

Gujarat High Court

Himachal vs Today on 7 February, 2011

Author: H.K.Rathod,&Nbsp

Gujarat High Court Case Information System

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CRA/253/2010 2/ 2 ORDER

IN
THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL
REVISION APPLICATION No. 253 of 2010

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HIMACHAL
FIBERS LIMITED THROUGH RAJESH GUPTA - Applicant(s)

Versus

SUBHAM
CHEMICALS THROUGH PROPRIETOR PRAVIN JAIN- HUF - Opponent(s)

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Appearance
:
MR
RAJESH K SAVJANI for
Applicant(s) : 1,
NOTICE SERVED BY DS for Opponent(s) : 1,
MR
SUREN M SHAH for Opponent(s) :
1,
=====

CORAM

:

HONOURABLE

MR. JUSTICE H.K.RATHOD

Date
: 07/02/2011

ORAL
ORDER

Today, on behalf of respondent, affidavit is placed on record. Copy thereof is served to learned advocate Mr. Savjani, which is taken on record.

Heard learned advocate Mr. RK Savjani on behalf of petitioner, learned advocate Mr. Suren M. Shah appearing for respondent no. 1.

I have considered submissions made by both learned advocates and also perused order passed by Trial Court in order 37 Rule 4 of Civil Procedure Code. The question involved in present application would require detailed examination. Hence, Rule. Interim relief in terms of para 13(B) till matter is finally decided by this Court. Learned advocate Mr. Shah waives service of notice of Rule on behalf of respondent.

It is made clear by this Court while passing interim order in favour of petitioner that BIFR proceeding Misc. Application no. 577/BC/2010 is concluded on 13/10/2010. The following order has been passed by BIFR, which is as under:

"1. The Misc. Application having registration No. 577/BC/2010 dated 5/10/2010 has been filed by Shri Dinesh Kumar, Advocate Bhagwati & Associates of the company praying that this Hon'ble Board may be pleased to:

a) To discharge the company from the purview of SICA as the networth of the company has turned positive.

b) To pass any other order as your honour may deem appropriate.

2. In the hearing held today (13.10.2010), the representative of the company submitted that this MA has been filed for discharge from the purview of SICA as the networth of the company has turned positive amounting to Rs. 13.58 crore as per ABS for the Financial Year 2009-10. It was further submitted that the company is working satisfactorily and earning profit from the last year.

3. The representative of IDBI (MA) confirmed that the networth of the company has turned positive and IDBI has no objection for discharging the company from the purview of SICA.

4. After considering the material on record and submissions made, the Bench discharged the company from the purview of SICA as the networth of the company has turned positive amounting to Rs. 13.58 crores. Secured Creditors, Unsecured Creditors, if any, as well as, Government Department are at liberty to recover the outstanding dues, if any, from the company and the protection available under SICA shall not be available to the company henceforth.

Let a copy of this order be circulated to all concerned."

In light of proceeding comes to an end before BIFR, it is open for respondent to initiate action/proceeding against present petitioner for recovering an amount in accordance with law. Naturally, as and when such action will initiate by respondent, it is open for petitioner to object or resist same which is permissible under law including maintainability of fresh proceeding if so initiated by respondent.

(H.K.RATHOD, J) asma Top