

**(1999) 08 BOM CK 0121**

**Bombay High Court**

**Case No:** Company Application No. 12-S of 1999 in Company Petition No, 9-S of 1999

Sesa Industries Limited

APPELLANT

Vs

Marmagoa Steel Limited

RESPONDENT

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**Date of Decision:** Aug. 30, 1999

**Acts Referred:**

- Companies Act, 1956 - Section 391, 392
- Sick Industrial Companies (Special Provisions) Act, 1985 - Section 15, 16, 17, 18, 22

**Citation:** (2000) 2 ALLMR 209 : (2000) 2 BomCR 709 : (2001) 104 CompCas 702 : (2000) 3 MhLj 433

**Hon'ble Judges:** R.K. Batta, J

**Bench:** Single Bench

**Advocate:** R.G. Ramani, for the Appellant; A.N.S. Nadkarni and H.D. Naik, for the Respondent

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**Judgement**

@JUDGMENTTAG-ORDER

R.K. BATTÀ, J.

The petitioners have filed an application for winding up Marmagoa Steel Limited (hereinafter referred to as "the said company") under the provisions of The Companies Act, 1956. The Executive Director of the said company filed an affidavit on 6th August, 1999 that a reference has been made by the company to the Registrar of the Board for Industrial and Financial Reconstitution, New Delhi (B.I.F.R.) and the said reference has been registered as Case No. 175-99. Accordingly, it was submitted in the said affidavit that provisions of section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "the said Act"), came into play, as a result of which the present proceedings are required to be suspended.

2. Section 22 of the said Act, reads as under;

"22. Suspension of legal proceedings, contracts, etc.---(1) Where in respect of an industrial company, an inquiry u/s 16 is pending or any scheme referred to u/s 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal u/s 25 relating to an industrial company 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 (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.

(2) Where the management of the sick industrial company is taken over or changed in pursuance of any scheme sanctioned u/s 18), notwithstanding anything contained in the Companies Act, 1956 or any other law or in the memorandum and articles of association of such company or any instrument having effect under the said Act or other law.

(a) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;

(b) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the Board.

(3) (Where an inquiry u/s 16 is pending or any scheme referred to in section 17 is under preparation or during the period) of consideration of any scheme u/s 18 or where any such scheme is sanctioned thereunder, for due implementation of the scheme, the Board may by order declare with respect to the sick industrial company concerned that the operation of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force, to which such sick industrial company is a party or which may be applicable to such sick industrial company immediately before the date of such order, shall remain suspended to that all or any of the rights, privileges, obligations and liabilities accruing or arising thereunder before the said date, shall remain suspended or shall be enforceable with such adaptations and in such manner as may be specified by the Board:

Provided that such declaration shall not be made for a period exceeding two years which may be extended by one year at a time so, however, that the total period shall exceed seven years in the aggregate.

(4) Any declaration made under sub-section (3) with respect to a sick industrial company shall have effect notwithstanding anything contained in the Companies

Act 1956 or any other law, the memorandum and articles of association of the company or any instrument having effect under the said Act or other law or any agreement or any decree or order of a Court, tribunal, officer or other authority or of any submission, settlement or standing order and accordingly:-

(a) any remedy for the enforcement of any right, privilege, obligation and liability suspended or modified by such declaration, and all proceedings relating thereto pending before any Court, tribunal, officer or other authority shall remain stayed or be continued subject to such declaration; and

(b) on the declaration ceasing to have effect -

(i) any right, privilege, obligation or liability so remaining suspended or modified, shall become revived and enforceable as if the declaration had never been made; and

(ii) any proceeding so remaining stayed shall be proceeded with subject to the provisions of any law which may then be in force from the stage which had been reached when the proceedings became stayed.

(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-A of the said Act, reads as under:

"(22-A. Direction not to dispose of assets.---The Board may, if it is of opinion that any direction is necessary in the interest of the sick industrial company or creditors or shareholders or in the public interest, by order in writing, direct the sick industrial company not to dispose of, except with the consent of the Board, any of its assets.

(a) during the period of preparation or consideration of the scheme u/s 18; and

(b) during the period beginning with the recording of opinion by the Board for winding up of the company under sub-section (1) of section 20 and up to commencement of the proceedings relating to the winding up before the concerned High Court)"

3. The petitioners/applicants have now filed an application seeking directions to the said company not to dispose of or alienate or create any third party interest in any of the assets of the company except with the prior leave of B.I.F.R. and that the said company shall give prior adequate notice to the petitioners before applying for such leave of the B.I.F.R.

4. Learned advocate Shri Ramani, appearing on behalf of the petitioners has urged that even though section 22 of the said Act operates from the date of registration of application, yet this Court can pass appropriate directions in the matter, as sought by the petitioners. In support of his submission he has placed reliance on judgment

of learned Single Judge of this Court in [M/s. Ramniklal and Co. and others Vs. The Wallace Flour Mills Co. Ltd., Company](#), ; judgment of the Apex Court in [Deputy Commercial Tax Officer and Others Vs. Corromandal Pharmaceuticals and Others](#), as well as the judgment of the Apex Court in [Real Value Appliances Ltd. Vs. Canara Bank and Others](#).

5. Learned advocate for the said company has, on the other hand, after relying upon the judgment of the Apex Court in [Real Value Appliances Ltd. Vs. Canara Bank and Others](#), , urged that once the reference is registered under the said Act, section 22 of the said Act comes into operation and inquiry u/s 16(1) is deemed to have commenced, as a result of which, the prohibition contained in section 22 comes into play immediately. In this respect, my attention has been drawn to paragraph 29 of the judgment of the Apex Court.

6. Paragraph 29 of the judgment of the Apex Court which is relevant for deciding the controversy raised by learned advocate for the petitioners reads as under ( 1998(4) Bom.C.R. page 616) :-

"29. There can therefore, be no difficulty in holding that after the amendment to Regulation 19 w.e.f. 24-3-1994, once the reference is registered and when once it is mandatory simultaneously to call for information/documents front the informant and such a direction is given, then inquiry u/s 16(1) must for the purposes of section 22 be deemed to have commenced. Section 22 and the prohibitions contained in it shall immediately come into play. In that view of the matter, we need not go into the correctness of the view expressed by the Calcutta, Rajasthan and Bombay High Courts which relied upon the unamended Regulation 19. Point 2 is decided accordingly."

On the basis of the abovementioned findings the impugned orders dated 28th July 1997 and 8th August 1997 which had been passed by the High Court after the proceedings had commenced before B.I.F.R. were held to be illegal and in violation of prohibition contained in section 22 of the said Act. It is no doubt true that the Apex Court had passed interim orders at the initial stage, to which my attention has been drawn by learned advocate for the petitioners, yet the Apex Court has laid down the law in paragraph 29 of the judgment quoted above. This ruling, thus, rather than supporting the case of the petitioners, goes against them.

7. It is not disputed that the reference has already been registered by the B.I.F.R. on 25th June 1999. It is further revealed from the affidavit filed on behalf of the said company that the said company has been declared as Sick Industrial Unit on 20th August 1999 u/s 17(1) of the said Act and the scheme for rehabilitation has been sought from the said company.

8. In the light of the law laid down by the Apex Court, the ruling of the Single Judge of this Court in [M/s. Ramniklal and Co. and others Vs. The Wallace Flour Mills Co. Ltd., Company](#), , upon which reliance has been placed by the petitioners, would not

in any manner help the cause of the petitioners. Moreover, the position therein was somewhat different and restraint order had already been passed before the BIFR had declared the company as Sick Industrial Company and the question was only relating to the modification of orders of restraint already passed and it is in these circumstances that the modified order was passed by the learned Single Judge.

9. The Apex Court in [Deputy Commercial Tax Officer and Others Vs. Corromandal Pharmaceuticals and Others](#), has in paragraph 8, upon which reliance has been placed by learned advocate for the petitioners, in clear terms laid down that the purpose and object of suspension of proceedings u/s 22(1) of the 1985 Act is to await the outcome of the reference made to the BIFR for the revival and rehabilitation of the sick industrial company. It is further observed that the words "or the like" which follow the words "execution" and "distress" are clearly intended to convey that the properties of the sick industrial company shall not be made the subject-matter of coercive action of similar quality and characteristic till the BIFR finally disposes of the reference made u/s 15 of the said Act. The Apex Court has further laid down :

"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 against the properties of the industrial company or other similar steps should 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 u/s 22 of the Act against any step for execution, distress or the like or other similar proceedings against the company without the consent of Board or as the case may be, the appellate authority."

10. Therefore, once the proceedings are suspended due to the registration of reference, it will not be possible, in the facts and circumstances of the case, to pass any coercive order as sought by the petitioners, in view of section 22 of the said Act, Learned advocate for the petitioners has himself admitted that there is no bar for the petitioners to approach BIFR and obtain appropriate orders in this behalf, u/s 22-A of the said Act.

11. In view of the above, I do not find any merit in the application filed by the petitioners and the application is, accordingly, rejected.

12. Application rejected.