

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Company Appeal No. 6 of 2016 (O&M)
Date of Decision: 14.03.2016

M/s Asian Lokto Industries Limited. ..Appellant

versus

M/s Nandan Sales ..Respondent

**CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.
HON'BLE MR. JUSTICE ARUN PALLI.**

Present : Mr. Gaurav Chopra, Advocate, for the appellant.
Mr. Anil K.Aggarwal, Advocate, for the respondent.

S.J.VAZIFDAR, ACTING CHIEF JUSTICE:

CMA No. 19 of 2016 in Company Appeal No. 6 of 2016

Heard. For the reasons mentioned in the application, delay of 61 days in filing the appeal is condoned. Application stands disposed of.

Company Appeal No. 6 of 2016 (O&M)

This is an appeal against the judgment and order of the learned Company Judge admitting the respondent's petition for winding up the appellant *inter-alia* on the ground that it is unable to pay its debts.

2. In the year 2001, the respondent filed a reference under Section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short 'the Act of 1985'). In view thereof and in view of the provisions of Section 22 of the Act of 1985, further proceedings in this petition were not permissible. This petition was filed on 14.07.2008. In view of the pendency of the reference before the Board for Industrial & Financial Reconstruction (BIFR), the petition was by an order dated 18.12.2008 adjourned sine-die.

3. By an order dated 15.09.2008, the BIFR rejected the reference on the finding that the appellant's net worth was positive. However, by an order dated 31.01.2011, the AAIFR inter-alia set-aside the order of the BIFR and remanded the matter to the BIFR. Thus, the reference was pending before the BIFR. In view thereof, the statutory stay on account of section 22 of the Act of 1985 continued to operate.

4. On 26.03.2015, the appellant filed Misc. Application No. 141 of 2015 before the BIFR and the only relief claimed was to fix a date for hearing the matter upon remand. The application was dismissed by an order dated 29.05.2015 for non-prosecution. The application was only for fixing the date of hearing of the matter, the dismissal thereof made no difference to the pendency of the reference. It was the application and not the reference that was dismissed. The reference itself was nevertheless to be considered on-merits.

5. The appellant filed MA No. 272 of 2015 for restoration of MA No. 141 of 2015. Restoration was the main relief claimed in the application. The application also sought an order fixing the date of hearing of MA No. 141 of 2015 but that would have depended upon the application for restoration being allowed. The application was also dismissed on 09.09.2015. The dismissal of the restoration application would equally make no difference to the pendency of the reference. The dismissal of the restoration application by no stretch of imagination lead to the dismissal or rejection of the reference. The effect of the dismissal of MA No. 141 of 2015 and MA No.272 of 2015 was only that no date had been fixed for the hearing of the reference. The reference still had to be decided. The BIFR was bound to hear the reference on-merits.

6. Faced with this it was contended that the observations in the order dated 09.09.2015 were also on the merits of the matter.

7. It is true that observations have been made regarding the merits of the matter. However, the reference itself has not been decided in all respects. The learned Judge observed that the effort of the company was merely to continue with protection under Section 22 of the Act of 1985 which was nothing but a misuse of the process of law. That may well be possible. However, the provisions of the Act must be followed. A reference cannot be deemed to be rejected merely because an application for fixing the date for hearing of the reference was rejected.

8. The learned Judge also observed that the appellant ought to have filed an application immediately after the order of the AAIFR for fixing the date for hearing the reference. The appellant not having made an application for fixing the date of hearing of the reference would make no difference. It was not bound to make such an application. The respondents could also have done the same.

9. In the circumstances, the appeal is allowed. The impugned order and judgment is set-aside. The company petition shall remain pending before the learned Company Judge at the stage of admission. The appellant shall inform the respondents and the Company Court within a week of any further orders passed in the reference filed under the Sick Industrial Companies (Special Provisions) Act, 1985.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

14.03.2016
'ravinder'

(ARUN PALLI)
JUDGE

To be referred to the reporter	√Yes	No.
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