Financial Reconstruction, in respect of the respondent-Company, was required to be implemented. In addition to the main question, various other** F **contentious issues with regard to the rights of one group of shareholders or the others to be in the control of the management of the Company were also raised.**

Disposing of the appeals, the Court

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HELD: The Act was enacted to overcome the grossly inadequate and time consuming institutional arrangements that were then in place for revival and rehabilitation of sick industrial companies. The Act was

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brought into force to provide timely identification, by an expert body, of sick industrial companies and to design suitable rehabilitation packages in order to obviate the enormous loss that would be occasioned by such units going permanently out of business. The Act has cast upon the BIFR the duty to cause a detailed inquiry to be made into the functioning of any sick industrial company and to take steps to revive the functioning of such company failing which to refer the cases of such companies to the jurisdictional High Court for winding up in accordance with the provisions of the Companies Act. [Para 7] [375-H; 376-A-E]

2. In the present case the entitlement of the respondent company to receive a total amount of Rs.170 crores (approximately) by way of acquisition compensation and the payment of Rs.95 crores by NHAI which is presently lying in deposit with the Registrar of the Calcutta High Court is not in dispute. That the respondent company would be left with a surplus of about Rs.50 crores after meeting all its losses and liabilities is a common ground amongst all the contesting parties. The rehabilitation scheme framed by the Board by its order dated 04.10.1999 is yet to be implemented. In the aforesaid situation keeping in view the object and scheme of the Act and the virtual consensus of the contesting parties with regard to the present financial health of the respondent company, it is clear that the company can no longer fall within the ambit of the expression "sick industrial company" as defined in Section 3(o) of the Act. Further applicability of the Act to the respondent company, therefore, does not arise. [Para 8] [377-A-D]

3. Since the respondent-company no longer falls within the ambit of a 'sick industrial company' as defined by Section 3(o) of the Act and the Act has ceased to apply

to the company and the rehabilitation package worked out by the Board has not yet been implemented, the question(s) arising in the present appeals have become academic and redundant. Hence, the said question(s) left open for determination in an appropriate case and as and when the occasion would arise. [Para 9] 377-E-F]

4. This Court exercising jurisdiction under Article 136 of the Constitution is not the appropriate forum to adjudicate grievances/claims with regard to the right of management of the affairs of the company by one group of shareholders or the other. Several contentious issues with regard to the rights of one group of shareholders or the other to be in control of the management of the Company had been raised and some of such claims are still pending before the High Court. Coupled with the above is the pendency of several other proceedings with regard to permanent stay of the winding up of the Company. Therefore, it would be just, proper and equitable to leave the contesting parties to pursue their remedies before the High Court or such other forum as may be competent in law. For the present, the Management of the Company as on date will continue until orders, if any, varying the current position are passed by any forum competent in law. It is clarified that the above is a mere working arrangement and the same should not be understood as any expression of opinion by this Court on the entitlement of any particular group of shareholders to run and manage the affairs of the company which issue is left open. [Para 10] [377-H; 378-A-E]

Radheshyam Ajitsaria and Anr. vs. Bengal Chatkal Mazdoor Unionand Ors. **(2006) 11 SCC 771: 2006 (2) Suppl. SCR 918;** *Raheja Univeral Limited vs. NRC Limited and Ors.* **(2012) 4 SCC 148: 2012 (3) SCR 388 - relied on.**

Case Law Reference: A

2006 (2) Suppl. SCR 918	**relied on**	**Para 3**
2012 (3) SCR 388	**relied on**	**Para 7**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 8440-8445 of 2013. B

From the Judgment and Order dated 19.10.2012 of the High Court of Calcutta in FMA Nos. 169, 170, 171, 172 of 2012, 1115 of 2011.

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WITH

C.A. Nos. 8446-8451, 8452-8457 and 8458-8463 of 2013.

Gopal Subramanium, Amrendra Sharan, V. Giri., C.A. Sundram, Rohinton Nariman, Guru Krishna Kumar, Shyam Divan, Umesh Pratap Singh, Brijesh Kumar Singh, R.C. Kohli, S. Mehdi Imam, Rahul Gupta, M.L. Lahoty, Ram Niwas, Samir Ali Khan, Pradeep Aggarwal, Lal Pratap Singh, Gaurav Kejriwal, A. Tanu, Ruchi Kohli, Sanjeev Sen, Manju Agarwal, Rameshwar Prasad Goyal, Rudarjeet Sarkar, Ankur Chawla, Meenakshi Chatterjee, Jayant Mohan, Vikas Mehta, Saurabh Kirpal, Renuka Iyer, Rajat Sehgal, Shakil Ahmed, Narhari, Aditi Misra, Abhishek Gupta, Mohit D. Ram, S. Wasim A. Qadri, Sunita Sharma, Sadha Sandhu, Rashmi Malhotra, Anil Katiyar, Mahesh Srivastava, Vaibhav Srivastava, P.N. Puri, Appoorv Kurup, Ardhendumauli Kumar Prasad, Pragati Neekhra, Parth Tiwari, Sanjoy K. Ghosh, Rupali S. Ghosh, D.P. Mukherjee, Amit Sibbal, U.N. Goyal, Dr. Kailash Chand for the appearing parties. D E F

The Judgment of the Court was delivered by G

RANJAN GOGOI, J. 1. Leave granted.

2. The common challenge in these appeals is against the judgment and order dated 19.10.2012 passed by a Division Bench of the High Court of Calcutta holding that the provisions H

A of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter for short "SICA") are applicable to the "foreign companies" registered in India under the provisions of Section 591 of the Companies Act, 1956 (hereinafter for short "the Act") and, therefore, the revival scheme framed by the Board for B Industrial and Financial Reconstruction (hereinafter referred to as "BIFR") in respect of the Baranagore Jute Factory Plc. (hereinafter for short 'the Respondent Company') is required to be implemented. Though the question raised in these appeals is short and precise, as noticed above, learned counsels for C the parties have raised various issues and contentions which, in no way, appear to be even remotely connected with the question of law that arises from the order of the High Court. We would, therefore, like to make it clear at the outset that in spite of the strenuous efforts on the part of the learned counsels for D the parties to persuade us to go into the said questions we have considered it wholly unnecessary to do so for reasons indicated hereinafter. Instead, we must deal with what strictly arises for our answer in the present appeals leaving the parties to avail of such remedies as may be open to them in law in respect of all other grievances raised.

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3. We may now take note of a few relevant facts. The Respondent Company was wound up by an order dated 28.10.1987 of the learned Company Judge of the Calcutta High Court. The appeal filed against the winding up order by some F of the workers of the Company came to be dismissed by the Appellate Bench of the High Court on 18.11.1987. Thereafter, on an approach being made, the winding up proceedings were stayed for a period of six months on 22.9.1988 and a scheme for revival of the Company suggested by some of the G shareholders was accepted by the learned Company Judge. Our perusal of the relevant facts and the voluminous pleadings brought on record would seem to suggest that the initial order of stay of the winding up dated 22.9.1988 has been extended from time to time and till the present date different schemes H for running the affairs of the Respondent Company has been

framed and implemented pursuant whereto the Company has A been functioning as a going concern. We also deem it necessary to put on record that it has been contended before us that several applications registered and numbered as C.A. No. 126/2005, C.A. No. 302/2005, C.A. No. 303/2005, C.A.No.370/2009, C.A.No.957/2010 for a permanent stay of the B winding up proceedings have been filed before the Calcutta High Court and the same are presently pending. The above plea has been urged notwithstanding the observations of this Court in *Radheshyam Ajitsaria & Anr. v. Bengal Chatkal Mazdoor Union & Ors.*[1] to the effect that in permanent stay of C the winding up proceedings in respect of the Respondent Company had been granted by the High Court.

4. From the pleadings of the parties placed before us it appears that the Respondent Company is the owner of vast immovable properties in and around Kolkata which, with the D passage of time, have enormously appreciated in value. It is this particular asset of the Respondent Company which has been the bone of contention between different groups of shareholders who have claimed the right to run the affairs of the Company under the schemes framed by the learned E Company Judge from time to time. The action of one group of shareholders purportedly to the disadvantage of another and the acquisition of majority share holding by one such group to the detriment of the other by enlarging the equity base of the Respondent Company has been the bone of contention giving F rise to serious contentious issues, which issues, as indicated earlier, we are not inclined to go into as the same not only has to be agitated before the appropriate forum but also does not arise from the order passed by the High Court which has been subjected to challenge in the appeals before us. All that would G be necessary for us to note, in addition to the facts stated above, is that a Reference made in the year 2004 to the BIFR by two of the Directors of the Respondent Company claiming to be in office at that point of time was ordered by the Calcutta

1. (2006) 11 SCC 771. H

A High Court to be disposed of on merits. The said order is dated 20.02.2006 passed in W.P. No. 221 of 2006. On the basis of the said order proceedings before the BIFR were taken up and a scheme under Sections 18(4) and 19(3) of the SICA was framed and notified for immediate implementation by the order B of the BIFR dated 4.11.2009. The said order came to be challenged before the High Court in W.P. No. 1166/2009 (re-numbered as W.P. 5535(W)/2010). There was an interim order in the said writ petition restraining the respondents therein from taking any steps in the matter of sale of any property of the C Respondent Company or from creating any charge in respect of the assets of the Company without the leave of the Court. The writ petition was, however, withdrawn on 16.6.2010 whereafter three separate writ petitions bearing Nos. 12377/2010, 12406/2010 and 12412/2010 were filed challenging the D jurisdiction of the BIFR to entertain the reference; frame the scheme in question and pass orders for implementation of the same. The aforesaid writ petitions were disposed of by the learned Single Judge of the High Court by order dated 25.1.2011 holding that the SICA is not applicable to the Respondent Company, it being incorporated outside India. E Consequently, the scheme framed by the BIFR was set aside and quashed. As against the aforesaid order dated 25.1.2011 passed by the learned Single Judge of the High Court six appeals were filed by the aggrieved parties bearing Nos.169/2012, 170/2012, 171/2012, 172/2012, 173/2012 and 1115/ F 2011. The Appellate Bench of the High Court by order dated 19.10.2012 took the view that on a purposive interpretation of the provisions of SICA the said Act would be applicable to the Respondent Company. In this regard the Division Bench of the High Court specifically took note of the fact that the only factory G of the Company is located in India at Baranagore; 90% of its shareholders are Indians and 3700 workers are working in the jute factory in West Bengal. Aggrieved, the present appeals have been filed before us.

H 5. Having noticed the question(s) arising from the order of

the High Court which has been challenged in the appeals presently under consideration, we may now briefly take note of the contentions raised in the appeals filed by the respective appellants before this Court.

The appellant in the appeals arising out of SLP (C) Nos. 39005-39010/2012, apart from questioning the jurisdiction of the BIFR, also contends that the first respondent (Namokar Vinimay Pvt. Ltd.) in the said appeals had fraudulently increased its equity holding from 9% to 90% on payment of a paltry sum of Rs. 5 crores by committing acts of cheating, forgery, fraud etc. The majority shareholding of the appellant has been thereby reduced, it is claimed.

In the appeals arising out of SLP (C) Nos.39011-39016/2012 the workers' union has raised grievances with regard to the competence of the existing Management Committee to function and contends that the Committee consisting of the two Directors who have instituted the appeals arising out of SLP(C) Nos. 39017-39022/2012 would be competent in law to run the affairs of the Respondent Company. Certain alleged fraudulent acts in the matter of disposition of the property/transfer of shares by the existing Management Committee are also alleged by the workers' union.

On the other hand in the appeals arising out of SLP(C) Nos. 39017-39022/2012, two Directors, namely, Chaitan Choudhury and Ridh Karan Rakhecha who have purportedly filed the appeal on behalf of the Respondent Company, apart from raising the issue of jurisdiction of the BIFR and the applicability of the SICA to the Company, had also struck issues with regard to the changes in the composition of the Management Committee and the frauds and the misdeeds allegedly committed by the first respondent, i.e., Namokar Vinimay Pvt. Ltd. in bringing out the above changes. Peculiarly, the reference of the case of the respondent Company to the BIFR was made by the very same appellants. In the last set of appeals in chronological order, i.e., appeals arising out of

A SLP(C) Nos. 39023-39028/2012, the appellant Radheshyam Ajitsaria is one of the promoters of the revival scheme under which a Committee of Management had been constituted in the year 1988/1989 by the learned Company Judge of the High Court to run the affairs of the Company. The appellants therein B are aggrieved by the BIFR's scheme which, according to the appellant, would be in serious derogation of the scheme approved by the High Court.

6. Having noted the broad features of the grievances C raised in each of these appeals we may now take note of certain connected facts on the basis of which we will be required to decide the necessity and expediency to adjudicate the core question arising in these appeals and the other issues that have been sought to be agitated before us. It has already been stated in the earlier part of this order that the Respondent D Company is the owner of vast tracts of immovable property in and around Kolkata which has, with the passage of time, appreciated in value. Way back in the year 1988 an area of about 24 acres of land owned by the Company was acquired for the purpose of building, maintenance, management and E operation of the second Vivekananda Bridge across the river Hoogly. In the year 2003 provisional compensation was assessed at Rs.21,28,21000/- and on deposit of the said amount possession of the land was taken over. The acquisition of the land came to be challenged before the High Court and F the said challenge was also carried to this Court. The net result of the aforesaid exercise(s) was an enhancement of the compensation initially by the High Court to the extent of 30% and thereafter by this Court by fictionally shifting the date of entitlement of compensation from the date of acquisition to the G date of taking over of possession. An award dated 30.01.2006 was made in terms of the order of this Court which had led to further disputes between the parties. Eventually, all parties agreed to refer the matter to the sole arbitration of a retired Chief Justice of this Court who by a final Award dated H 13.9.2012 awarded an additional compensation package of

Rs.57 crores along with interest, which on computation, would amount to about Rs.50 crores. A sum of Rs.95 crores has been deposited by the National Highway Authority of India with the Registrar of the Calcutta High Court on 9.11.2012 in the account of the Respondent Company. In this manner the Respondent Company has received/entitled to receive a sum of nearly Rs.170 crores on account of compensation for acquisition of the land. The Respondent Company has clearly and categorically and on the basis of the precise details of its liabilities has contended that even after meeting all its statutory and contractual obligations and liabilities it would still be left with a surplus of nearly Rs.50 crores and, therefore, would not be a 'sick company' any more. The aforesaid claim/position has been admitted by the appellant in the appeals arising out of SLP (C) Nos.39005-39010/2012 in paragraph 'I' of the SLP by stating as follows :

> "It is submitted that in all an amount of Rs.170 crores has been paid by NHAI to the Respondent No.22 Company out of which Rs.95 crores has been deposited with the Registrar of the High Court on 9.11.2012 to the credit of the Respondent No.22 Company pursuant to the award dated 13.9.2012 and as such the Respondent No.22 Company would be out of BIFR as it will have a surplus fund available and profits of about Rs.50 crores even after meeting out all losses and liabilities."

7. To appreciate the effect of the aforesaid facts on the necessity of any adjudication of the present appeals, the object behind enactment of the SICA and the statutory scheme contemplated by the Act may be briefly noticed. An elaborate exposition of the legislative history and object behind enactment of the SICA as well as the scheme under provisions of the Act is to be found in a recent pronouncement of this Court in *Raheja Univeral Limited v. NRC Limited & Ors.*[2]. At the cost of repetition it may be usefully recapitulated that the Act was

2. (2012) 4 SCC 148.

A enacted to overcome the grossly inadequate and time consuming institutional arrangements that were then in place for revival and rehabilitation of sick industrial companies. The Act was brought into force to provide timely identification, by an expert body, of sick industrial companies and to design B suitable rehabilitation packages in order to obviate the enormous loss that would be occasioned by such units going permanently out of business. The provisions of Sections 15 to 19 contained in Chapter III of the Act dealing with references to the Board by the Management of sick industrial companies; C enquiries into the working of such companies and the measures to be undertaken by the Board to make a sick industry viable had received a full consideration of this Court in *Raheja Univeral Limited* (supra). The details in this regard need not be noticed once again save and except that the Act has cast D upon the BIFR the duty to cause a detailed inquiry to be made into the functioning of any sick industrial company and to take steps to revive the functioning of such company failing which to refer the cases of such companies to the jurisdictional High Court for winding up in accordance with the provisions of the Companies Act. In this regard, specific notice must be had of E Section 3(o) of the Act which defines a sick industrial company in the following terms:

> "(o) "sick industrial company" means an industrial company (being a company registered for not less than five F years) which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth.
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> Explanation.-For the removal of doubts, it is hereby G declared that an industrial company existing immediately before the commencement of the Sick Industrial Companies (Special Provisions) Amendment Act, 1993 registered for not less than five years and having at the end of any financial year accumulated losses equal to or exceeding its entire net worth, shall be deemed to be a

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sick industrial company;" A

8. In the present case the entitlement of the respondent company to receive a total amount of Rs.170 crores (approximately) by way of acquisition compensation and the payment of Rs.95 crores by NHAI which is presently lying in deposit with the Registrar of the Calcutta High Court is not in dispute. That the respondent company would be left with a surplus of about Rs.50 crores after meeting all its losses and liabilities is a common ground amongst all the contesting parties. The rehabilitation scheme framed by the Board by its order dated 04.10.1999 is yet to be implemented. In the aforesaid situation keeping in view the object and scheme of the Act and the virtual consensus of the contesting parties with regard to the present financial health of the respondent company it is clear that the company can no longer fall within the ambit of the expression "sick industrial company" as defined in Section 3(o) of the Act. Further applicability of SICA to the respondent company, therefore, does not arise. B C D

9. If the respondent company no longer falls within the ambit of a 'sick industrial company' as defined by Section 3(o) of the Act and the Act has ceased to apply to the company and the rehabilitation package worked out by the Board has not yet been implemented, the question(s) arising in the present appeals have surely become academic and redundant. If that be so, we do not see why we should answer the said question(s) in the present group of appeals. Instead, in fitness of things, we should leave the said question (s) open for determination in an appropriate case and as and when the occasion would arise. E F

10. In so far as the other issues, particularly, with regard to the management of the company is concerned we have already found that none of the said issues arise from the order of the High Court under appeal before us. Even otherwise, we will not be justified to go into any of the said issues and express any opinion thereon inasmuch as this Court exercising G H

A jurisdiction under Article 136 of the Constitution is not the appropriate forum to adjudicate grievances/claims with regard to the right of management of the affairs of the company by one group of shareholders or the other. It has been urged before us that several contentious issues with regard to the rights of B one group of shareholders or the other to be in control of the management of the Company had been raised and some of such claims are still pending before the High Court. Coupled with the above is the pendency of several other proceedings with regard to permanent stay of the winding up of the C Company. Taking into account all that has been stated above we are of the view that it would be just, proper and equitable to leave the contesting parties to pursue their remedies before the High Court or such other forum as may be competent in law. For the present, the Management of the Company as on date will continue until orders, if any, varying the current position are D passed by any forum competent in law. It is made clear that the above is a mere working arrangement that we have considered appropriate for the present and the same should not be understood as any expression of opinion by us on the entitlement of any particular group of shareholders to run and E manage the affairs of the company which issue is left open.

11. Consequently, all these appeals shall stand disposed of in terms of our above observations and directions.

K.K.T. Appeals disposed of.