

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) No. 8439/2007**

Reserved On : 22nd May, 2008

Date of Decision : 26th May, 2008

State Bank of India

.... Petitioner

Through: Mr. S.L. Gupta, Advocate.

versus

Appellate Authority for Industrial and Financial Reconstruction and Ors.

....Respondents

Through : Mr. Karan Khanna, Advocate, for
the Respondent No.3.

CORAM:

HON'BLE MR. JUSTICE MUKUL MUDGAL

HON'BLE MR. JUSTICE V.K. SHALI

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| 1. | Whether the 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 |

J U D G M E N T

26.05.2008

MUKUL MUDGAL, J.

1. This writ petition challenges the order dated 12th September, 2007 passed by the Appellate Authority for Industrial and Financial Reconstruction (hereinafter referred to as the 'AAIFR') in an appeal bearing no. 145/2006 filed by the respondent no.3, M/s. Jai Mata Glass Limited and appeal no. 153/2006 filed by the State Bank of India against the order dated 10th April, 2007 passed by the Board for Industrial and Financial Reconstruction (hereinafter referred to as the 'BIFR') in case no. 364/2001.

2. The BIFR had sanctioned a scheme vide its order dated 10th April, 2006 and the challenge by the respondent no.3 M/s. Jai Mata Glass Industries is to the following clause (ii) of paragraph 5.10 of the Sanctioned Scheme, which reads as follows:-

“The guarantees given by the present promoters of the Company to IDBI will remain effective until the allotment of equity of Rs.196.50 lacs and allotment of CORCPS of Rs. 175 lacs to IDBI.”

3. We are not concerned with the result of the appeal filed by the respondent no.3 as the challenge in the writ petition is to the order passed in appeal no. 153/2006 filed by the State Bank of India which sought modification of the rehabilitation scheme approved by the BIFR on the basis of the objections filed by the appellant-bank.

4. The main resistance of the petitioner-State Bank of India was to the cheque collection facility and providing at par the remittance facility to the sick company. Owing to the heavy costs and it was stated that further exposure as per the Reserve Bank of India (for short 'RBI') Guidelines could not be provided to the respondent no.3-company as the respondent no.3 continues to appear in the RBI's Defaulters List. Another plea relating to the sister company was also raised. The plea of the appellant was dealt with by the respondent-bank by submitting that most of the leading banks were providing facilities sought for by the respondent-company and consequently, the scheme could not be faulted with. These facilities were required to facilitate operation of the accounts in a systematic manner and provide for a quicker realisation of funds which if not provided would deplete the respondent

no.3's profit margin by Rs.35 lacs.

5. In our view, the AAIFR has rightly taken the view that the effort of the petitioner-bank should be to assist the sick company to recover from the sickness in accordance with the aim and objects of the SICA Act. The UTI Bank's business brochure clearly shows that the facility for anywhere/Multi City deposit/Payment was being provided by the banks. The contention of the sister-concern could not be raised as it was not raised when the Scheme was being framed. The order passed by the District Judge is also noted where the bank had agreed to abide by the Rehabilitation Scheme:-

“Settlement arrived at between the parties of Ext. CA a copy of draft rehabilitation scheme which has been filed by them today. In terms of a condition in the said scheme, which condition is acceptable and agreeable to both sides and which is regarding creation of first charge on certain assets of defendant No.1, as specified in the said scheme in satisfying the claim for money which is now due to the plaintiff, the suit has been withdrawn. States of the parties/their counsel concerning the aforesaid settlement have been recorded separately. The suit has been withdrawn by the counsel for the plaintiff, in view of the said settlement. The same is, therefore, dismissed as withdrawn.”

6. The main plea advanced by the learned counsel for the appellant before the

BIFR and in this Court was that the petitioner could not increase the exposure by way of fresh Sanction/enhancement of its credit facilities till the name of the respondent no.3-company continued to appear in the RBI's defaulters list. The plea of the learned counsel for the respondent no.3 was that it was never a wilful defaulter and its name was appearing in the list of defaulting borrowers for the reason that repayment of loans obtained from IDBI was delayed. He stated that the said loan has since been repaid in accordance with the negotiated settlement reached with the IDBI and therefore it was the IDBI who should have recommended to the RBI to remove the name of the respondent-company from the defaulters list. The appellate authority also directed the IDBI to advise RBI to remove the name of the respondent-company from the list of defaulting borrowers.

7. In this view of the matter, it is clear that the main grievance raised by the petitioner-bank cannot be countenanced in view of the fact that the main plank of the objection to the Scheme that the respondent no.3 was a defaulting company in the list of the defaulters with the RBI has now lost substance because it is not in dispute that the dues of the respondent no.3 towards IDBI have been cleared and

also because a direction was given by the appellate authority to the IDBI for the advise to the RBI to remove the name of the respondent-company from the list of the defaulters. We are fully in agreement with the aforesaid reasons given by the AAIFR. The main grievance of the petitioner was that the respondent no.3-company was in the list of defaulters of the RBI, which grievance has been redressed by the direction given by the AAIFR to the effect that IDBI should advise the RBI for removal of the name of the respondent-company from the list of defaulting borrowers, which direction has not been challenged by any party. The principal objection of the petitioner, State Bank of India about the name of the respondent-company figuring in the list of defaulters with the RBI, is removed. Further, the AAIFR has also given reasons to the effect that once the petitioner bank is ready to extend the facility of concessional rate of interest in accordance with the guideline of the RBI, there is no justification of denying the respondent no.3 the benefit of collection of various instruments at par, as denial of such facility would only make the company sick by depleting its resources further. Consequently, we see no reason to interfere with the impugned order. In any

event, the appellate authority i.e. AAIFR's upholding the BIFR order would lead to the rehabilitation of a company which was a sick company and the Scheme would facilitate the continuation of employment of 400 persons in an industrially under-developed State. Thus, the orders challenged in this writ petition also facilitates public interest and this is an additional reason why this Court should not interfere under Article 226 of the Constitution of India.

8. The writ petition accordingly stands dismissed and disposed of.

(MUKUL MUDGAL)

JUDGE

(V.K. SHALI)

JUDGE

May 26, 2008

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