

SUPREME COURT OF INDIA

President/Secretary, J.K. Synthetics Mazdoor Union (Citu), Indira Gandhi Nagar, Kota & Ors.

Vs.

Arfat Petrochemicals Pvt. Ltd. & Ors.

C.A.No.8597 of 2010

(Anil R.Dave and L.Nageswara Rao,JJ.,)

18.11.2016

JUDGMENT

L.Nageswara Rao,J.,

1. Civil Appeal Nos. 8597 and 8598 of 2010 are filed by President, J.K. Synthetics Mazdoor Union, Kota & Ors. and General Secretary, Rajasthan Trade Union Kendra & Anr. respectively against the judgment dated 28.07.2009 of the Rajasthan High Court at Jaipur in Civil Writ Petition No. 2006 of 2009. Civil Appeal No. 8599 of 2010 is filed by M/s J.K. Synthetics Ltd. against the same judgment to a limited extent that the findings in its favour given by the Appellate Authority for Industrial and Financial (AAIFR) vide order dated 11.12.2008 were reversed without any challenge to the same.

2. The parties will hereinafter be referred to as arrayed in Civil Appeal No. 8597 of 2010. The facts relevant for adjudication of the dispute in these Appeals are as follows: J.K. Synthetics Limited (now Jay Kay Enterprises Ltd.), who is the Second Respondent was declared a sick industrial company on 02.04.1998. The Industrial Development Board of India (IDBI), who is the Fourth Respondent was appointed as the Operating Agency. A Draft Rehabilitation Scheme was submitted on 06.06.2000. As per the said Scheme, a revival of the cement units by de-merging them into a separate unit was proposed. This was not accepted by the creditors and the Operating Agency. The Board for Industrial and Financial Reconstruction (BIFR) directed an advertisement to be issued for a change of management of the company for the purpose of rehabilitation. The Second Respondent challenged the order dated 06.06.2000 by filing an Appeal before the AAIFR. The AAIFR circulated a Draft Rehabilitation Scheme for approval on 31.01.2001. The AAIFR allowed the said Appeal by its order dated 23.01.2003 by setting aside the order of the BIFR dated 06.06.2000. By the said order, the AAIFR sanctioned the Draft Rehabilitation Scheme dated 31.01.2001 by which the proposal of the de-merger of cement units was accepted.

3. In the meanwhile, the Second Respondent entered into a Memorandum of Understanding (MoU) with M/s Arafat Petrochemicals Pvt. Ltd. (APPL), the First Respondent herein.

According to the said MoU the assets of the Kota Units of Respondent No. 2 were to be sold to Respondent No.1 for a total consideration of Rs. 15 crores. The liability towards payment to the workmen was to be borne by APPL. It is also relevant to mention here that a Tri-Partite Labour Settlement Agreement (TLSA) was executed between the First Respondent, Second Respondent and the Labour Unions on 09.10.2002. Another TLSA on the same terms was entered into between the First Respondent, Second Respondent and Staff Association on 22.10.2002. The total liability under the TLSAs worked out to approximately Rs.43.69 crores. There is no unanimity between the parties on the scope of the above mentioned TLSAs. The First Respondent claims that there is no compulsion on its part to provide future employment to all the existing workmen whereas the workmen contend to the contrary. There is also a dispute about the obligation of First Respondent to revive the Kota units.

4. On 07.01.2005, the AAIFR sanctioned a Scheme for transfer of the Kota units to the First Respondent in terms of the MoU dated 19.10.2001. The liability of the First Respondent was fixed at Rs.52.46 crores (Rs.15 crores to be paid to JK Synthetics Limited/Second Respondent and Rs.37.46 crores to be paid to the workmen). The order dated 07.01.2005 was challenged by the Appellant in the High Court of Delhi by filing a Writ Petition which was dismissed on 26.07.2005. The AAIFR refused to interfere with the Sanctioned Scheme dated 07.01.2005 on the ground that it was substantially implemented. By an order dated 30.05.2007 the AAIFR directed the BIFR to monitor the implementation of the Sanctioned Scheme.

5. The Appellant filed Civil Suit No.63 of 2008 in the Court of Additional Civil Judge, Kota seeking an injunction against the First Respondent from selling, removing or dismantling any assets of the Kota units till the entire amount due to the workmen was determined and settled. The said suit was dismissed on 08.04.2008 on the ground that the matter has to be decided under the Industrial Disputes Act, 1947.

6. On 24.03.2008 a sale deed was executed by the Second Respondent in favour of the First Respondent for sale of the assets of the Kota units. In the review meeting held on 05.05.2008, the BIFR took note of the complaints that were made regarding the sale of assets of the Kota units as waste/scrap by the First Respondent. The BIFR held that the interest of the workmen have to be safeguarded in accordance with the Sanctioned Scheme of 2005. The BIFR also held that the Second Respondent cannot escape responsibility towards the rehabilitation of the Kota unit on the ground that there is change in management. After holding that sufficient steps have not been taken by the First and Second Respondents towards revival of the Kota Units, the BIFR gave the following directions:

“i) “IDBI (MA) would expeditiously carry out spot inspection of the Kota Unit and submit a detailed status report to this Board regarding implementation of the SS-03 & SS-05 within a period of 30 days.

ii) M/s JKSL/M/s APPL would maintain status quo and would not alienate any material/assets whatsoever from the factory site of Kota Unit till further orders from this Board.

iii) Permission is granted to all Association (s)/Union (s)/ Employees of the company M/s JKSL present today to proceed u/s 22(1) against the company M/s JKSL/M/s APPL/their promoter(s)/guarantor (s) for recovery of their dues through legal action(s) in appropriate forum(s).

iv) Chief Secretary/ Resident Commissioner, Govt. of Rajasthan shall attend the next hearing as fixed by this Board.

v) Allahabad Bank, Central Bank of India and Syndicate Bank are exempted from attending any further hearing in the matter. The address list be amended accordingly, as requested by the company. The employees and other respondents listed by Hon'ble AAIFR in order of 31.08.2006 be noticed for the next hearing”

7. The First Respondent participated in the next review meeting held by the BIFR on 30.06.2008. It complained of no notice being issued for the earlier meeting dated 05.05.2008. The First Respondent informed the BIFR that it is not a sick company and no directions can therefore be issued to it. The BIFR held that the First Respondent was not right in contending that it does not fall within the purview of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as “the Act”) and need not implement the orders issued by the Board. The BIFR directed the IDBI to carry out an inspection of the Kota units and to submit a report. There was a direction to maintain status quo in respect of the material/assets at the factory site of the Kota Units till further orders. There was also a stay on transfer/alienation of land or assets of the company without the permission of the Board. The orders dated 05.05.2008 and 30.06.2008 of the BIFR were assailed by the First and Second Respondents before the AAIFR. The AAIFR by its order dated 11.12.2008 dismissed the Appeals filed by the First Respondent and directed the BIFR to re-examine the exact position relating to the payment of dues to the workmen. The BIFR was also directed to continue the monitoring of the Scheme and review the efforts made by the First Respondent towards revival of the Kota units. The contention of the First Respondent that the BIFR has no jurisdiction over a company which is not a sick company was rejected. It is relevant to refer to the findings of the AAIFR in favour of the Second Respondent in paragraphs 38, 39 and 40 of the said order. In the said paragraphs the AAIFR held that it is only the First Respondent who would be responsible for the payment of the dues to the workmen. While holding that the Second Respondent is not liable to make any payment, the AAIFR allowed the Appeal of the Second Respondent by setting aside the directions issued by the BIFR to the Second Respondent.

8. Aggrieved by the order dated 11.12.2008 of the AAIFR, the First Respondent filed a Writ Petition in the Rajasthan High Court. The High Court allowed the Writ Petition by holding that the BIFR and the AAIFR do not have jurisdiction to issue directions to a company which is not a sick industrial company under Section 22 A of the Act. Being aggrieved by the said

judgment of the High Court, the Labour Unions filed Civil Appeal No. 8597 and 8598 of 2010. Civil Appeal No. 8599 of 2010 is filed by JK Synthetics Limited aggrieved by the judgment in so far as it set aside the findings in its favour which were not challenged in the Writ Petition.

9. The only point that falls for consideration in these Appeals is regarding the scope of Section 22 A of the Act. Section 22 A is as follows:

“22 A. Direction not to dispose of assets: - The Board may, if it is of opinion that any direction is necessary in the interest of the sick industrial company or creditors or shareholders or in the public interest, by order in writing direct the sick industrial company not to dispose of, except with the consent of the Board, any of its assets—

(a) during the period of preparation or consideration of the scheme under section 18; and

(b) during the period beginning with the recording of opinion by the Board for winding up of the company under sub-section (1) of section 20 and up to commencement of the proceedings relating to the winding up before the concerned High Court.”

10. “Sick industrial company” is defined in Section 3 (1) (o) which is as under:

“(o) ”sick industrial company” means an industrial company (being a company registered for not less than five years) which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth.

^Explanation: - For the removal of doubts, it is hereby 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 sick industrial company;”

11. It is clear from a plain reading of Section 22 A of the Act that the Board can issue a direction not to dispose of assets only to a sick industrial company. There is no dispute that the First Respondent is not a sick industrial company and that it purchased the assets from a sick industrial company in accordance with the Sanctioned Scheme. The BIFR was not correct in passing an order of status quo and directing the First Respondent not to alienate/transfer the assets by its orders dated 05.05.2008 and 30.06.2008. We agree with the findings of the High Court in the impugned judgment that the BIFR does not have competence to issue directions to a company which is not a sick industrial company under Section 22 A of the Act. We are fortified in this view by a judgment of this Court in *U.P. State Sugar Corporation Ltd. v. U.P. State Sugar Corporation Karamchari Association and Anr. reported in'* wherein it "was held as follows:

“It runs counter to the express terms of Section 22 A of the Act which confers a limited power on the Board to pass an order prohibiting a sick industrial company from disposing of its assets only during the period specified in Clause (a) and (b).”

12. Several contentions have been raised by both sides during the course of hearing of these Appeals which we have not adverted to as they are not relevant for adjudication of the dispute in these appeals. We express no opinion on the jurisdiction of BIFR under other provisions of the Act. It is open to the BIFR to review the implementation of the Sanctioned Scheme and pass suitable directions.

13. As stated supra, the AAIFR held that the Second Respondent has no liability in respect of Kota units which have been sold to the First Respondent. The said findings were not challenged by the First Respondent in the Writ Petition filed in the High Court. The High Court set aside the entire order dated 11.12.2008 without taking note of the findings in favour of the Second Respondent. The petition filed for clarification by the Second Respondent was also dismissed by the High Court. The High Court ought not to have disturbed the findings in favour of the Second Respondent as they were not in challenge in the Writ Petition filed by the First Respondent.

14. For the aforesaid reasons, Civil Appeal Nos. 8597 and 8598 of 2010 are dismissed. Civil Appeal No. 8599 of 2010 is allowed. No costs.

Judgment Referred.

¹(1995) 4 SCC 0276