

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 306/2008

LATHA PRIYANGA TEXTILE

... Petitioner

Through : Mr. S. Aravindh, Adv.

versus

BOARD FOR IND. AND FIN. RECONSTRUCTION & ORS ... Respondent

Through : Mr. Vikas Nanda, Adv. for Mr. Alok

Aggarwal, Adv. for Respondent No.2

CORAM:

HON'BLE MR. JUSTICE T.S. THAKUR

HON'BLE MS. JUSTICE ARUNA SURESH

1. Whether reporters of local papers may be allowed to see the judgment? Not Necessary
2. To be referred to the Reporter or not? ` Not Necessary
3. Whether the judgment should be reported in the Digest? Not Necessary

ORDER

% 14.01.2008

Per Thakur, J (oral)

M/s Tamaraj Mills Ltd. is an old company in spinning and weaving Industry. It appears to have gone sick despite efforts made by its promoters to keep it afloat. The matter appears to have eventually landed up before the BIFR who noted that since no viable proposal for restructuring of the company and its rehabilitation had been presented, the same ought to be wound up. Aggrieved by the said order, the company filed an appeal before the AAIFR. The said appeal was eventually disposed off by an order dated 11th August, 2006 with a direction to the BIFR to consider the Draft Rehabilitation Scheme placed before the AAIFR and to proceed to pass appropriate orders in accordance with the law on the same. The AAIFR observed :

“We have considered carefully the averments and the records placed before us as well as the facts and circumstances of the case carefully. TML is a company established more than 70 years ago and has been continuously in this line of spinning and weaving industry. This company became sick. In spite of lot of efforts could not submit in a period of 6-7 years a viable revival proposal because of which BIFR passed the winding up order. The company came in appeal and has ultimately submitted the proposal found acceptable by

the secured creditors and the OA, on the basis of which a DRA has been formulated. We have taken due note of the orders/directions of the Hon'ble High Courts. We find that the various interests evinced by various parties have been on account of the effort being made by the sick company itself and the OA to somehow find a way of revival of the company. Though we have impleaded most of them in order that all those interested are heard, their offers are : not the result or consequence of any order, we have passed, directions given to the OA to go in for a change of management or a sale of total assets of the company. We also find from the table above that none of the parties who have showed interest belong directly in the line of manufacturing yarn and cloth. The DRS prepared on the other hand aims to continue with line of production and business for which the company was originally established. While in the earlier efforts made before the BIFR no one was prepared even to put Rs.50 lakhs in a NLA, in the DRS under consideration, we see that the appellant company has in fact, already placed Rs.5 Cr. in a NLA with IDBI which is also non interest bearing. We find that the secured creditors are presently willing to repose faith in the future conduct of the company and are willing to put up with an aggregate sacrifice of Rs.124 Cr.

We are therefore, of the considered opinion that the company is in position to revive, and in this context the detailed proposal given by the company itself should be considered. It is important to note here that even though there are a couple of proposals which are marginally more than what the company has offered, they have not been considered favourably via-a-vis offer of the company.

In the above stated context we allow the appeal and set aside the impugned order. We also remand the case to BIFR with the directions that the DRS placed before us, shall be submitted to BIFR not later than 4 weeks of the date this order and the that the BIFR will thereafter proceed to consider the same in accordance with law and as expeditiously as possible.” (emphasis supplied)

2. Pursuant to the above order, the matter appears to have been taken up by the BIFR who noted that the Company had, during the intervening period, become viable on account of its net worth exceeding the outstanding liabilities. The BIFR in this regard referred to a certificate dated 30th July, 2007 issued by the statutory auditors of the company according to which the net worth of the company had risen to Rs.5.43 Crores and exceeded the accumulated loss of Rs.3.59 Crores. The BIFR

also took note of the audited balance sheet ending 31st March, 2007 and came to the conclusion that the request made by the company for discharge from the proceedings was perfectly justified. BIFR recorded a specific finding to the effect that the company had taken a strategic investor who had brought in a large amount of Rs.19.5 Crores which was sufficient to clear all the liabilities of the secured creditors. It was in that backdrop that the BIFR by an order dated 13th November, 2007 discharged the company from the purview of SICA. The following passages from the order passed by the BIFR is in this regard relevant:

“3. The company vide its communication dated 19.9.07 requested the Hon'ble Board for discharging it from the purview of SICA as its net worth had turned positive as on 30.6.08. They had also annexed a Certificate dated 30.7.07 from the Statutory Auditors of the company as per which the net worth of Rs.5.43 crores was exceeding the accumulated losses of Rs.3.59 crores by Rs.1.84 crores. The company had also submitted the audited balance sheet (ABS) upto financial year 31.3.07 as well as for the period ending 30.6.07 to support its request for discharge.

4. In today's hearing, the representative for IDBI (OA) submitted that the net worth had turned positive as on 30.6.07 by Rs.1.84 crores and recommended for discharging the company from the purview of SICA. He further submitted that in order to ensure sustainable revival of the company, they had inducted a strategic investor (SSCL), who had already inducted Rs.19.50 crores into the company. The funds were utilized for meeting the liabilities of the secured creditors. The company was working.

5. On a query with regard to specific observations of the Statutory Auditors in respect of default committed by the company in repayment of principal amounting to Rs.16.49 crores and interest amounting to Rs.112.95 crores to banks and financial institutions, the representative for the company submitted that these observations were made by the Statutory Auditors in their report dated 30.7.07 in the ABS for the period ending 31.3.07. Subsequently, the Strategic Investor had inducted Rs.19.5 crores with which all the liabilities of the secured creditors were settled through OTS. No Due Certificate had been obtained from them, IDBI had assigned their debt to SSCL and issued No Due Certificate to the company.

6. XXXXX

7. XXXXX

8. After considering the material on record and submissions made, the Bench observed that the net worth of the company as on 30.6.07 was positive of Rs.5.43

crores vis-a-vis accumulated losses of Rs.3.59 crores and hence the company was no longer fitting the definition of a sick industrial company in terms of section 3(1) of SICA. The Bench, therefore discharged the company from the purview of SICA.

3. The petitioner, who was one of the intending purchasers of the company while the same was being offered for sale, has challenged the aforementioned orders in the present writ petition.

4. Appearing for the petitioner Mr. S. Arvinth made a two-fold submission before us. Firstly he contended that the order passed by the BIFR went beyond the scope of the order which the AAIFR had passed. According to the learned counsel, the BIFR was not justified in discharging the company from the purview of the Act inasmuch as the AAIFR had restricted the scope of the remand to the consideration of the DRS. Alternatively, he argued that the discharge was against public interest inasmuch as the respondent No.2 company had made a gain by way of waivers from various public institutions to the tune of Rs.245 crores.

5. Having given our careful consideration to both the submissions, we find no merit in either one of them. It is true that AAIFR had sent the matter back to the BIFR to consider the DRS proposed by the company but the order passed by the AAIFR did not in our view prevent the BIFR from passing appropriate orders in accordance with law taking note of the subsequent developments as it had actually done. If the BIFR came to the conclusion as it has in the present case, that the net worth of the company had, on account of the investments made by the strategic investor and the promoters, increased beyond the accumulated losses and that arrangements for payment of the outstanding dues to the secured creditors had also been made, it was competent to have discharged the company from the proceedings pending before it. The order passed by the Appellate Board did not in our view limit the scope of consideration by the BIFR leave alone prevent it from taking note of the subsequent developments and passing an order appropriate to the circumstances.

So also the argument that the BIFR could not discharge the company from the purview of the Act having regard to the gains which it had allegedly made has not appealed to us. The details about how the gains were made have not been adequately set out nor is there any material before us to substantiate the allegation that there were any undeserved gains which the company had made on account of the pendency of the proceedings before the BIFR. At any rate, the petitioner company has no locus standi whatsoever to make a grievance either against the order passed by the BIFR discharging the company or against the grant of benefits to the company so long as the authorities who have been induced to give such benefits or the secured or unsecured creditors of the company do not have any such grievance. The writ petition is in our view a clear abuse of the process of this court hence deserve to be dismissed.

6. In the result, this writ petition fails and is accordingly dismissed but in the circumstances without any order as to costs.

T.S. THAKUR,J

ARUNA SURESH, J

JANUARY 14, 2008
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