Supreme Court of India
Jay Engineering Works Ltd vs Industry Facilitation Council ... on 14 September, 2006
Author: S.B. Sinha
Bench: S.B. Sinha, Dalveer Bhandari

CASE NO.:
Appeal (civil) 4126 of 2006

PETITIONER:
Jay Engineering Works Ltd.

RESPONDENT:
Industry Facilitation Council and Anr.

DATE OF JUDGMENT: 14/09/2006

BENCH:
S.B. Sinha & Dalveer Bhandari

JUDGMENT:

J U D G M E N T [Arising out of S.L.P. (C) No. 909 of 2005] WITH CIVIL APPEAL NO.4127 OF 2006 [Arising out of S.L.P. (C) No. 991 of 2005] S.B. SINHA, J :

Leave granted.

The Appellant herein is a public limited company engaged in business of manufacturing electronic fans and fuel injection equipments. Respondent No. 2 is a small scale industry. It manufactures copper wires. It supplied its products to the Appellant herein during the period 28th December, 1996 and 3rd June, 2000. As the Appellant Company became sick, its Board of Directors made a reference in terms of Section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short 'the 1985 Act') on 8.4.1994. The Appellant Company was declared as sick unit by the Board for Industrial and Financial Construction (for short "the Board"). A rehabilitation scheme was framed by the Board but it was declared to have failed by an order on 12.7.2001. By reason of the said order, however, Industrial Development Bank of India (IDBI) was appointed as an operating agency. A fresh report was submitted by the said operating agency on 20th March, 2003 which was accepted by the Board whereupon a fresh rehabilitation scheme was sanctioned on 8.4.2003.

In the meanwhile, the Respondent No. 2 herein filed a claim petition before the Industry Facilitation Council (for short "the Council") Respondent No. 1 herein in terms of the provisions of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (for short "the 1993 Act"). Before the Council, the Appellant herein raised a plea that it had been declared to be a sick company by the Board and as such the matter should not be proceeded further. The Council, however, opined that only because the Appellant Company has been declared sick by the Board, it would not bind the Council to take a decision in the matter. It passed an award directing:

"That upon the submissions made by both the parties in the above case and in the light of contentions raised it is prayed that the delay of two years to four years was caused by the

respondents for making the payment to the petitioner, which is enough. Therefore, Council has passed the order that an amount of Rs.

10,92,253.00 and one and half percent interest of PLR of State Bank of India is due to the Petitioner Messrs. Diamond Wire Industries, Ratlam, of the Respondent Messrs. Jay Engineering Works Limited, New Delhi."

The said award of the Council was put in execution. The bank account of the Appellant was attached by the District Court, Ratlam. A writ petition was filed by the Appellant herein before the Madhya Pradesh High Court questioning the same which by reason of the impugned judgment has been dismissed by a learned Single Judge. A Letters Patent Appeal preferred thereagainst was dismissed by the impugned judgment.

The High Court in its impugned judgment proceeded on the premise that the 1993 Act could prevail over the 1985 Act.

Mr. S. Ganesh, learned senior counsel appearing on behalf of the Appellant, at the outset, drew our attention to the fact that the award made by the Council in favour of the Respondent had been taken into consideration in the revised Scheme itself and as such the award of the Council was non-executable. It was urged that both the 1985 Act and 1993 Act operate in different fields and in that view of the matter, the question that the 1993 Act prevailing over the 1985 Act would not arise in the instant case.

Mr. Sushil Kumar Jain, learned counsel appearing on behalf of the Respondents, on the other hand, submitted that the Scheme approved by the Board in 2003 is not applicable to the case of the Respondents. It was submitted that in any event by reason of the said Scheme the liability of the creditors could not be reduced.

It is not in dispute that the award was made by the Council in favour of the Respondent No. 2. However, it is also not in dispute that the Board in terms of its order dated 8.4.2003 approved the Scheme which inter alia envisaged the following:

"(xi) Rs. 462 lakhs for Settlement of "Dormant Trade Creditors" on the basis of 25% principal amount,

(xii) Rs. 540 lakhs for settlement of current overdues of suppliers to be paid over a period of 18 months."

In the said Scheme, the award made in favour of the Respondents finds place in the category of 'Dormant Creditors'. The liabilities of the Appellant vis-`-vis the Respondent No. 2 was, therefore, indisputably a subject matter of the said Scheme. The High Court, in our opinion, committed an error in proceeding on the premise that the awarded amount had not been included and could not be included in the sanctioned rehabilitation scheme, the same being part of transactions which took place after 21.11.1997 ignoring the revised scheme made in the year 2003.

The High Court furthermore opined that inclusion of the Respondent as a deferred creditor in the fresh rehabilitation scheme dated 8.4.2003 also did not affect the situation in favour of the Appellant presumably on the premise that the 1993 Act was a special Act.

Before we advert to the contentions raised by the learned counsel for the parties, we may notice sub-section (2) of Section 6 of the 1993 Act which reads as under:

"(2) Notwithstanding anything contained in sub-section (1), any party to a dispute may make a reference to the Industry Facilitation Council for acting as an arbitrator or conciliator in respect of the matters referred to in that sub- section and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such disputes as the arbitration or conciliation were pursuant to an arbitration agreement referred to in sub-section (1) of section 7 of that Act."

We may also notice that Section 10 thereof provides for a non- obstante clause in the following terms:

"10. Over-riding effect.--The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

The 1993 Act was enacted to provide for and regulate the payment of interest on delayed payments to small scale and ancillary industrial undertakings and for matters connected therewith.

The provisions of the 1993 Act, therefore, do not envisage a situation where an industrial company becomes sick and requires framing of a scheme for its revival.

It is no doubt true that an award in relation to a claim of a small- scale industry if made by the Council would be governed by the provisions of the Arbitration and Conciliation Act, 1996 (for short "the 1996 Act").

The 1985 Act is a complete code by itself. Section 22 of the 1985 Act provides for special provisions. Sub-section (1) of Section 22 was amended in the year 1994 by Act No. 12 of 1994 which reads as under:

"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 sections 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (1 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 no 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."

The said provision, thus, mandates that no proceeding inter alia for execution, distress or the like against any of the properties of the industrial company and no suit for recovery of money or for the enforcement of any security, shall lie or be proceeded with further, except with the consent of the Board or as the case may be, the Appellate Authority. The said statutory injunction will operate when an inquiry had been initiated under Section 16 or a scheme referred to under Section 17 is under preparation and/ or inter alia a sanctioned scheme is under implementation. It is not disputed before us that the amount awarded in favour of the Respondent by the Council finds specific mention in the sanctioned scheme which is under implementation.

The award of the Council being an award, deemed to have been made under the provisions of the 1996 Act, indisputably is being executed before a Civil Court. Execution of an award, beyond any cavil of doubt, would attract the provisions of Section 22 of the 1985 Act. Whereas an adjudicatory process of making an award under the 1993 Act may not come within the purview of the 1985 Act but once an award made is sought to be executed, it shall come into play. Once the awarded amount has been included in the Scheme approved by the Board, in our opinion, Section 22 of the 1985 Act would apply.

If the liabilities of the Appellant are covered by the Scheme framed under Section 22 of the 1985 Act, the High Court was clearly in error in coming to the conclusion that the provisions thereof are not attracted only because the debt had been incurred after the Company was declared to be a sick one.

The 1985 Act also contains a non-obstante clause in sub-section (1) of Section 32 which reads as under:

"32. Effect of the Act on other laws.--(1) The provisions of this Act and of any rules or schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law except the provisions of the Foreign Exchange Regulation Act, 1973 (46 of 1973) and the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976) for the time being in force or in the Memorandum or Articles of Association of an industrial company or in any other instrument having effect by virtue of any law other than this Act."

The 1985 Act was enacted in public interest. It contains special provisions. The said special provisions had been made with a view to secure the timely detection of sick and potentially sick companies owning industrial undertakings, the speedy determination by a Board of experts for preventive, ameliorative, remedial and other measures which need to be taken with respect to such companies and the expeditious enforcement of the measures so determined and for matters connected therewith or incidental thereto.

The High Court has placed strong reliance on Deputy Commercial Tax Officer and Others v. Corromandal Pharmaceuticals and Others [(1997) 10 SCC 649] wherein this Court was considering an exceptional situation by reason of the fact that the liability of the sick company for the first time arose after the date of sanctioned scheme and the sick industrial unit was enabled to collect tax due

to the Revenue from the exporters thereafter but declined to pay it over to the Revenue wherefor recovery proceedings had to be taken. This Court categorically opined that there cannot be any impediment in the enforcement of the Scheme. Section 22 of the 1985 Act provides for a safeguard against impediment that is likely to be caused in the implementation of the Scheme. Section 22 was also held to be of wide import as regards suspension of legal proceedings from the moment, the inquiry is started till after the implementation of the scheme or disposal of the scheme under Section 25 of the 1985 Act. It was categorically held:

" it will be reasonable to hold that the bar or embargo envisaged in Section 22(1) of the Act can apply only to such of those dues reckoned or included in the sanctioned scheme ."

The ratio laid down in the said decision, therefore, instead of assisting the Respondent assists the Appellant.

In Maharashtra Tubes Ltd. v. State Industrial & Investment Corporation of Maharashtra Ltd. and Another [(1993) 2 SCC 144] this Court held:

"On the other hand, the 1985 Act was enacted, as its preamble manifests, with a view to timely detection of sick or potentially sick companies owning industrial undertakings, the identification of the nature of sickness through experts in relevant fields with a view to devising suitable remedial measures through appropriate schemes and their expeditious implementation. Here the emphasis is to prevent sickness and in cases of sick undertakings to prepare schemes for their rehabilitation by providing financial assistance by way of loans, advances or guarantees or by providing reliefs, concessions or sacrifices from Central or State Governments, scheduled banks, etc. The basic idea is to revive sick units, if necessary, by extending further financial assistance after a thorough examination of the units by experts and only when the unit is found to be no more capable of rehabilitation, that the option of winding up may be resorted to "

Both the Acts operate in different fields. If the 1985 Act is attracted, the question of its giving way of the 1993 Act would not arise.

In Allahabad Bank v. Canara Bank and Another [(2000) 4 SCC 406], this Court held :

"There can be a situation in law where the same statute is treated as a special statute vis-`-vis one legislation and again as a general statute vis-`-vis yet another legislation "

In that case, it was further opined that although both the Companies Act, 1956 and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 are special laws, normally the latter shall prevail.

We have noticed hereinbefore that the 1985 Act was amended in 1994. The 1994 Amending Act was enacted after the coming into force of the 1993 Act.

Both the Acts contain non-obstante clauses. Ordinary rule of construction is that where there are two non-obstante clauses, the latter shall prevail. But it is equally well-settled that ultimate conclusion thereupon would depend upon the limited context of the statute. [See Allahabad Bank (supra) para 34].

In Maruti Udyog Ltd. v. Ram Lal and Others (2005) 2 SCC 638], it was observed :

"The interpretation of Section 25-J of the 1947 Act as propounded by Mr Das also cannot also be accepted inasmuch as in terms thereof only the provisions of the said chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law including the Standing Orders made under the Industrial Employment (Standing Orders) Act, but it will have no application in a case where something different is envisaged in terms of the statutory scheme. A beneficial statute, as is well known, may receive liberal construction but the same cannot be extended beyond the statutory scheme "

In Shri Sarwan Singh and Another v. Shri Kasturi Lal [(1977) 1 SCC 750], this Court opined :

" When two or more laws operate in the same field and each contains a non-obstante clause stating that its provisions will override those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration "

The endeavour of the court would, however, always be to adopt a rule of harmonious construction.

In NGEF Ltd. v. Chandra Developers (P) Ltd. and Another [(2005) 8 SCC 219], interpreting sub-section (4) of Section 20 of SICA, it was held :

"It is difficult to accept the submission of the learned counsel appearing on behalf of the respondents that both the Company Court and BIFR exercise concurrent jurisdiction. If such a construction is upheld, there shall be chaos and confusion. A company declared to be sick in terms of the provisions of SICA, continues to be sick unless it is directed to be wound up. Till the company remains a sick company having regard to the provisions of sub-section (4) of Section 20, BIFR alone shall have jurisdiction as regards sale of its assets till an order of winding up is passed by a Company Court."

It was further held :

"Section 32 of SICA contains a non obstante clause stating that provisions thereof shall prevail notwithstanding anything inconsistent with the provisions of the said Act and of any rules or schemes made thereunder contained in any other law for the time being in force. It would bear repetition to state that in the ordinary course although the Company Judge may have the jurisdiction to pass an interim order in exercise of its inherent jurisdiction or otherwise directing execution of a deed of sale in favour of an applicant by the Company sought to be wound up, but keeping in view the express provisions contained in sub-section (4) of Section 20 of SICA such a

power, in our opinion, in the Company Judge is not available. (See BPL Ltd.) We may, however, observe that the opinion of the Division Bench in BPL Ltd. to the effect that the winding-up proceeding in relation to a matter arising out of the recommendations of BIFR shall commence only on passing of an order of winding up of the Company may not be correct. It may be true that no formal application is required to be filed for initiating a proceeding under Section 433 of the Companies Act as the recommendations therefor are made by BIFR or AAIFR, as the case may be, and, thus, the date on which such recommendations are made, the Company Judge applies its mind to initiate a proceeding relying on or on the basis thereof, the proceeding for winding up would be deemed to have been started; but there cannot be any doubt whatsoever that having regard to the phraseology used in Section 20 of SICA that BIFR is the authority proprio vigore which continues to remain as custodian of the assets of the Company till a winding-up order is passed by the High Court."

In ICICI Bank Ltd. v. Sidco Leathers Ltd. and Others [2006) 5 SCALE 27] the law is stated in the following terms :

"The non-obstante nature of a provision although may be of wide amplitude, the interpretative process thereof must be kept confined to the legislative policy. Only because the dues of the workmen and the debt due to the secured creditors are treated pari passu with each other, the same by itself, in our considered view, would not lead to the conclusion that the concept of inter se priorities amongst the secured creditors had thereby been intended to be given a total go-by.

A non-obstante clause must be given effect to, to the extent the Parliament intended and not beyond the same."

For the reasons aforementioned, the impugned judgment cannot be sustained. Before parting with this case, however, we may observe that we have not adverted to the question raised by the learned counsel for the Respondents as to whether the Board while implementing the scheme could reduce the quantum of the liability of creditors, as we are of the opinion that such a contention need not be gone into at this stage. It will, therefore, further be open to the Respondent No. 2 to approach the Board, if any occasion arises therefor.

The impugned judgments are set aside. The appeals are allowed. No costs.