

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

+ W.P.(C)) 8472/2007

Date of Decision: 9th April, 2008

#

RICHARDSON & CRUDDAS LTD. EMPLOYEES UNION & ANR.... Petitioner

!

Through: Mr. D.S. Narula with Ms.Manmeet
Arora and Mr. A.S. Narula,
Advocates

versus

\$

UOI & ORS.

^

..... Respondents

Through: Mr. J.P. Sengh, Sr. Advocate with
Ms.Rimple Jain, Advocates for
respondent No.9.
Mr. Ranvir singh with Mr. Varun
Tyagi, Advocates for Respondent
No.2.
Mr. Ashish Dholakia with Mr.Adarsh
Priyadarshi, Advocates for
respondents.
Mr. Anurag Mathur, Advocate for
SBI.

%

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

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

J U D G M E N T

Per Thakur, J(oral)

1. Respondent No.2 – M/s Richardson & Cruddas (1972) Ltd. is a wholly

Government owned company which has gone sick for the past nearly fifteen years resulting in a reference being made for its rehabilitation before the BIFR under Sick Industrial Company (Special Provisions) Act, 1985. Efforts appear to have been made to explore the possibilities of its rehabilitation by appointing different operating agencies and inviting different rehabilitation proposals from them. The BIFR, eventually, came to the conclusion that the company could not be revived and that the only option left was to wind-up the same. An order directing winding up of the company was accordingly passed by the BIFR on 25th July, 2003. Aggrieved by the said order, the Government of India, the Sick Industrial Company concerned and the workers employed in the same, filed three different appeals before the Appellate Authority for Industrial and Financial Reconstruction, New Delhi. While the said appeals were pending the petitioner Employees Union appears to have presented a draft scheme before the Appellate Authority for the proposed rehabilitation of the company. That scheme was referred by the AAIFR to the operating agency, namely, the State Bank of India for the same and submitted to the AAIFR on 7th February, 2005. The petitioner's case appears to be that the scheme so approved by the operating agency was upon consideration by the AAIFR duly sanctioned and circulated. No such order of sanction or specific approval of the scheme has been passed by the AAIFR or is available on record. On the contrary, the AAIFR has by an order dated 24th September, 2007 impugned in this writ petition recorded a specific finding that the scheme presented by the operating agency was not

tenable and could not, therefore, be circulated. The AAIFR was of the opinion that a fresh revival proposal had to be formulated which could then be considered by the BIFR after giving an opportunity to the parties concerned to submit their respective proposals. The AAIFR observed:-

“Having regard to the submissions of the Govt. and other parties, the facts and circumstances of the case, the different considerations discussed earlier we are of the opinion that there are tenable reasons why the revival proposal as it has been prepared by the O.A. cannot be circulated. In our view, a fresh revival proposal, instead, has to be formulated. We are of the opinion that the company can be revived through a disinvestment process which is being increasingly followed by Govt. of India provided it is done in a fair and transparent manner and having regard to the norms which have been laid down by the Apex Court in the Balco case and other cases relating to disinvestment. We, therefore, allow the Appeal 395/03 filed by the Union of India and set aside the winding up order dated 25.07.03 passed by BIFR and remand the case to BIFR and direct that the parties concerned must approach the BIFR within a period of 8 weeks from the date of this order with concrete propositions, plan of action and obtain further detailed directions from BIFR and, thereafter, submit a proposal as expeditiously as possible within the timeframe to be decided by BIFR to enable the Board thereafter to proceed further according to law.”

The present writ petition filed by the Union assails the above direction.

Appearing for the petitioner, Mr. Narula, made a two fold submission before us. Firstly, he contended that keeping in view the observations made by AAIFR in the order under challenge the Board of Industrial and Financial Reconstruction was likely to get prejudiced against the scheme presented by the Union while considering the proposals for revival of the company. He

contended that the petitioner Union could be protected against any such prejudice by making a suitable observation to that effect. Secondly, he argued that the efforts for revival of the sick company have remained pending before the BIFR for a considerable period of time and unless this Court were to fix a timeframe within which the entire issue is examined and finally disposed of, the matter is likely to hang fire for an indefinitely long time to come.

M/s J.P. Sengh and Ranvir Singh, counsel appearing for the respondents have no objection to both these submissions being accepted and this Court making appropriate observations in regard to the same. It was submitted by them that since the matter has been remanded back to the BIFR for reconsideration of the proposals, all the parties are free to file their revised proposal and advance arguments in support of the same, in which event the BIFR would examine the merits of each proposal and take appropriate measures. So also any observation made by this Court regarding expeditious conclusion of the proceedings would be in the interest of all concerned.

In the circumstances, therefore, and keeping in view the statements made above, we dispose of this petition with the observation that the BIFR shall not, while reconsidering the revival proposal given by the operating agency and which the other parties may file before it in terms of the order passed by the AAIFR, be prejudiced by any observation made by the AAIFR in regard to the feasibility, or otherwise, of any scheme presented before it.

The BIFR shall be free to take an objective view of the matter on a fair and proper consideration and evaluation of the revival proposal presented before it in terms of the order made by the AAIFR including that which the petitioner Union may choose to make. That should, in our opinion, take care of the apprehension expressed by the petitioner. As regards the apprehension regarding the matter continuing to hang fire for an indefinite period, we are of the view that since the case has been pending for nearly fifteen years or so, the BIFR would do well to expedite the conclusion of the proceedings and pass appropriate orders on the subject as early as possible and preferably within a period of one year. No costs.

ACTING CHIEF JUSTICE

SIDDHARTH MRIDUL, J

APRIL 09, 2008
ns