

SUPREME COURT OF INDIA

Shree Sajjan Mills Limited & Ors.

Vs.

Municipal Corporation

C.A.No. ... of 2009

(Altamas Kabir and Cyriac Joseph, JJ)

28.04.2009

ORDER

Altamas Kabir, J.

1. Leave granted. This appeal is directed against the judgment and order f dated 28-7-2005, passed by the Madhya Pradesh High Court at Indore in MA No. 2275 of 2004 and also against the order dated 11-1-2007, passed in MCC No. 1194 of 2005.

2. The petitioner herein applied to the Board for Industrial and Financial Reconstruction (BIFR) under the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "SICA") for being registered as a sick company and it was so registered on 21-11-1989. It appears that a recommendation was made by BIFR for winding up of the Company, but in appeal before the Appellate Authority for Industrial and Financial Reconstruction (AAIFR), a scheme for revival of the Company was framed on 29-11-1995. Arising out of SLPs (C) Nos. 12148-49 of 2007

3. Pursuant to the scheme, an Assets Sale Committee was constituted which invited tenders for sale of surplus land belonging to the appellant Company. The respondent Corporation also participated in the auction and a was found to be the highest bidder in respect of the plots tendered for sale.

4. Under the terms and conditions of the sale, the highest bidder was required to deposit 20% of the purchase price within thirty days from the date of the auction and the remaining balance in two subsequent stages. At the very initial stage, the Corporation failed to deposit 20% of the purchase price within the stipulated time and, accordingly, the aforesaid Committee ^ cancelled the offer and forfeited the earnest money which had been deposited by the Corporation for participating in the auction. Such cancellation and forfeiture was effected as far back as in 1998.

5. Subsequently, in 2001, the Corporation filed a suit for recovery of the earnest money.

Before the civil court, an application was filed by the appellant Company under Sections 9 and 151 of the Code of Civil Procedure read with Section 26 of SICA objecting to the jurisdiction of the court to entertain the suit.

6. The application was considered by the learned District Judge, Ratlam, Madhya Pradesh, before whom the suit was pending. Accepting the submissions made on behalf of the Corporation, the learned District Judge came to the finding that in view of Section 26 of SICA, the civil court had no jurisdiction to try any suit relating to sick units against the proceedings of the Board and was of the view that the plaint should be returned to the plaintiff under Order 7 Rule 10 CPC. However, on the request made on behalf of the plaintiff, an order was made for return of the plaint for presentation before the appropriate forum, including the Board, under the provisions of Order 7 e Rule 10-A CPC.

7. Aggrieved by the order of the learned District Judge, dated 31-8-2004, the respondent Corporation filed Miscellaneous Appeal No. 2275 of 2004. The High Court considered the effect of Section 26 of the Sick Industrial Companies (Special Provisions) Act, 1985 and held that the transaction between the Corporation and the Company was outside the purview both of BIFR and Aaifr, and that the same did not affect the implementation of the scheme. The High Court, accordingly, allowed the appeal and set aside the order of the learned District Judge and remanded the same to the learned District Judge to dispose of the suit on merits. The said order of the High Court has been challenged in the present special leave petition.

8. Ms Sunita Rao, learned advocate for the appellant, tried to impress upon us that the sale, which was sought to be effected by the Assets Sale Committee, constituted a part of the process of implementation of the scheme and, accordingly, under Section 26 of SICA, appropriate relief should have been sought for before the Board and that the High Court had erred in holding otherwise.

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9. Ms Rao submitted that the sale being part of the scheme for revival of the Company, only BIFR or Aaifr have jurisdiction to decide the question as to whether the earnest money had been rightly forfeited or not. Ms Rao relied on the decision of this Court in *Jay Engg. Works Ltd. v. Industry Facilitation Council* in support of her submissions.

10. On the other hand, Ms Priya Puri, learned advocate, appearing for the respondent Corporation, submitted that the sale transaction may have been effected towards the implementation of the scheme, but the question as to whether the earnest money deposited by the Corporation was liable to be forfeited or not was not an issue which fell for the determination of BIFR or Aaifr under the aforesaid Act and that the same was an issue of a purely civil nature to be decided by the civil court. She submitted that no interference was called for with the judgment and order of the High Court.

11. Having considered the submissions made on behalf of the respective parties, we are unable to agree with Ms Rao that the forfeiture of the earnest money in respect of the sale transaction was part of the process for implementation of the scheme as such. The provisions of Sections 15 to 19 of SICA provide for BIFR to frame a scheme for revival of the company declared sick and, in that connection, it has authority to decide all matters with regard to such a scheme. It is in that context that Section 26 has to be read:

“26. Bar of jurisdiction.—No order passed or proposal made under this Act shall be appealable except as provided therein and no civil court shall have jurisdiction in respect of any matter which the appellate authority or the Board is empowered by, or under, this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”

12. We agree with the view expressed by the High Court that the forfeiture of the earnest money by the Assets Sale Committee could not have been the subject-matter of a dispute within the meaning of Section 26 which either BIFR or AAIFR has the jurisdiction to determine. Accordingly, we see no reason to interfere with the judgment and order of the High Court impugned in this appeal.

13. The appeal is, therefore, dismissed. Consequently, the order dated 11-1-2007, rejecting the application filed on behalf of the Corporation for recalling the order by the appellant Company, does not call for any interference.

1 (2006) 8 SCC 677