

HIGH COURT OF GUJARAT

CALICO FIBRE EMPLOYEES ASSOCIATION

Versus

UNION OF INDIA

Date of Decision: 16 July 1998

Citation: 1998 LawSuit(Guj) 342

Hon'ble Judges: [S D Pandit](#)

Eq. Citations: 1998 3 GLR 2394, **1998 2 GLH 447**, 1999 2 LLJ 250, 1999 LabIC 81, 1999 98 CompCas 401, 1999 1 GCD 510

Case Type: Special Civil Application

Case No: 7918 of 1997

Subject: Company, SICA

Editor's Note:

Sick Industrial Companies (Special Provisions) Act, 1985 - Secs 15, 15-A, 18FA, 32 - Industries (Development and Regulation) Act, 1951 - Act of 1985 and Act of 1951 have distinct and separate aim and objects - When BIFR has submitted report to High Court to wind up a company, Central Government can examine the question as per Act of 1951 - Direction given to union Government to examine the issue afresh as per guidelines given - Order accordingly

Acts Referred:

[Sick Industrial Companies \(Special Provisions\) Act, 1985](#) Sec 18FA, [Sec 32](#), [Sec 15](#), Sec 15A

Final Decision: Petition allowed

Advocates: [Mukul Sinha](#), [R C Jani](#), [Anjaria](#), [V B Gharania](#), [D S Nanavati](#)

S. D. PANDIT, J.

[1] Rule. This petition is taken for final hearing in view of the facts and circumstances of the case as well as with the content of parties.

[2] The petitioner has filed this petition seeking writ of mandamus and direct the respondent No. 1 to decide the representation made on 9th October, 1997.

[3] The petitioner is a Union of the Workmen working in Calico Polyesters Fibre Division situated at Baroda. Calico Polyesters Fibre is an undertaking owned and controlled by respondent No. 4 the Ahmedabad Manufacturing and Calico Printing Company Ltd. (hereinafter to be referred as Principal Company). The principal company was in very strained financial position and became sick. Therefore, the Board of Directors of principal company made a reference to "Board for Industrial and Financial Reconstitution" (hereinafter be referred as B.I.F.R.) under Sec. 15 of Sick Industrial Companies (Special Provisions) Act, 1985. Thereafter B.I.F.R. made the necessary inquiry into the working of sick "principal company". But B.I.F.R. could not work out any scheme to see that the 'principal company' could come over losses and financial difficulties. Consequently, B.I.F.R. submitted its report dated 30-11-1995 to the company Court that there is no possibilities to sustain and survive and hence the principal company should be wound up. On the strength of the said report of B.I.F.R. the winding proceedings are going on before the company Court in Company Petition No. 157 of 1995.

[4] The petitioner has averred that the Calico Polyester Fibre one of the units/undertakings of the principal company was always viable and profit-making. It is further claimed that the respondent No. 2 is interested in taking over the said Calico Polyester Fibre Division of the principal company. The petitioner, therefore, made a representation to the Central Government, the respondent No. 1 to take necessary steps under Secs. 15A and 18FA of the Industrial (Development & Regulation) Act, 1951 in the public interest. But as no action on the said representation was taken the present petition is filed to give direction to Central Government to consider their representation and to take necessary action in the matter.

[5] Respondent No. 1 has filed affidavit-in-reply. In the said affidavit- in-reply, it is contended that once action is taken by B.I.F.R. under the Sick Industrial Companies (Special Provisions) Act, 1985, neither the Central Government nor any other agency can take any action under Industries (Development and Regulation) Act, 1951. Thus, it is contended that the Central Government has not failed to consider their representation. Hence the petition be dismissed.

[6] Respondent No. 2 filed affidavit-in-reply and contended that the respondent No. 2 cannot take over the Calico Fibre Unit and is not at all interested in taking over Calico Fibre Unit at Vadodara (Baroda). It is not economically viable under the present competitive environment.

[7] Dr. Sinha submitted that the approach of the Central Government in not considering the claim of the petitioner is totally erroneous and on account of wrong assumptions. As regard this, Mr. Anjaria, learned Advocate for the respondent No. 2 submitted that the respondent No. 2 is not at all interested in taking over the unit/undertaking in question, therefore, there is no question of considering the claim of the petitioner. Mr. R. C. Jani, the learned Advocate for the Central Government contended that once it is found by B.I.F.R. that the company is not viable, there is no question of consideration of the petitioner's claim. He relied on the provisions of Sec. 32 of the Sick Industrial Companies (Special Provisions) Act, 1951.

[8] The Sick Industrial Companies (Special Provisions) Act, 1985 and Industries (Development and Regulation) Act, 1951 are two different and distinct enactments. The Act of 1985 is designed to make special provisions in the public interest to secure timely detection of sick and potentially sick companies owning industrial undertakings. The said Act of 1985 has been enacted with a view to (i) afford maximum protection of employment, (ii) optimise the use of the funds etc., (iii) salvaging the production assets, (iv) realising dues to banks and financial corporations. The said Act of 1985 is enacted to safeguard the economy of the nation and to protect viable sick units. It is aimed at the reviving and rehabilitating sick industrial companies. The object of the Act 1951 is to bring under the Central control the development and regulation of the important industries mentioned in the Schedule of the said Act. The said control is provided as the activities of those industries affect the country as a whole and the development of which must be governed by the economical factors of all India import. The Act of 1985 is aimed at providing the protection to sick industrial companies whereas the Act of 1951 is aimed at protecting an industrial undertaking or unit in the larger economic interest of the country. Therefore, the above stated aims and objects of two enactments, must be born in mind while considering and deciding the representation of the petitioner.

[9] It is vehemently urged by Mr. B. C. Jani, the learned Advocate for the respondent No. 1 that once an action is taken under S.I.C.A. 1985, there is no question of considering the action under Industries (Development & Regulation) Act, 1951. In order to consider the said contention let me consider the provision of Sec. 15A as well as Sec. 18FA of Industries (Development & Regulation) Act, 1951. They are as under :

"Sec. 15A : Power to investigate into the affairs of a company in liquidation :-

(1) Where a company, owning an industrial undertaking is being wound up by or under the supervision of the High Court, and the business of such company is not being continued, the Central Government may, if it is of opinion that it is necessary, in the interest of the general public and, in particular, in the interest of production,

supply or distribution of articles or class of articles relatable to the concerned scheduled industry, to investigate into the possibility of running or restarting the industrial undertaking, make an application to the High Court praying for permission to make, or cause to be made, an investigation into such possibility by such person or body of persons as that Government may appoint for the purpose.

(2) Where an application is made by the Central Government under sub-sec. (1), the High Court shall, notwithstanding anything contained in the Companies Act, 1956 (I of 1956) or in any other law for the time being in force, grant the permission prayed for."

"Sec. 18FA. Power of Central Government to authorise, with the permission of the High Court , persons to take over management or control of industrial undertakings :-

(1) If the Central Government is of opinion that there are possibilities of running or restarting an industrial undertaking, in relation to which an investigation has been made under Sec. 15-A, and that such industrial undertaking should be run or restarted, as the case may be, for maintaining or increasing the production, supply or distribution of articles or class of articles relatable to the scheduled industry, needed by the general public, that Government may make an application to the High Court praying for permission to appoint any person or body of persons to take over the management of the industrial undertaking or to exercise in respect of the whole or any part of the industrial undertaking such functions of control as may be specified in the application.

(2) Where an application is made under sub-sec. (1), the High Court shall make an order empowering the Central Government to authorise any person or body of persons (hereinafter referred to as the 'authorised persons') to take over the management of the industrial undertaking or exercise functions of control in relation to the whole or any part of the industrial undertaking (hereinafter referred to as the 'concerned part') for a period not exceeding five years :

Provided that if Central Government is of opinion that it is expedient in the interests of the general public that the authorised person should continue to manage the industrial undertaking, or continue to exercise functions of control in relation to the concerned part, as the case may be, after the expiry of the period of five years aforesaid, it may make an application to the High Court for the continuance of such management or functions of control, for such period, not exceeding two years at a time, as may be specified in the application and thereupon the High Court may make an order permitting the authorised person to

continue to manage the industrial undertaking or to exercise functions of control in relation to the concerned part :

Provided further that the total period of such continuance (after the expiry of the initial period of five years) shall not in any case, be permitted to exceed twelve years.

(3) Where an order has been made by the High Court under sub-sec. (2) the High Court shall direct the Official Liquidator or any other person having, for the time being, charge of the management or control of the industrial undertaking, whether by or under the orders of any Court, or any contract or instrument or otherwise, to make over the management of such undertaking or the concerned part, as the case may be, to the authorised person and thereupon the authorised person shall be deemed to be the Official Liquidator in respect of the industrial undertaking or the concerned part, as the case may be.

(4) Before making over the possession of the industrial undertaking or the concerned part to the authorised person, the Official Liquidator shall make a complete inventory of all the assets and liabilities of the industrial undertaking or the concerned part, as the case may be, in the manner specified in Sec. 18-FG and deliver a copy of such inventory to the authorised person, who shall, after verifying the correctness thereof, sign on the duplicate copy thereof as evidence of the receipt of the inventory by him.

(5) On taking over the management of the industrial undertaking, or on the commencement of the exercise of functions of control in relation to the concerned part, the authorised person shall take immediate steps to run the industrial undertaking or the concerned part as to ensure the maintenance of production.

(6) The authorised person may, on such terms and conditions and subject to such limitations or restrictions as may be prescribed, raise any loans for the purpose of running the industrial undertaking or the concerned part, and may, for that purpose create a floating charge on the current assets of the industrial undertaking or the concerned part, as the case may be.

(7) Where the authorised person is of opinion that the replacement or repair of any machinery of the industrial undertaking or the concerned part is necessary for the purpose of efficient running of the industrial undertaking or such part, he shall, on such terms and conditions and subject to such limitations, or restrictions as may be prescribed, make such replacement or repair, as the case may be.

(8) The loan obtained by the authorised person shall be recovered from the assets of the industrial undertaking or the concerned part, in such manner and subject to such conditions as may be prescribed.

(9) For the purpose of running the industrial undertaking, or exercising functions of control in relation to the concerned part, the authorised person may employ such of the former employees of the industrial undertaking whose services became discharged by reason of the winding up of the company owning such undertaking and every such person employed by the authorised person shall be deemed to have entered into a fresh contract of service with the company.

(10) The proceedings in the winding up of the company, in so far as they relate to -

(a) the industrial undertaking, the management of which has been taken over by the authorised persons under this section, or

(b) the concerned part in relation to which any function of control is exercised by the authorised person under this section,

shall, during the period of such management or control, remain stayed, and, in computing the period of limitation for the enforcement of any right, privilege, obligation or liability in relation to such undertaking or the concerned part, the period during which such proceedings remained stayed shall be executed."

If the above provisions of Sec. 15A are considered then it would be quite clear that if the Central Government happens to form an opinion to investigate into the possibility of running or restart an industrial undertaking owned by a company being wound up by the High Court then the Central Government is to make an application to the High Court praying for permission to do so. On getting the permission the Central Government is to take steps as provided by Sec. 16 and subsequent sections upto Sec. 18FA. The action under Sec. 15A and the subsequent sections can be taken even after the winding up proceedings are in force.

[10] S.I.C.A. is aimed at surviving Sick Industrial Company. The B.I.F.R. considers the whole company who is financially sick company whereas the Industries (Development & Regulation) Act, 1951 empowers the Central Government to take steps to see survival of an industrial unit or undertaking owned by a company which is facing winding up proceeding in a High Court. In case of a financially sick company, if the company approaches the B.I.F.R. the winding up proceeding starts only on B.I.F.R. submitting its report to the High Court requesting the High Court to wind up the company. Once such report is filed the B.I.F.R. loses its control over sick company and

proceedings under S.I.C.A. come to an end and the action under Industries (Development & Regulation) Act, 1951 could be taken. Mr. R. C. Jani is replying on Sec. 32 of S.I.C.A. in support of his submission. The provisions of Sec. 32 of S.I.C.A. are 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 Regulations 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.

(2) Where there has been under any scheme under this Act an amalgamation of a sick industrial company with another company, the provisions under Sec. 72A of the Income-tax Act (43 of 1961) shall, subject to the modifications that the power of the Central Government under that section may be exercised by the Board without any recommendation by the specific authority referred to in that section, apply in relation to such amalgamation as they apply in relation to the amalgamation of a company owning an industrial undertaking with another company."

If the above provisions of section are considered then it will be quite clear that if any action or a scheme under S.I.C.A. is pending or in force then it will have overriding effect on all actions under any other Acts except the Acts saved by the said section. But as stated earlier once the B.I.F.R. submits its report to High Court to wind up the sick company on account of its inability to enforce any scheme to sick company the action under S.I.C.A. comes to an end. Consequently, the Sec. 32 of S.I.C.A. will not apply.

[11] It is clearly averred by the petitioner that Calico Fibre unit/undertaking was always a profit-making unit. The said unit is situated at Vadodara (Baroda). The other units of the principal company are situated at Ahmedabad and Bombay and they were textile producing and textile printing units. The principal company is having large parcel of land in Bombay as well as Ahmedabad. The Calico Fibre unit is employing around 600 workmen. The Calico Fibre unit imports Polyester Fibre yarn and products could be also exported. None of the above statements are disputed by any of the respondents. It is further claim of the petitioner that Calico Fibre unit could be treated as a separate industrial undertaking and by its separation it could not be said that the

creditors as well as share holders will loose their money. If the landed property and machinery of the principal company at Ahmedabad and Bombay are sold in the winding up proceedings, all the claims against the company could be satisfied. The above claims made by the petitioner must be investigated and considered in order to take a decision as to whether an application is to be filed under Sec. 15A of Industries (Development and Regulation) Act, 1951 before the High Court in the proceedings for winding of Respondent No. 1 of Company Petition No. 157 of 1995.

[12] No doubt, the respondent No. 2 has clearly stated that they are not interested in taking over the industrial undertaking in question. But because of the said present state of respondent No. 2 it could not be said that there could not be consideration by the Central Government. If the respondent No. 2 who was initially interested in taking over the industrial undertaking is not now having interest in the same, the Central Government can find out if any other agency is willing to take over. It is for the Central Government to consider the representation made by the petitioner and to take decision as to whether to act under Industrial (Development & Regulation) Act, 1951. But the stand taken by the Central Government that the Central Government cannot take any action on the representation of the petitioner on account of the action taken under S.I.C.A. is not correct. At the cost of repetition, it must be stated that S.I.C.A. is aimed at surviving of a financially sick company as a whole, where as the Industrial (Development & Regulation) Act, 1951 is aimed at surviving an industrial undertaking owned by the company who is subjected to winding up proceeding.

[13] Therefore, in view of the above discussion, I hold that the present petition must be allowed. I hereby direct the respondent No. 1 Central Government to reconsider the representation made by the petitioner on 9th October, 1997 in the light of the observations (particularly para No. 11) made in this judgment and then to take its decision and inform the petitioner accordingly. Thus, the Rule is made absolute as indicated above. No order as to costs. Petition allowed.