Before G.S. Singhvi and Nirmal Singh, JJ

INDUSTRIAL CABLES (INDIA) LTD.—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS—*Respondents*

C.W.P. No. 15426 of 2000

24th November, 2000

Constitution of India, 1950— Art. 226— Sick Industrial Companies (Special Provisions) Act, 1985— Ss. 15, 16 and 22— Board for Industrial and Financial Reconstruction (BIFR) registering a reference made by a Company u/s 15(1)—BIFR failing to complete the enquiry within 60 days as stipulated in S.16(3)— State Govt. issuing demand notices for recovery of dues of sales tax— Section 22 prohibits the State Govt. from recovering sales tax during the pendency of an enquiry u/s 16— Period of 60 days stipulated in S. 16(3) is not mandatory and the enquiry initiated u/s 16 cannot be treated as lapsed simply because the BIFR could not finalise the proceedings of enquiry within 60 days— No scheme for the rehabilitation of the Company sanctioned by the BIFR— Writ allowed, impugned notices declared illegal while directing respondents to restrain from using any coercive method to recover the dues of tax, with a liberty to recover the dues of tax by filing an application before BIFR under the provisions of law.

Held, that a bare reading of the language of Section 16(3) in conjunction with the scheme of Chapter 3 of the 1985 Act leads to an irresistible conclusion that the period of 60 days stipulated in Section 16(3) is not mandatory and the enquiry initiated u/s 16 cannot be treated as lapsed simply because the operating agency is not in a position to complete enquiry within 60 days. The use of the expression "as expeditiously as possible and endeavour shall be made" clearly shows the anxiety of the Legislature for expeditious finalisation of the enquiry, but in the absence of anything more, we are unable to hold that failure of the operating agency to complete the enquiry within 60 days, results in abrogation thereof. Any such interpretation, would be contrary to the object of the 1985 Act. Therefore, the enquiry initiated u/s 16 cannot be deemed to have lapsed due to non-finalisation thereof within 60 days, and during the pendency of the enquiry respondents cannot use any coercive method to recover the dues of tax from the petitioner in pursuance of the impugned notices.

(Paras 14 & 16)

Puneet Bali, Advocate for the Petitioner

Rupinder Khosla, Deputy Advocate General, Punjab for responden Nos .1 to 4

JUDGMENT

G.S. Singhvi, J

(1) In this petition filed under Article 226 of the Constitution of India, the petitioner has prayed for quashing of demand notices Annexure P/8 dated 2nd August, 2000, P/9 dated 25th August, 2000, P/12 dated 5th October, 2000 and P/14 dated 2nd November, 2000 issued by the Assessing Authority-cum-Excise and Taxation Officer, Ward No. 9, Rajpura (respondent No. 4) requiring it to pay the dues of sales tax under the Punjab General Sales Act, 1943 (for short, "the 1948 Act"). It has also prayed for directing the respondents not to take any coercive measures for recovery of dues of tax during the pendency of the enquiry under Section 16 of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short, "the 1985 Act") in view of the law laid down by the Supreme Court in *'Tata Davy Ltd. etc.* v. State of *Orissa & Ors.* (1)

(2) There is no dispute between the parties that the reference made by the Board of Directors of the petitioner under Section 15(1) of the 1985 Act was received by the Board for Industrial and Financial Reconstruction (for short the BIFR) on 12th July, 1999. The same stands registered as case No. 240 of 1999 and after taking cognizance of the same, the BIFR has passed two interim orders on 28th October, 1999 (Annexure P-16) and 14th September, 2000 (Annexure P-17).

(3) According to the petitioner, in view of the statutory bar contained in Section 22 of the 1985 Act, respondents 1 to 4 cannot recover the amount of sales tax due against it under the 1948 Act and the Central Sales Tax Act, 1956 (for short 'the 1956 Act') and no coercive measure can be taken for effecting the recovery in pursuance of the impugned notices.

(4) Respondents 1 to 4 have controverted the plea of the petitioner by contending that the failure of BIFR to complete the enquiry within 60 days stipulated in Section 16(3) of the 1985 Act has the effect of rendering the reference infructuous and, therefore, they can effect recovery of dues under the 1948 Act and the 1956 Act.

(1) JT 1997 (7) SC 216

(5) Shri Puneet Bali referred to the provisions of Sections 16 to 18 and 22 of the 1985 Act and argued that during the pendency of the enquiry under Section 16, the respondents cannot adopt any coercive method for recovery of the dues under the 1948 Act or the 1956 Act. Learned counsel submitted that the enquiry contemplated by section 22 of the 1985 Act will be deemed to have commencement on the date of registration of reference and the same cannot be treated to have lapsed simply because the BIFR could not finalise the proceedings of enquiry within 60 days. In support of his arguments, the learned counsel relied on the decisions of Supreme Court in *Real Value Appliance Ltd.* v. *Canara Bank & Others* (2) *Tata Davy Ltd. etc.* v. *State of Orissa & Ors. (supra),* and *Rishabh Agro Industries Ltd.* v. *P.N.B. Capital Services Ltd.* (3)

(6) Shri Rupinder Khosla, learned Deputy Advocate General, Punjab argued that the petitioner should not be given any relief because it has not approached the Court with clean hands. He pointed out that at the time of filing of the wirt petition, the petitioner had deliberately withheld the orders Annexures P—16 and P—17 passed by the BIFR with a view to mislead the Court about the implication of non-compliance of Section 16(3) of the 1985 Act and the same were placed on record along with the replication after an objection to this effect had been raised by the respondents. Shri Khosla further argued that the enquiry initiated by the BIFR will be deemed to have lapsed after the expiry of 60 days and, therefore, the protection of Section 22 is no longer available to the petitioner. He relied on the decision of the Supreme Court in *Deputy Commercial tax Officer & Ors. v. Corromandal Pharmaceuticals & Ors.* (4), and of the Bombay High Court in *Central bank of India v. Madalsa international Ltd. and others* (5), and argued that the petitioner should not be allowed to mis-use the provisions of the 1985 Act for avoiding its statutory liability under the 1948 Act and the 1956 Act.

(7) We have thoughtfully considered the respective submissions. Sections 15 (1) and (2), 16 and 22 (1) of the 1985 Act, which have bearing on the decision of the issue raised by the petitioner, read as under :—

"15. *Reference to Board*—(1) Where an industrial company has become a sick industrial company, the Board of Directors of

(2) 1998 (5) SCC 554
(3) 2000 (5) SCC 515
(4) JT 1997 (3) SC 660
(5) AIR 1997 Bombay 310

the company, shall, within sixty days from the date of finalisation of the duly audited accounts of the company for the financial year as at the end of which the company has become a sick industrial company, make a reference to the Board for determination of the measures which shall be adopted with respect of the company :

Provided that if the Board of Directors had sufficient reasons even before such finalisation to form the opinion that the company had become a sick industrial company, the Board of Directors shall, within sixty days after it has formed such opinion, make a reference to the Board for the determination of the measures which shall be adopted with respect to the company.

(2) Without prejudice to the provisions of sub-section (1), the Central Govenment or the Reserve Bank or a State Government or a public financial institution or a State level institution or a scheduled bank may, if it has sufficient reasons to believe that any industrial company has become, for the purposes of this Act, a sick industrial company, make a reference in respect of such company to the Board for determination of the measures which may be adopted with respect to such company :

Provided that a reference shall not be made under this sub-section in respect of any industrial company by—

(a) the Government of any State unless all or any of the Industrial undertakings belonging to such company are situated in such State :

(b) a public financial institution or a State level institution or a scheduled bank unless it has, by reason of any financial assistance or obligation rendered by it, or undertaken by it, with respect to, such company, an interest in such company".

"S. 16 : *Inquiry into working of sick industrial companies*— (1) The Board may make such inquiry as it may deem fit for determining whether any industrial company has become a sick industrial company—

(a) upon receipt of a reference with respect to such company under Section 15; or

(b) upon information received with respect to such company or upon its own knowledge as to the financial condition of the company.

2. The Board may, if it deems necessary or expedient so to do for the expeditious disposal of an inquiry under sub-section (1), require by order any operating agency to enquire into and make a report with respect to such matters as may be specified in the order.

3. The Board or as the case may be, the operating agency shall complete its inquiry as expeditiously as possible and endeavour shall be made to complete the inquiry within sixty days from the commencement of the inquiry.

Explanation—For the purpose of this sub-section, an inquiry shall be deemed to have commenced upon the receipt by the Board of any reference or information or upon its own knowledge reduced to writing by the Board.

"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 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 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."

(8) The ambit and scope of Sections 15, 16 and 22 was considered by the Supreme Court in *Real Value Appliances Ltd. V. Canara Bank and Others* (supra). After taking note of the view expressed by the various High Courts, their Lordships of the Supreme Court held as under :—

According to section 22, in case an "inquiry under section 16" is pending, then,notwithstanding anything in the Companies

Act or any other instruments etc., no proceedings for the winding up of the company for execution or distress or the like against the property of the company or for the appointment of a receiver and no suit for recovery of money or enforcement of any security or of any guarantee—shall lie or be proceeded with further, except with the consent of the Board. Under sub-clause (3), of Section 16 the Board or the operating agency is to endeavour to complete the inquiry within 60 days from the date of commencement of the inquiry, Explanation below sub-clause (3) explains that for purposes of sub-clause (3), that is to say, for computing the period of 60 days, an inquiry shall be deemed to have commenced upon the receipt by the Board or any reference or information or upon its own knowledge reduced to writing by the Board.

In our view, when section 16(1) says that the BIFR can conduct the inquiry "in such manner as it may deem fit" the said words are intended only to convey that a wide discretion is vested in the BIFR in regard to the procedure it may follow for conducting an inquiry under section 16(1) and nothing more. In fact, once the reference is registered after scrutiny, it is, mandatory for the BIFR to conduct an inquiry. *The inquiry must be treated as having commenced as soon as the registration of the reference is completed after scrutiny and that from that time, action against the Company's assets must remain stayed as stated in section 22 till final decisions are taken by the BIFR.*

The effect of the amended Regulation 19 (5) is that even before any Bench of the BIFR can think of calling for information under Regulation 20(1) or under Regulation 21 read with section 16, it is now mandatory after the amendment that as soon as a reference is registered, information/documents shall be called for from the informant straightaway, *In asmuch as under the latter part of Regulation 19 (5) it is necessary that simultaneously with the registration of the reference, information/documents are to be called for from the informant- the inquiry must, be deemed to have commenced under section 16 of the Act at that stage itself, namely, at stage of the second part of Regulation 19(5) and it is no longer permissible to say that such a stage is reached only when the BIFR issues notices and starts an inquiry under Regulation 19 w.e.f. 24th March, 1994, once the reference is registered and when once it is mandatory*

simultaneously to call for information/documents from the informant and such a direction is given, then inquiry under section 16(1) must - for the purposes of section 22- be deemed to have commenced.

(9) In *Rishabh Agro industries Ltd.* vs. *P.N.B. Capital Services Ltd.* (supra), the Supreme Court considred the question as to whether a company against whom an order of winding up has been passed and whose assets have been taken over by the Offical Liquidator, can file an application for reference and whether the protection of Section 22 of the 1985 Act is available to such company. it was argued on behalf of the respondent that the provisions of the 1985 Act should not be interpreted so as to allow an unscrupulous litigant to take advantage of the bar contained in Section 22 of the 1985 Act. While rejecting that arguments, the Supreme Court held as under :—

"Such a grievance may be justified and the submission having substance but in view of the language of Sections 15 and 16 of the Act particularly Explanation of Section 16 inserted by Act No. 12 of 1994, this Court has no option but to adhere to its earlier decision taken in **Real Value Appliances** (supra). While interpreting, this Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the Legislature to amend, modify or repeal it by having recourse to appropriate procedure, if deemed necessary."

(10) In *Tata Davy Limited* Vs. *State of Orissa* (supra), a two Judges Bench of Supreme Court considered the question as to whether tax under the State legislation can be recovered during the pendency of inquiry under Section 16 of the 1985 Act. After taking note of the decision of another bench of two Judges in the case of *Corromandal Pharmaceuticals* case (supra) and the arguments urged on behalf of the State of Orissa that the Central legislation enacted under Entry 52 List I of the Seventh Schedule cannot take away the power of the State legislature to enact law under Entry 54 of List II, the Court held that the provisions of Central Act do not impair or interfere with the rights of the State to legislate with respect to Sales tax but in view of the bar contained in Section 22 of the 1985 Act, the State cannot recover the sales tax during the pendency of an enquiry within the meaning of Section 16 read with Section 15 of the said Act. the decision of *Corromandal Pharmaceuticals* case (supra) was distinguished with the following observations:

"The Corromandal Pharmaceuticals judgment dealt with a sick industrial company which was enabled to collect amounts

like sales tax after the date of the sanctioned scheme. This Court said, "Such amounts like sales tax, etc. which the sick industrial company is enabled to collect after the date of the sanctioned scheme, legitimately belonging to the revenue, cannot be and could not have been intended to be covered within Section 22 of the Act". It added that the issue that had been arisen before it had not arisen in the case of Vallabh Glass Works. It did not appear therefrom or from any other decision of this Court or of the High Courts " that in any one of them, the liability of the sick comapny dealt with therein itself arose for the first time after the date of sanctioned scheme. At any rate, in none of these cases a situation arose whereby the sick industrial unit was enabled to collect tax due to the Revenue from the customers after the sanctioned scheme but the sick unit simply folded its hands and declined to pay it over to the Revenue, for which proceedings for recovery had to be taken." Clearly, the facts in the Corromandal Pharmaceuticals case differ from the facts of the Vallabh Glass Works case and those before us. The Reference to the Corrmandal Pharmaceuticals case is, therefore, inapposite."

(11) In *Corromandal Pharmaceutical's* case (supra), the Supreme Court held that bar contained in Section 22 cannot be invoked where the tax as collected after the coming into force of the sanctioned scheme. The facts of that case show that the respondent was declared a sick industrial company under the 1985Act by the BIFR and the Industrial Re-construction Bank of India was appointed as operating agency. On receipt of the report of operating agency, the BIFR sanctioned a scheme for the rehabilitation of the company. That scheme was brought into force with immediate effect. The assessment orders for the assessment year 1992-93 and 1993-94 were passed by the competent authority constituted under the Andhra Pradesh General Sales Tax. The company successfully challenged the recovery proceedings before the High Court, but in *Deputy Commercial Tax Officer & Ors.* Vs. *Corromandal Pharmaceuticals & Ors.* (supra) their Lordships of the Supreme Court reversed the orders of the High Court and held as under :—

"Under the statute, the BIFR is to consider in what way various preventive or remedial measures should be afforded to a sick industrial company. In that behalf, BIFR is enabled to frame an appropriate scheme. To enable the BIFR to do so, certain preliminaries are required to be followed. It

starts with the reference to be made by the Board of Directors of the sick company. The BIFR is directed to make appropriate inquiry as provided in Sections 16 and 17 of the Act. At the conclusion of the inquiry, after notice and opportunity afforded to various persons including the creditors, the BIFR is to prepare a scheme which shall come into force on such date as it may specify in that behalf. It is in implementation of the scheme wherein various preventive remedial or other measures, are designed for the sick industrial company, steps by way of giving financial assistance etc. by Government, banks or other institutions, are contemplated. In other words, the scheme is implemented or given effect to, by affording financial assistance by way of loans, advances or guarantees or reliefs or concessions or sacrifies by Government, banks, public financial institutions and other authorties. In order to see that the scheme is successfully implemented and no impediment is caused for the successful carrying out of the scheme, the Board is enabled to have a say when the steps for recovery of the amounts or other coercive proceedings are taken against sick industrial company which, during the relevant time, acts under the guidance/control or supervision of the Board (BIFR). Any step for execution, distress or the like the properties of the industrial company or other similar steps shold not be pursued which will cause delay or impediment in the implementation of the sanctioned scheme. In order to safeguard such state of affairs, an embargo or bar is placed under Section 22 of the Act against any step for execution, distress or the like or other similar proceedings against the company without the consent of the Board or, as the case may be, the appellate authority. The language of Section 22 of the Act is certainly wide. But, in the totality of the circumstances, the safeguard is only against the impediment, that is likely to be caused in the implementation of the scheme. If that be so, only the liability or amounts covered by the scheme will be taken in, by Section 22 of the Act. *So, we are of the view that though the language of Section 22 of the Act is of wide import regarding suspension of legal proceedings from the moment an inquiry; is started, till after the implementation of the scheme or the disposal of an appeal under Section 25 of the Act, 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. Such amounts like sales*

tax, etc., which the sick industrial company is enabled to collect after the date of the sanctioned scheme legitimately belonging to the Revenue, cannot be and could not have been intended to be covered within Section 22 of the Act. Any other construction will be unreasonable and unfair and will lead to a state of affairs enabling the sick industrial unit to collect amounts due to the Revenue and withhold it indefinitely and unreasonably. Such a construction which is unfair, unreasonable and against spirit of the statute in a business sense, should be avioded."

(12) In our opinion, the above observations do not in any manner help the cause of the respondents because they have neither pleaded nor any evidence has been produced before the Court to show that any scheme has been sanctioned by the BIFR for the rehabilitation of the petitioner and it has collected any amount after coming into force of the sanctioned scheme.

(13) In view of the aforementioned decisions of the Supreme Court, we are unable to agree with Shri Rupinder Khosla that notwithstanding the registration of reference made by the petitioner under Section 15(1) of the Act, the State should be allowed to make recoveries of sales tax etc. in pursuance of the impugned notices.

(14) The argument of Shri Rupinder Khosla that the proceedings of enquiry should be deemed to have been lapsed after the expiry of 60 days as stipulated in Section 16(3) of the 1985 Act sounds attractive but lacks merit and deserves to be rejected. A bare reading of the language of Section 16 (3) in conjunction with the scheme of Chapter 3 of the 1985 Act leads to an irresistible conclusion that the period of 60 days stipulated in Section 16(3) is not mandatory and the enquiry initiated under Section 16 cannot be treated as lapsed simply because the operating agency is not in a position to complete enquiry within 60 days. The use of the expression "as expeditiously as possible and endeavour shall be made....." clearly shows the anxiety of the Legislature for expeditious finalisation of the enquiry, but in the absence of anything more, we are unable to hold that failure of the operating agency to complete the enquiry within 60 days, results in abrogation thereof. Any such interpretation, in our opinion, would be contrary to the objects of the 1985 Act, namely, to afford maximum protection to him, optimum use of the financial resource, safeguarding of the assets of production and realising of the amount due to the bank and financial institutions. Therefore, we hold that the enquiry initiated under Section 16 cannot be deemed to have lapsed due to non-finalisation thereof within 60 days.

(15) The decision of the Bomaby High Court in *Central Bank of India* Vs. *Madalsa International Ltd. and others* (supra) has been over-ruled by the Supreme Court in *Patheja Bros. Forgings & Stamping and another* vs. *ICICI Ltd.* (6) and, therefore, the respondents cannot derive any benefit from that decision.

(16) On the basis of the above discussion, we hold that during the pendency of the enquiry under the 1985 Act, respondents 1 to 4 cannot use any coercive method to recover the dues of tax from the petitioner in pursuance of the notices Annexures P/8, P/9, P/12 and P/14.

(17) Hence, the writ petition is allowed. the impunged notices are declared illegal and respondents 1 to 4 are restrained from making recovery in pursuance thereof. However, we give liberty to the said respondents to make an application before the BIFR for grant of permission to make recovery of the dues of tax under the 1948 Act and the 1956 Act.

(18) Copy of the order be given dasti on payment of fee prescribed for urgent applications.

R. N. R.

Before V.M. Jain, J

GURDEEP SINGH—*Petitioner*

versus

STATE OF HARYANA—*Respondent*

Crl. M. No. 47596/M of 2000

22nd January, 2001

Code of Criminal Procedure, 1973—Ss. 398, 401(2) and 403—C.J.M. dismissing Criminal complaint filed by the State at the initial stage for want of prosecution—Sessions Judge setting aside the order of dismissal without issuing notice to the accused—Whether violative of principles of natural justice—Held, no—A person who has not even put in appearance in the Court as an accused has no locus standi to be heard by the Court while setting aside the order of dismissal.

(6) 2000 (6) SCC 545