

* **THE HIGH COURT OF DELHI AT NEW DELHI**

+ WP(C) 3720/2002

Date of Decision : 11th April, 2008

PRATAP STEEL ROLLING MILLS LTD. Petitioner
Through Mr. Ravi Kant Chadha, Sr. Adv. with
Ms. Mansi Chadha, Ms. Asha, Adv.
Mr. Kailash Maheshwari, Joint MD

versus

AAIFR & ORS. Respondent
Through Mr. Rajiv Shakdhar, Sr. Adv. with
Mr. Rajive R. Raj, Adv. for ICICI/Kotak
Mahindra Bank.
Ms. Maneesha Dhir, Adv. for SBI
Ms. Preeti Dalal, Adv. for R-4 & R-20
Mr. Suresh Dutt Dobhal, Adv. for R-6
Mr. S.P. Suman, Adv. for R-16
Mr. Vageesh Sharma, Adv. for R-17
Ms. Manjusha Wadhwa, Adv. for R-21

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

T.S. THAKUR, J :

In this petition for a writ of certiorari, the petitioner company calls in question the correctness of an order dated 16th May, 2002 passed by the Appellate Authority for Industrial and Financial Reconstruction, New Delhi (AAIFR) whereby Appeal No. 66/2002 filed by the petitioner has been dismissed and the order passed by the BIFR directing the winding up of the petitioner company in terms of Section 20(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 upheld. The controversy arises in the following circumstances:

2. The petitioner company is engaged in the manufacturing of

special steel products in two mini steel plants one of which is at Chheharata in Amritsar and the other at Pithampura near Indore in Madhya Pradesh. A third mini plant at Mandi Govindgarh, Punjab was also operated by the Company on lease which has since been terminated. A variety of reasonings like recession in steel industry, inability of the promoters to bring in the additional funds, extremism in Punjab, low capacity utilization and shortage of working capital appear to have affected the performance of the company forcing it to make a reference to BIFR under Section 15(1) of SICA on 16th October, 1995. The accounts of the company for the financial year ending 31st March, 1995 showed an accumulated loss of Rs.21.56 Crores as against the net worth of Rs.10.38 Crores. The reference prayed for a declaration of sickness of the company and determination of measures for its rehabilitation.

3. The BIFR upon consideration of the relevant material, declared the company sick in terms of Section 3(1)(o) of SICA and held that it was not possible for the petitioner to revive on its own. The Board accordingly appointed IDBI as the operating agency under Section 17(3) of the Act and directed the petitioner to submit a comprehensive rehabilitation proposal to the said agency.

4. The petitioner accordingly submitted a proposal pursuant to the above directions on the basis whereof the operating agency submitted a rehabilitation scheme on 10th September, 1996 which was considered by the BIFR at the hearing held on 23rd September, 1996. The BIFR however gave certain directions to the operating agency for modifying the scheme while directing the promoters to deposit a sum of Rs.2 Crore in an interest-bearing no-lien account with SBI.

5. The modified scheme was then submitted to the operating agency but although the promoters deposited a sum of Rs.50 lacs in a

no lien account with SBI, the remaining amount of Rs.1.5 Crores was not deposited despite extension of time granted for the purpose. Suffice it to say that the matter remained pending before the BIFR between 1995 till the year 2001 during which period the BIFR heard the matter on several occasions and passed orders, all aimed at finding ways and means of rehabilitating the company by bringing about a one time settlement of the dues payable to several creditors, secured and unsecured and by encouraging the finalization of a long term agreement with the workers union. It was during this period that the BIFR had on the basis of the report of the operating agency circulated a Draft Rehabilitation Scheme (DRS-2000) under Section 19(2) of SICA, brief particulars whereof were published in the newspapers also. Several responses submitted to the said scheme were heard by the BIFR on different dates of hearing. While the financial institutions were agreeable to the one time settlement terms suggested in the DRS, objections to the same were raised by some other parties. The orders passed by the BIFR and the AAIFR set out in considerable detail the steps that have been taken over the years to rehabilitate the petitioner company and the reasons for their failure. What is important is that the BIFR eventually came to a prima facie conclusion that the DRS circulated by the Board was no longer feasible for implementation. It was also of the opinion that since opportunities had already been allowed to the company to work out a revival scheme, there was no chance of a revival of the company or its net worth turning positive within a reasonable time frame. The Board, therefore, concluded that it would be just and equitable in public interest to wind up the petitioner company and accordingly issued a show cause notice directing the interested parties to file their objections/suggestions/alternative proposals in response to the same.

The relevant portion of the order passed by the Board on 3rd October, 2002 was in the following words:

“14. Having heard the submissions, the Bench observed that the company could not blame anyone else for the delay, since even on the date there was no general agreement regarding the scheme and several specific directions of the Bench were also not complied with by the company. Even the ABSs upto 2001-01 were not supplied to all the secured creditors. The company's Provisional Balance Sheet (PBS) as on 31.3.2001 was not even ready and the upto date position of its assets and liabilities was also furnished, on account of which it could not be ascertained whether the scheme took care of all the liabilities of the company with suitable restructuring where possible. There were huge variation in the dues of Central Excise and the demand for interest on debentures as raised by PNB, was likely to raise similar demands from others. PNB could not be faulted for taking the stand as conveyed today, since the company had not even provided the detailed lists of debenture-holders to it. There was no confirmation from most of the statutory authorities regarding the position of their dues and the position conveyed by the company could not be accepted based merely on its statements and it had not brought any documentary evidence in support of its various claims regarding EPF, Central Excise, Sales Tax and MPSEB's dues etc. Even the secured creditors were not dithering and seeking down payment under OTS within one month's time, which the company apparently was unable to do. In these circumstances, the DRS earlier circulated by the Board was no longer considered workable or feasible for consideration and implementation. Further, since enough time and opportunity had already been allowed to the company and other possible avenues to work out a revival scheme also exhausted, the Bench came to the conclusion that no workable revival scheme could be worked out for the company enabling it to turn its networth positive within a reasonable time frame, while discharging all its due financial obligations. In these circumstances, the Bench formed a prima-facie opinion in terms of Section 20(1) of the Act that it would be just and equitable in public interest if the sick company – PSRML – was wound up. The Bench directed that a SCN should be issued in this regard and published in one National and one local vernacular newspaper as per the procedure, asking the interested parties to file their objections/suggestions/alternative proposals in response to this opinion. The Bench would take up the responses to SCN for consideration at the next hearing to be held on 21.1.02 at 11.30AM.”

(emphasis supplied)

6. An appeal preferred against the above order was subsequently withdrawn with liberty to file another appeal after the said order was confirmed by the BIFR.

7. After objections and responses to the show cause notice were received by the BIFR, the prima facie opinion was confirmed by it by its order dated 21st January, 2002. The Board held that despite adequate time and opportunity given to the company and its promoters and despite all efforts made to explore possible avenues for rehabilitation, it had not been possible to work out any acceptable revival scheme to enable the company to turn its net worth positive within a reasonable time frame. The Board accordingly forwarded its recommendation to the High Court for winding up the petitioner company in terms of Section 20(1) of the Act. Aggrieved by the said order, the petitioner preferred an appeal before the AAIFR which, as already noticed earlier, has been dismissed in terms of the impugned order dated 16th May, 2002. The AAIFR has summed up the reasons for upholding the order passed by the Board in the following words :

“(a) First, PRSML is too heavily indebted. Its balance sheet for the financial year ending 31.3.97 shows the accumulated loss of Rs.38.42 cr as against the net worth of Rs.14.03 cr. The accounts were qualified by the statutory auditors who pointed out that accumulated loss would have been higher by Rs.20 cr if provisions were made for various liabilities. Moreover, the dues of FIs/SBI have been shown at a uniform figure of Rs.55.41 cr upto 31.3.2001 because no provision for interest has been made after April, 1996. The accumulated losses in successive balance sheets have been understated.

(b) Secondly, the OTS terms are not accepted by IFCI, IFCI has insisted on payment of interest on OTS amount from the date of acceptance of the proposal by FIs (IFCI fax dated 9.1.2002 to IDBI (OA) referred to by the learned counsel for PRSML). During proceedings before BIFR also, IFCI had declined to waive interest on OTS amount from 1996

(para 23 of BIFR's order dated 21.2.2002). Without IFCI's consent u/s 19(2) of SICA, the scheme cannot be sanctioned.

(c) Thirdly, DRS-96 prepared earlier could not be circulated/sanctioned because the promoters were unable to deposit even Rs.2 cr in no-lien account. Even now, the promoters want three months' time to bring in Rs.2 cr. They have either no resources or are not willing to firmly commit their own funds though under the scheme (revised DRS-2000) they have to bring in Rs.2.23 cr as their own contribution as well as additional funds as unsecured loans to meet shortfalls in profitability projections. The promoters are depending on sale proceeds from disposal of surplus land in order to bring in their contribution. This is not workable because the sale proceeds from PRSML's surplus assets have to be paid to FIs who will not release their charges until their OTS amounts are paid, and the sale proceeds from ARSML's land, which has been mortgaged to SBI as collateral security, would have to be paid to SBI.

(d) Fourthly, the scheme envisages that a sum of Rs.15.98 cr would be raised from the sale of PSRML's surplus assets within six months for OTS payments to FIs. The experience of schemes based on sale of surplus assets, particularly real estate, shows that sale proceeds are realized in time only if prospective buyers are identified and undertake firm commitments by bringing in substantial funds in advance. In schemes, wherein the process of sale of real estate is started after sanction, sale proceeds are not realized for years. In the present case, there are no identified buyers with firm commitments. There is no likelihood of a sum of Rs.15.98 cr being raised within six months.

(e) Fifthly, a sum of Rs.13.00 cr is proposed to be raised from sale of about 25 acres of ARSML's land for payment to SBI. There was no legal bar to ARSML selling this land and making payment to SBI. However, the promoters, instead of selling it, gave it as security to SBI and avoided selling it on the pretext that only distress sale price was being offered by prospective buyers. SBI has insisted on payment of interest if the OTS payment is not completed in six months. There is no likelihood of the land being sold in time for payment to SBI, keeping in view the fact that the promoters want three months even to bring in a sum of Rs.2 cr only.

(f) Sixthly, the scheme envisages internal accruals of Rs.2.01 cr as part of means of finance. Internal accruals can be expected only if working capital finance is tied up. The working capital

requirements is assessed at Rs.7.77 cr in the first year (Annexure III to the scheme), including working capital margin (Rs.1.94 cr – shown as Rs.1.97 cr in 'cost of scheme') and Rs.5.83 cr as bank finance. SBI has declined any further exposure. PSRML has not tied up with any bank(s). No bank finance will be available without margin money of Rs.1.94 cr to be brought in by PSRML/promoters. The promoters have not shown resourcefulness for bringing in the margin money. Sale proceeds from disposal of assets of PSRML/ARSML would first go to Fis/SBI for OTS payments, which are not likely to materialise within the projected time-schedule. In the absence of adequate working capital (margin and bank finance), the operations will be far below the projected levels and the scheme will be a non-starter.

(g) Seventhly, the scheme also depends upon deferment of collection of sales/purchase/entry tax and past liabilities for five years. State Governments (Punjab and Madhya Pradesh) have not given consent thereto u/s 19(2) of SICA. Again, the scheme envisages some settlement of the dues of Madhya Pradesh State Electricity Board which has demanded payment of its dues of Rs.13.61 cr in 18-36 monthly installments but the scheme does not include provision therefor. Similarly, the scheme does not contain sufficient provisions for payment of statutory liabilities towards Central Excise, EPF etc. The profitability projections are unrealistically optimistic, based as they are on non-provision for inescapable liabilities. The scheme will, therefore, flounder in the very first year of its operation.

(h) Eighthly, PSRML's claim of the value of its assets being worth Rs.76 cr is based on "replacement value" and not on "realisable value" and does not provide any basis for preparing a workable rehabilitation scheme."

8. The present writ petition calls in question the validity of the above order as already noticed earlier.

9. Appearing for the petitioner, Mr. Chadha fairly conceded that on the date the BIFR and the AAIFR passed their respective orders, the circumstances then prevailing and the financial health of the petitioner company did not present a healthy picture worthy of any possible rehabilitation. He therefore did not make any attempt to assail either the findings recorded by the AAIFR or the ultimate

conclusion drawn by it on the basis thereof. What was contended by Mr. Chadha was that pursuant to a one time settlement with the four secured creditors, namely, IDBI, ICICI, IFCI and State Bank of India, the possibility of a rehabilitation had re-emerged and that this Court could, in the light of the said one time settlement and the order of this Court dated 15th July, 2003, explore the possibilities of formulating a revival scheme.

10. On behalf of the respondents, it was on the other hand submitted that the one time settlement referred to by the petitioner had not been given effect to in full and that substantial amounts of money due under the said settlement continued to remain recoverable from the petitioner company. The said amounts were not, according to the respondents, being arranged by the company despite repeated requests and despite expiry of the period fixed for payment of the outstandings under the OTS. The secured creditors therefore sought dismissal of the petition as did the unsecured creditors who also claimed substantial amount to be outstanding against the company which it was in no position to pay.

11. A perusal of the order dated 15th July, 2003 passed by a division bench of this Court would show that during the pendency of the petition, the financial institutions mentioned above and the State Bank of India to whom the company owes substantial amounts were reported to have entered into a one time settlement under which the petitioner had agreed to pay Rs.15.15 Crores to IDBI, ICICI and IFCI on the terms that have been set out in the said order. One of the conditions stipulated in the said settlement was that the cut off date for reliefs and concessions would be 31st March, 2003 and that the amount of Rs.15.15 Crores shall be paid by the company within one year from the date of approval, i.e. 20th June, 2003. The terms of

settlement incorporated in the order of this Court may at this stage be extracted :

- (1) The cut-off date for reliefs and concessions under OTS would be March 31, 2003.*
- (2) The company shall pay the OTS amount of Rs.15.15 crores within one year from the date of approval, i.e. June 20, 2003.*
- (3) The outstanding crystalised dues to carry interest at PLR (12.5% p.a.) from the date of approval, i.e. June 20, 2003.*
- (4) In the event of default in payment of the crystalised dues, the company's obligation and liability under the loan agreement shall revive to the full extent and the institutions shall be entitled to recover from the company all the amounts of principal, interest and other charges under the respective agreements in full and shall be entitled to enforce the security available to them for recovery of their respective claims in full.*
- (5) The sale of the assets shall be done in a transparent manner, if necessary, through an asset sale committee, with representation from institutions.*
- (6) The company shall deposit the proceeds from sale of surplus assets/other assets in a 'No lien' account with IDBI to be utilised towards OTS payment to institutions (IDBI, ICICI and IFCI).*
- (7) All securities, guarantees and legal documents shall continue to be valid till the entire OTS amount is paid and all conditions shall apply mutatis-mutandis.*
- (8) The charges on the company's assets shall be released only on receipt of entire OTS amount. Charge would be released on specific assets as and when sold.*
- (9) The promoters shall undertake to meet any shortfall in OTS amount."*

12. It is evident from Condition No. 4 above that in the event of default in payment of the crystalised dues, the company's obligation and liability under the loan agreement were to stand revived to the full extent and the institutions entitled to recover from the company the amounts towards principal, interest and other charges under their respective agreements in full. They were also entitled to enforce the security available to them for recovery of their respective claims to the fullest. Similarly, the one time settlement with the State Bank of India involved an assured payment of Rs.14 Crores subject to the

condition that in the event of failure/default of the company and the guarantors to meet their commitments for settlement of the bank's dues, the bank shall have the absolute right to revoke the arrangements, forfeit the amount, if any, already paid and recall the entire amount of interest and principal outstanding, together with compound and/or penal interest thereon as per the provisions of the original loan agreements.

13. It is common ground that the amounts due to the financial institutions and to the State Bank of India were not paid to the creditors within the time stipulated in the OTS scheme. When the matter came up on 3rd April, 2007, the Court noted that the affidavit filed by the company in an attempt to show that order dated 15th July, 2003 had been complied with and the amounts under the OTS liquidated did not present a satisfactory picture. The Court therefore appointed an auditor to determine the amounts due and payable by the petitioner to the various creditors after taking note of the payments made and the interest liability accrued on the same. An interim report was submitted by the auditor, but despite grant of four months time to the auditor, no final report came forth from him. When the matter again came up on 8th February, 2008 for hearing, the petitioner company was directed to file a detailed statement indicating the exact amount due to the ICICI, IFCI and SBI, the secured creditors of the company, as it was admitted that the dues payable to IDBI stood liquidated. The petitioner was also asked to indicate the amounts due to unsecured creditors like VLSF, Bright Leasing & Finance Ltd. and Madhya Pradesh State Electricity Board as on 31st January, 2008. Pursuant to the said direction, the petitioner has filed an affidavit on 12th February, 2008 setting out the outstanding liability towards secured creditors of the company. A

perusal of the said affidavit would show that the company owes substantial amounts to all the three secured creditors even in terms of the one time settlement, the terms whereof the company has already violated by committing a default. From the tabular information contained in the affidavit filed by the petitioner, the outstanding liability is as under:

<i>S.No</i>	<i>FIs</i>	<i>OTS amount (Lakhs)</i>	<i>Paid (Lakhs)</i>	<i>Balance OTS (Lakhs)</i>	<i>Interest on OTS (Lakhs)</i>	<i>Total dues as per OTS (Lakhs)</i>
<i>1</i>	<i>IFCI</i>	<i>323.75</i>	<i>105.04</i>	<i>218.71</i>	<i>137.22</i>	<i>355.93</i>
<i>2</i>	<i>ICICI</i>	<i>350.00</i>	<i>213.55</i>	<i>136.45</i>	<i>119.67</i>	<i>256.12</i>
<i>3</i>	<i>SBI</i>	<i>1400.00</i>	<i>1137.24</i>	<i>262.76</i>	<i>402.13</i>	<i>664.89</i>
		<i>Total</i>	<i>1455.83</i>	<i>617.92</i>	<i>659.02</i>	<i>1276.94</i>

14. It is evident from the above that the company has failed to liquidate the amounts payable to the secured creditors under the OTS and that even in terms of the said scheme, there is a substantial amount of Rs.12,76,94,000/- outstanding against it as on date.

15. In so far as the unsecured creditors are concerned, while according to the petitioner no amount is due to Bright Leasing & Finance Ltd. and VLS Finance Ltd., respondents No. 16 and 17 respectively, the affidavit does not make any mention about the dues of Madhya Pradesh State Electricity Board. Learned counsel appearing for M/s VLS Finance Ltd., Respondent No.17 has however filed a statement indicating the amount of Rs.58,77,677/- to be due and recoverable on account of the principal and interest on the same. Similarly, counsel appearing on behalf of the respondent Madhya Pradesh State Electricity Board has also filed a statement indicating that a sum of Rs.718.46 lacs was recoverable from the petitioner on account of electric energy supplied to the mini steel plant, payment whereof has not been made. Learned counsel appearing for Bright

Leasing & Finance Ltd. concern, respondent No.16, pointed out that a sum of Rs.3.18 crores was outstanding against the petitioner company in terms of nine arbitral awards made against the petitioner in which the liability of the petitioner had been adjudged.

16. It is manifest from the above that apart from a sum of Rs.12,76,94,000/- due to the secured creditors under the OTS, there is an admitted sum of Rs.7.18 Crores due to the Madhya Pradesh State Electricity Board. A liability of more than Rs.20 crores thus exists against the petitioner even on its own admission. Apart from that, Respondents No.16 and 17 make a further claim of nearly Rs.4 crores which takes the total liability in the neighbourhood of Rs.24 crores or so. Confronted with this position, Mr. Chaddha, learned counsel appearing for the petitioner, made a candid admission on the instructions of Sh. Kailash Chand Maheshwari, the Joint Managing Director of the company who was present in person on 14th February, 2008, that neither the company nor its promoters were in a position to arrange that amount to pave way for a possible rehabilitation of the company. What was argued by Mr.Chaddha was that the company is negotiating with certain investors who may join the management and bring in the required investment to pay up the outstanding liabilities to bring the company on the path to recovery. Since there was nothing on record before us to support the assertion that any negotiations were going on with any investor who are ready to pump-in that kind of money, we had given two weeks time to the company to place on record a copy of the scheme, if any, formulated with the help of the investors and affidavits of the investors to the effect that they were ready to pump-in the additional investment required. The petitioner company has not however filed any such affidavit or scheme which clearly implies that the prospects of any investor joining the

management of the company to help it out of the financial morass in which it has landed itself are also bleak. Such being the position, no useful purpose would be served by keeping these proceedings pending any further. As on the date the orders of the BIFR and the AAIFR were passed, the company was in no position to make its net worth positive after liquidating the outstanding liability. Even after the one time settlement which the company negotiated with the secured creditors, the liability that remains outstanding is so huge that the prospects of rehabilitation continue to remain dark. The inability of the promoters to bring in the additional investment for any rehabilitative exercise either by themselves or with the help of any investors leaves no option for the Court except to uphold the order passed by the AAIFR for in the absence of any workable scheme of rehabilitation, winding up would remain the only other option. Any further attempts at finding newer and more ingenious ways of rehabilitation would only be tantamount to “flogging a dead horse” – to use the expression of their lordships of the Supreme Court in ***U.P. Financial Corporation and Others v. Naini Oxygen & Acetylene Gas Ltd. and Another* (1995) 2 SCC 754**.

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

T.S. THAKUR, J.

ARUNA SURESH, J.

APRIL 11, 2008
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