

PETITIONER:
GRAM PANCHAYAT AND ANR.

Vs.

RESPONDENT:
SHREE VALLABH GLASS WORKS LIMITED AND ORS.

DATE OF JUDGMENT 15/03/1990

BENCH:
SHETTY, K.J. (J)
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SHETTY, K.J. (J)
SAHAI, R.M. (J)

CITATION:
1990 AIR 1017 1990 SCR (1) 966
1990 SCC (2) 440 JT 1990 (1) 438
1990 SCALE (1) 439

ACT:
The Sick Industrial Companies (Special Provisions) Act, 1985: Ss. 16, 17 & 22--Sick industrial company--Proceedings for recovery of amount due--Validity of.

HEADNOTE:

Section 16 of the Sick Industrial Companies (Special Provisions) Act, 1985 authorises the Board for Industrial and Financial Reconstruction established under the Act to make enquiry for determining whether any industrial company has become a sick industrial company. Section 17(2) empowers the Board to grant a reasonable time to such a company to make its net worth positive. Where such a course is not practicable s. 17(3) empowers the Board to appoint an operating agency to prepare a scheme for rehabilitation/revival of the company. Section 22(1) provides that in case the enquiry under s. 16 is pending or any scheme referred to under s. 17 is under preparation or consideration by the Board or any appeal under s. 25 is pending, then proceedings for winding up, execution, distress or the like are to be suspended or presumed to be suspended. The proceedings in respect of these matters could, however, be continued with the consent of the Board or of the appellate authority as the case may be. Section 22(5) provides for exclusion of the period during which the remedy remains suspended, in computing the period of limitation for enforcement of the right.

The respondent company had been declared by the Board to be a sick industrial company under s. 16 of the Act and an operating agency had been appointed under s. 17(3) to prepare a scheme for rehabilitation/revival of the company.

The respondent company owed a large sum to the petitioner Panchayat on account of property tax and other dues. When the petitioners initiated coercive proceedings to recover that amount the company moved the High Court by way of a writ petition under Article 226 of the Act. The High Court restrained the petitioners from recovering the said amount without the consent of the Board.

Dismissing the special leave petition, the Court,
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HELD: The High Court was justified in quashing the recovery proceedings taken against the properties of the

company. [970G-H]

The Board by order dated 27 August, 1987 had stated that it was satisfied that the company had become a sick industrial company and directed that further proceedings under the Act shall be taken. By another order made on the same day under s. 17(2) the Board had found that it was not practicable for the company to make its net worth positive within a reasonable time and had proceeded to take action under s. 17(3) and appointed the ICICI as the operating agency to prepare a scheme for rehabilitation/revival of the company. In view of these steps taken by the Board under ss. 16 and 17 of the Act, no proceedings for execution, distress or the like against any of the properties of the industrial company shall lie or be proceeded with further by virtue of s. 22(1) except with the consent of the Board. [970A-D]

The Board at its discretion may accord approval. If the approval is not granted the remedy is not extinguished. It is only postponed. Sub-section (5) of s. 22 provides for exclusion of the period during which the remedy is suspended while computing the period of limitation for recovering the dues. [970F-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 14395 of 1989.

From the Judgment and Order dated 18.7.1989 of the Bombay High Court in W.P. No. 6108 of 1987.

V.N. Ganpule for the Petitioners.

P. Chidambaram, Mrs. Raian Karaniawala, N.H. Seerbai, Karanjawala and Ravinder Kumar for the Respondents. The Judgment of the Court was delivered by

K. JAGANNATHA SHETTY, J. The petitioners seek leave to appeal against the decision of the Bombay High Court in Writ Petition No. 6108/87 quashing the proceedings for recovery of property tax and other expenses due from the first respondent-company.

The matter arises in this way: For the purpose of prevention and revival of sick industries, the Central Government has enacted the Act called "The Sick Industrial Companies (Special Provisions) Act, 1985

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('The Act'). The Act extends to the whole of India including the State of Jammu & Kashmir. It came into force (except sections 15 to 34) with effect from 15 May 1987. The Act covers only sick industrial companies or industrial companies which have the potential to become sick. The Act empowers the Central Government to establish a Board to be known as the Board for Industrial & Financial Reconstruction to exercise the jurisdiction and powers, and discharge the functions and duties imposed under the Act.

The first respondent-company M/s Shree Vallabh Glass Works Ltd. has been declared to be a sick industrial company within the meaning of clause (0) of sub-section (1) of Section 3 of the Act. 'Sick Industrial Company' "means an industrial company being a company registered for not less than seven years which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth and has also suffered cash losses in such financial year and the financial year immediately preceding such financial year."

The first petitioner is the Gram Panchayat, Salwad and second petitioner is the Chairman of the Gram Panchayat. The petitioners initiated coercive proceedings under Section 129

of the Bombay Village Panchayat Act to recover a sum of Rs.9,47,539 stated to be the property tax and other amounts due from the company. Challenging that proceedings, the Company moved the High Court by way of Writ Petition under Article 226 of the Constitution claiming protection provided under Section 22 of the Act. The High Court has accepted the writ petition and restrained the petitioners from recovering the said amount without the consent of the Board.

The question is whether the Panchayat could not recover the amount due to it from out of the properties of the sick industrial company without the consent of the Board?

Section 22 provides, as far as material, as follows:

"Section 22--Suspension of Legal Proceedings, contracts, etc-

(1) Where in respect of an industrial company, an inquiry under Section 16 is pending or any scheme referred to under Section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under Section 25 relating to an industrial company

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is pending, then, notwithstanding anything contained in the Companies Act, 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 shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority.

22(2) to 22(4) xxx xxx xxx

22(5) In computing the period of limitation for the enforcement of any right, privilege, obligation or liability, the period during which it or the remedy for the enforcement thereof remains suspended under this section shall be excluded."

Section 22(1) provides that in case the enquiry under Section 16 is pending or any scheme referred to under Section 17 is under preparation or consideration by the Board or any appeal under Section 25 is pending then certain proceedings against the sick industrial company are to be suspended or presumed to be suspended. 'The nature of the proceedings which are automatically suspended are: (1) Winding up of the industrial company, (2) Proceedings for execution, distress or the like against the properties of sick industrial company, and (3) Proceedings for the appointment of receiver. The proceedings in respect of these matters could, however, be continued against the sick industrial company with the consent or approval of the Board or of the Appellate Authority as the case may be.

Section 16 authorises the Board to make such enquiry as it may deem fit for determining whether any industrial company has become a sick industrial company. Where Board is satisfied that a company has become a sick industrial company, it could give a reasonable time to the company to make its net worth positive (Sec. 17(2)). Where it is not practicable for sick industrial company to make its net worth positive within a reasonable time, Section 17(3) steps in authorising the Board to direct any operating agency to prepare a scheme in relation to the company. The Board may specify the various measures to be considered by the operating agency. These measures are detailed out in Section 18. The operating agency has to prepare a scheme as per the order specified by the Board.

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In the instant case, the Board by order dated 27 August 1987 has stated that it was satisfied that the company has become a sick industrial company. The Board directed that further proceedings under the Act shall be taken with respect to the company. On the same day the Board after having heard the representatives of the ICICI, the company, the concerned Banks, the other public financial institutions and the State Government of Gujarat, considered the entire material on record, held that it was not practicable for the company to make its net worth positive within a reasonable time and that further proceedings under sub-section (3) of Section 17 of the Act are, therefore, to be taken. Accordingly, in exercise of the powers conferred under Section 17(3) of the Act, the Board appointed the ICICI as the operating agency to prepare a scheme for rehabilitation/revival of the company keeping in view of the provisions of Sections 18 and 19 and the guidelines. At the same time the Board appointed Shri Y.V. Sivaramakrishnayya as the special director of the company for safeguarding its financial and other interests.

In the light of the steps taken by the Board under Sections 16 and 17 of the Act, no proceedings for execution, distress or the like proceedings against any of the properties of the company shall lie or be proceeded further except with the consent of the Board. Indeed, there would be automatic suspension of such proceedings against the company's properties. As soon as the inquiry under Section 16 is ordered by the Board, the various proceedings set out under sub-section (1) of Section 22 would be deemed to have been suspended.

It may be against the principles of equity if the creditors are not allowed to recover their dues from the company, but such creditors may approach the Board for permission to proceed against the company for the recovery of their dues/outstandings/overdues or arrears by whatever name it is called. The Board at its discretion may accord its approval for proceeding against the company. If the approval is not granted, the remedy is not extinguished. It is only postponed. Subsection (5) of Section 22 provides for exclusion of the period during which the remedy is suspended while computing the period of limitation for recovering the dues.

In our opinion, the High Court was justified in quashing the recovery proceedings taken against the properties of the company and we accordingly, reject this petition, with no order as to costs.

P.S.S.
dismissed.
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Petition