

PETITIONER:
M/S. INDIAN MAIZE & CHEMICALS LTD.

Vs.

RESPONDENT:
STATE OF U.P. & ORS.

DATE OF JUDGMENT: 13/01/1997

BENCH:
K. RAMASWAMY, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Delay condoned.

The petitioner is, through this petition, assailing the correctness of the order of the Allahabad High Court, Lucknow Bench, made on July 26, 1996 in Writ Petition No. 2109 of 1996. The petitioner- U.P. State Electricity Board on February 6, 1990 for the supply of electric energy of 1650 KVA. The petitioner had executed an agreement and also complied with the formalities for the supply of electricity in terms of Indian Electricity Act, 1910. The petitioner claimed the rebate on the basis that he had established the industry in an undeveloped area but we are not concerned with that controversy. Admittedly, a sum of Rs. 49395 lacs was due from the petitioner. On a demand raised by the Board on June 4, 1996 in that behalf, the petitioner approached the High Court. The petitioner, with a view to avoid disconnection had agreed with the Board on June 10, 1996 for payment of above outstanding amount in 12 monthly instalments and the Board had agreed for the same and given re-connection subject to the petitioner paying the amount as agreed. The petitioner after depositing one instalment, committed default in the payment. Since the petitioner anticipated disconnection, it approached the High court for the direction not to recover the amount putting forth the plea that the petitioner is a sick industry and his claim for rehabilitation was pending before B.I.F.R. and, therefore, no action could be taken in that behalf. The High Court has refused to grant the relief by the impugned order dated June 26, 1996. Thus, this special leave petition.

Learned counsel for the petitioner has contended that the controversy is covered by the judgment of this Court in C.E.S.C. Ltd. & Ors. vs. Bowrech Cotton mills Co. Ltd & Ors. [1993 Supp. (1) SCC 451]. Therefore, the high Court was not right in relying upon that court's earlier judgment in Modi spinning & Weaving Mills Co. Ltd. vs. U.P.S.E.B & Ors. [AIR 1992 All. 247]. We find that the contention raised by the leaned counsel is not correct in law. It is seen that in CESC Ltd. case, this Court had expressly left open the question of the undertaking given and the default committed and fulfilment thereof since that question was not raised in

the High Court as expressly mentioned in paragraph 3 thereof. With regard to the delayed payment, surcharge etc. the direction issued by the High Court was modified in paragraph 4 and direction was given to pay the amount in instalments as envisaged in paragraph 4 of the judgment. as far as the arrears are concerned, since the first question was not considered, this Court had held that since the matter was pending before the BIFR itself.

It is seen that Section 22(1) of the sick Industrial Companies (Special provisions) Act, 1985 envisages as under:

"22. Suspension of legal proceedings, contract, etc.--(1) Where in respect of an industrial company, an inquiry under section 16 is pending or any scheme referred to under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under section 25 relation to an industrial company is pending, then, notwithstanding anything contained in the companies Act, 1956 (q of 1956), or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof (and on suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company) shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate authority.

A reading of the above section would indicate that when the proceedings are pending before the BIFR in respect of any matter referred to therein for inquiry by the Board, the proceedings or order of execution, distress or the like would be stayed until the proceedings get concluded before the BIFR or would not be proceeded without the leave of the Board or appellate authority. It is seen that under the Indian Electricity supply Act, one of the conditions is that continued payment of the price of electrical energy supplied by the Board is a condition for the condition for the continued supply and the default committed in the payment thereof entails disconnection of the supply of electrical energy, except in accordance with the procedure prescribed under the contract or the regulation issued under the Indian Electricity supply Act. Execution connotes pre-existing decree. It is true that any action for realisation etc. Pending decision by BIFR or without its permission is prohibited. Enforcement or compliance of the obligation under the contract or regulation for supply of electrical energy by ordering payment of electrical energy is not and

cannot be considered to be execution of decree. Execution of the decree presupposes existence of a decree of a competent Court and the decree- holder should take steps to have it executed pending proceeding before or leaf BIFR. There is no decree of court. since the petitioner had committed default and as a condition for re-connection, agreed to pay the amount in instalments, he is liable to comply with the undertaking given for supply of electrical energy. the petitioner committed default in that behalf. so, it is not entitled to seek any declaration or direction from the Court that since the matter is pending before the BIFR, he would be untitled to the supply of electrical energy without the compliance of the corresponding obligation of payment under regulations or of the contract under the Indian Electricity supply Act. It is, therefore, not correct to say that since the proceedings are pending before the BIFR, the electricity is required to be supplied to the consumer without compliance of the conditions. It is then sought to be contended that the authorities may take coercive steps to recover the arrears. at this state, we need not go into the question.

The special leave petition is accordingly dismissed.