

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

+ **W.P.(C) No. 8048/2007**

Date of Decision: 11th March, 2008

ARROW SYNTEX P. LTD. & ORS. Petitioners
! Through : Mr. C. Mukund, Adv. with Mr. A.K.
Jain, Mr. Pankaj Jain, Advs.

versus

\$ **AAIFR & ORS.** Respondents
^ Through : Mr. Ashok Bhasin, Sr. Adv. with
Mr. Vinay Sharma, Mr. Pradeep
Trehan, Advs. for R-3, 4 & 5

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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? YES
2. To be referred to the Reporter or not? YES
3. Whether the judgment should be reported in the Digest? YES

: **T.S. THAKUR, J.**

The short question that falls for consideration in this writ petition is whether the Board for Industrial and Financial Reconstruction (BIFR for short) was legally justified in declining to recognize a change in the management of respondent No.3 on the ground that the said change was contrary to the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 having been introduced by the sick company without the permission of the Board. The incidental question that falls for consideration is whether the AAIFR was justified in dismissing the appeal

filed by the petitioner on the ground that the same was not maintainable as the petitioners were not parties in the proceedings before the BIFR. The controversy arises in the following circumstances :

2. M/s Coral Newsprint Ltd. Respondent No.3 in this petition appears to have filed a reference under Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 before the BIFR. By its order dated 4th October, 2001, the Board after hearing the parties declared the said company to be a sick industrial company and appointed Punjab National Bank (PNB) as the operating agency under Section 17(3) of the Act to prepare a Draft Rehabilitation Scheme (DRS) keeping in view the guidelines set out by the BIFR in its order. Pursuant to the said order, the PNB formulated a draft rehabilitation scheme but before the scheme could be approved, PICUP, one of the secured creditors, expressed lack of confidence in the management of the company and declined to support the proposed scheme opting for a one time settlement of their claim. At the same time, the PNB appears to have also settled its dues on 15th May, 2004 accepting the payment of Rs.1.6 Crores as against a total of Rs.2.6 Crores approximately. These developments were reported by the operating agency to the BIFR who had in the meantime received an application from petitioner No.1 company and its promoters collectively described as 'Jalan Group' with a prayer that an agreement dated 11th October, 2003 entered into between the Jalan group and the directors of respondent No.3 company also described as 'Chauhan Group' may be recognized and an order confirming the change of management in favour of the Jalan group passed enabling them to take charge and control of the management of the said company. Upon consideration, the BIFR rejected the

said application filed by the petitioners on the ground that the suo moto back door change of management of the company which the two groups had arranged between themselves was without its approval and contrary to the provisions of the Act which could not be recognized. The BIFR further directed all concerned to maintain status quo failing which action under Section 24, 33 and 34 of the Act was threatened against the defaulters.

3. Aggrieved by the aforementioned order passed by the BIFR, the petitioners preferred an appeal before the AAIFR which failed and was dismissed by the said Tribunal by order dated 24th September, 2007 holding that the petitioners had no locus standi to maintain the appeal as they were not parties in case No. 328/2000 before the BIFR in which the order under appeal was passed. The present writ petition, as already noticed earlier, assails the correctness of the said two orders.

4. Appearing for the petitioners, Mr. C. Mukund strenuously argued that the BIFR was not justified in rejecting the application filed by the petitioners on the ground that the same brought up a back door change of management of the company without the approval of the Board. He contended that the petitioners had, pursuant to the agreement, invested a considerable amount of Rs.4 Crores or so in liquidating the outstanding liability of the sick company and thus changed their position to their detriment which aspect gave to the petitioners the right to insist on the enforcement of the agreement dated 11th October, 2003. It was contended by Mr. Mukund that even though the agreement had been entered into without the prior permission of the BIFR, yet the BIFR could and ought to have considered the question of granting approval to the said arrangement especially when the same was in

the best interest of the sick company. Just because the agreement was entered into in anticipation of the Board's approval did not, according to the learned counsel, render the same illegal so as to call for its rejection out of hand.

5. We have given our careful consideration to the submissions made at the Bar and perused the record. The BIFR was, in our opinion, perfectly justified in declining to recognize the agreement executed between the two groups which was unsupported by the prior permission of the BIFR and indeed amounted to a back door change of the management of the company during the pendency of the proceedings before the Board. The company having been declared to be a sick industrial company, any scheme or arrangement intended to revive or rehabilitate the same had to be only in accordance with the provisions of the Act and under the supervision of the Board. It is evident from a plain reading of Section 17 and 18 of the Act that the Scheme prepared by the operating agency had to be examined by the Board and sanctioned with or without modification after taking into consideration the suggestion received from the sick industrial company and the operating agency as also from the transferee industrial company and any other company concerned in the amalgamation or from any shareholder, creditor or employee of such companies. What is important is that in terms of Section 18(8) of the Act, on and from the date of the coming into operation of the sanctioned scheme, the same becomes binding on the sick industrial company and the transferee company or, as the case may be, the other company and also on the shareholders, creditors, guarantors and employees of the said companies. Any difficulty arising in giving effect to the provisions of the

sanctioned scheme can also be removed only by the Board on the recommendations of the operating agency or otherwise by an order that the Board may pass. Suffice it to say that the process of formulation of the scheme and its sanction and implementation and matters relating thereto are all regulated by the provisions of the Act and had to be completed under the directions of the Board. Any arrangement which the Directors of the two companies, namely, the petitioner No.1 and respondent No.3 in the present case may have entered into without approval of the BIFR would therefore fall foul of the scheme and spirit of the Act and could therefore be ignored by the Board as it indeed has done in the instant case.

6. There is yet another reason that, in our opinion, justifies the view taken by the BIFR. The agreement executed between the parties envisaged an application to be made to the BIFR for sanction of the scheme which responsibility was under the said agreement assigned to the Chauhan group representing the sick company. Disputes as to the working of the arrangement between the two groups however have arisen leading to multiple rounds of litigation between them in this court and in other courts. It is common ground that all the disputes arising out of the agreement between the parties now stand referred for arbitration of Hon'ble Justice S.C. Jain, a former Judge of this court for adjudication. It is also not in dispute that in the said arbitration proceedings, while the petitioners Jalan group seek specific performance of the agreement and in the alternate refund of the amount spent by them, respondent No.3 company has made a counter claim of Rs.15 crores. These parallel proceedings are now pending before the arbitrator pursuant to a reference made by this court. The petitioners had at

the same time unsuccessfully approached the Company Law Board also for intervention who has in terms of an order dated 11th July, 2006 declined to interfere on the ground that the matter is pending between the two groups in arbitration and that the question of transfer of the shares and change of management are matters that fall beyond the purview of a petition under Section 397/398 of the Act. The following passage from the order passed by the Company Law Board is in this regard relevant :

“8. As far as the prayer for transfer of the balance 23% shares and direction to the respondents to apply the BIFR for change in the management as proposed in the agreement etc. are beyond the purview of a petition under Section 397/398 of the Act. Further, the respondents have already obtained a restraint order from the civil court restraining the petitioners from interfering in the management of the company. The petitioners have also invoked arbitration as provided in the Term Sheet. While the Jalan Group claims that they have complied with the terms of the agreement in mobilizing funds to clear the liabilities, the same is disputed by Chauhan Group. Most importantly, the company is before BIFR and therefore either for acquiring the controlling interest in the company or the management of the company, no effective relief can be granted to the petitioners other than confirming that they are the shareholders of 11.51% shares.

9. Accordingly the petition is disposed of in the above terms with no order as to costs.”

7. In the above facts and circumstances, the BIFR was justified in ignoring the arrangement sought to be introduced without its approval which arrangement has, at any rate, proved more problematic than useful to the parties. If the ultimate object of the proceedings before the BIFR was to revive the company and draw it out of the financial difficulties that it had landed in, the said object could not be achieved by thrusting upon it an arrangement which has, from the very inception, landed in rough waters. There is in that view, therefore, no room for interference with the order made by the BIFR.

8. The incidental question whether an appeal was maintainable before the AAIFR need not detain us for long. We say so, because even if the appeal filed by the petitioners was held to be maintainable, the same would be inconsequential having regard to the fact that the order passed by the BIFR was in the facts and circumstances justified.

9. There is no merit in this writ petition which fails and is hereby dismissed with costs assessed at Rs.5,000/-

T.S. THAKUR, J.

ARUNA SURESH, J.

March 11, 2008
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