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IN THE HIGH COURT OF DELHI AT NEW DELHI

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**W.P.(C) NO.942/2007, W.P.(C) NO.2865/2007 AND
W.P.(C) NO.2880/2007**

Reserved on : 05.09.2008

Date of Decision : 09.04.2009

**1. W.P.(C) NO.942/2007 & CM Nos.1652/2007, 2274/2007,
5412-13/2007, 14869/2007, 16129/2007, 16139-40/2007
& 17629/2007**

M/S R.R.KABELS LTD.

..... Petitioner

Through Mr. Harish Salve, Mr. Rajiv
Nayyar, Sr. Advs. with Ms.
B. Sunita, Mr. Darpan Wadhwa &
Mr. Anil, Advocates

Versus

AAIFR & ORS.

..... Respondents

Through Ms. Indira Jaisingh, Sr. Adv.
with Mr. B. K. Sinha, Adv.

for Respondent.

Mr. V.P. Singh, Sr. Adv. with Mr.
Buddy Ranganathan,

Ms. Shruti Verma, Advs. for M/s
Pegasus Asset Reconstruction for the
respondent.

Mr. Dewan, Adv. for the respondent.

Mr. Jayant Bhushan, Sr. Adv. with for
the respondent.

Mr. C.A. Sundaram, Sr. Adv. with Ms.
Sushmita Banerjee, Advocate for
respondent no.36.

Ms. Indu Malhotra, Sr. Adv. with Mr. P.
K. Seth, Mr. Abhishek Kumar, Mr.
Kush Chaturvedi, Advs. for the
respondent no.26.

Mr. A.S. Chandiok, Sr. Adv., Mr. Parag
P. Tripathi, ASG with Mr. Prateek
Jalan, Ms. Ranjita, Ms. Vismai Rao,
Advs. for respondents.

Mr. P. S. Sudheer, Ms. Anne Mathew,
Advs. for respondent no.4.

Mr. Rajeev Sahney, Sr. Adv. for
respondent no.14.

Mr. P. R. Sikka, Adv. for respondent
no.2

Mr. D.K. Aggarwal with Shanto
Mukerjee, Advs. for respondent no.29.

Mr. Anil Devan, Sr. Adv. with Mr.
Sanjiv Sen, Mr. Sameer

Dewan, Advs. for respondent
no.27/34.

Mr. Dushyant Dave, Sr. Adv. and Mr.

Jayant Bhushan, Sr. Adv. with Mr. D. Kundu and Mr. Tarun, Adv. for TATA Steel Ltd./respondent no.24.
Mr. Vivek Sibal, Mr. Tarunvir Singh, Adv. for respondent no.31.
Mr.Radha Rangaswamy, Adv. for respondent/Govt. of West of Bengal.

AND

2. W.P.(C) NO.2865/2007 & CM No. 5354/2007

PEGASUS ASSETS RECONSTRUCTION PVT. LTD.

..... Petitioner
Through : Same as in WP(C)
No.942/2007

Versus

AAIFR & ORS.

..... Respondents
Through : Same as in WP(C)
No.942/2007

AND

3. W.P.(C) NO.2880/2007 & CM No.5387/2007

THE INDIAN KABELS WORKERS UNION

..... Petitioner
Through : Same as in WP(C)
No.942/2007

Versus

AAIFR & ORS.

..... Respondents
Through : Same as in WP(C)
No.942/2007

CORAM :

HON'BLE MR. JUSTICE MUKUL MUDGAL, J

HON'BLE MR. JUSTICE V.K.SHALL, J

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| 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 |

J U D G M E N T

V.K. SHALL, J:

1. This order shall dispose of three Writ Petition No.942/2007 (M/s R.R.Kabels Ltd. Vs. AAIFR & Ors.), WP(C) No. 2865/2007 (M/s

Pegasus Assets Reconstruction Pvt. Ltd. Vs. AAIFR and Ors.) and WP(C) No.2880/2007 (The Indian Kables Workers Union Vs. AAIFR & Ors.). All these three writ petitions are challenging the same order dated 22nd September, 2006 passed by AAIFR though for different reasons. By virtue of the said order, AAIFR has passed the following directions:-

“46. We also give the following directions to the BIFR which we expect will be followed by the Board. All parties are also directed to fully cooperate with the BIFR so that the time frame given to the BIFR can be maintained.

- i) All four parties who have been permitted by the BIFR order dated 12.04.2006 shall give their respective proposals to the OA i.e. SBI for its evaluation within two weeks of the passing of this order, during which period all the four parties, namely, SJIL (Silver Jubilee Infrastructure Ltd.), Pegasus (Pegasus Assets Reconstruction Pvt. Ltd.), RRK (M/s R. R. Kables Ltd.) and LLL (Land Lease Company (India) Ltd. respectively shall hold discussions with the secured creditors and others. Thereafter, operating agency (hereinafter referred to as 'OA') shall hold discussions with the secured creditors and others. All the four parties shall deposit 100% of their envisaged promoters' contribution in an interest bearing No Lien Account with the OA and give proof of their deposit to the satisfaction of the OA.
- ii) OA upon receipt of the proposals from all or any of; the four parties as enumerated hereinabove, shall satisfy itself about the deposit in an interest bearing No Lien Account of the entire promoters' contribution and, thereafter, examine the proposals. The said examination by the OA shall be done within a period of four weeks after expiry of two weeks from the passing of this order.
- iii) OA after examination of the proposals shall call for a joint meeting of all concerned parties and conduct negotiations and prepare a viable and fully tied up Draft Rehabilitation Scheme (DRS) and submit the same to BIFR latest upon the expiry of ten weeks time of the passing of; this order. OA along with DRS shall also submit a report to BIFR giving respective

merits and demerits of each of the proposal evaluated for consideration of BIFR.”

2. The petitioner M/s R.R.Kabels Ltd.had challenged the order dated 12th April, 2006 passed by the BIFR in AAIFR permitting all the above mentioned four parties to submit the revised proposal to the OA on the ground that it is the scheme for rehabilitation of the sick company was superior as compared to the schemes given by Peagasus Assets Reconstruction Pvt. Ltd. and SJIL and LLJ because Peagasus was an asset reconstruction company and could not run the sick company in view of the bar contained in Section 10(2) of the SICA and the guidelines framed by the RBI. It had also failed to deposit the promoter’s contribution in the no lien account while as the petitioner had already deposited 25 crores and further made arrangement for another 35 crores of investment to revive the sick company. Similarly, the schemes of SJIL and LLJ also did not conform to this direction of the BIFR and accordingly these schemes could not be considered. The petitioner had further contended that it had already purchased 85% of the secured credit, signed MOU with Union not to retrench any employee and the direction given by the BIFR for submission of the fresh scheme to be given by these four parties would further cause delay in the rehabilitation of the sick company which has already been lying closed for a considerable length of time. It was also contended that the petitioner is doing the same business which the sick company was doing.

These submissions of the petitioner company were negatived and the appeal was dismissed by the impugned order dated 22nd September, 2006 by which the petitioner is feeling aggrieved and has challenged it by filing the present petition.

3. Pursuant to this order, M/s R.R.Kabels Ltd. submitted a revised and duly tied up proposal with the operating agency and also deposited a sum of Rs.21 crores on 21st April, 2006 and a sum of Rs.5 crores on 9th May, 2006. Simultaneously, it preferred the present Writ Petition bearing WP(C) No.942/2006 before this Court praying for quashing of the impugned order dated 22nd September, 2006 and further praying that the rehabilitation scheme proposed by the petitioner namely M/s R.R.Kabels Ltd. ought to be sanctioned by the respondents under the provisions of The Sick Industrial Companies (Special Provisions) Act, 1985.

4. There are 39 respondents in the Writ Petition. This Court passed an order on 13th February, 2007 staying further proceedings both before AAIFR and BIFR till the next date of hearing which order continued to be in existence till date. Counter affidavits have been filed by respondents No.32, 38 and 39 opposing the writ petition.

5. The other two writ petitioners have also challenged the order dated 22nd September, 2006 of AAIFR though for different reasons. In Writ Petition bearing No.2865/2007 petitioner, M/s Pegasus Assets Reconstruction Pvt. Ltd., has prayed for various reliefs, main among them being that the MOU signed by the petitioner M/s R.R.Kabels Ltd. with the respondents No.29, 32 and 33 and with the various secured creditors and the purchase of the secured debt by them is bad in law. It was the case of Pegasus that purchase of secured debt by M/s R.R.Kabel even after, it, itself had obtained an order of status quo from AAIFR is not only violative of AAIFR order and contemptuous but it has also upset the level playing field for all the prospective bidders.

6. So far as third Writ Petition bearing No.2880/2007 by The Indian Kables Workers Union Vs. AAIFR & Ors. is concerned, it has prayed for summoning of the record of the case from AAIFR in respect of miscellaneous application bearing No.176/2007 in Appeal No.110/2006 culminating into the order of 22nd September, 2006 passed by AAIFR and further issuance of an appropriate mandamus or direction or order commanding that M/s Tata Iron & Steel Company Ltd. give a proposal and to consider the said proposal of rehabilitation of M/s Incab Industries Ltd. by the BIFR. It was also prayed that the respondents be prohibited except respondent no.24-M/s Tata Iron & Steel Co. Ltd., their service agency etc. interfering from rehabilitation proposal or taking over M/s Incab Industries Ltd. by M/s Tata Iron & Steel Co. Ltd.

7. In order to appreciate the real point in controversy, it may be pertinent here to mention the brief facts. M/s Incab Industries Ltd. (hereinafter referred to as 'the Company') was having its main plant at Jamshedpur and another plant at Pune apart from its Head Office at Calcutta. The aforesaid Company does not seem to have been managed properly on account of which the Company had to be closed down as it had suffered losses. In October, 1999, a reference was made to BIFR for the purpose of declaring the Company as a sick unit. On 4th April, 2000, BIFR declared the Company as a sick unit under The Sick Industrial Companies (Special Provisions) Act, 1985 and the State Bank of India was appointed as an operating agency. On 20th October 2000, since no viable rehabilitation scheme could be framed, BIFR directed the operating agency to issue an advertisement for change of management of the Sick Company. However, no party came forward for taking over the management of

the company. In the year 2006, BIFR formed a prima facie opinion that the company could not be revived and therefore, should be wound up on account of the fact that there was no viable or agreed rehabilitation proposal with means of finance tied up, as no party was available to take over the grant of rehabilitation. However, as a last measure, BIFR gave an opportunity to various parties to submit a rehabilitation proposal in respect of the aforesaid company. As a consequence of this, three proposals were submitted before BIFR, one by M/s R.R.Kabels Ltd. (petitioner in WP(C) 942/06), the second by M/s Pegasus Assets Reconstruction Pvt. Ltd. (respondent no.32 and petitioner in WP(C) 2865/07 and third by M/s Silver Jubilee infrastructure Ltd. (respondent no.31). In addition to this, one company M/s Land Lease Company (India) Ltd. (LLL)-respondent no. 33 were also permitted to submit a proposal to the BIFR along with certified copy of the High Court order permitting M/s Land Lease Company (India) Ltd. to submit the proposal. All these proposers were to negotiate with the secured creditors/workers and other necessary parties and submit a revised and improvised rehabilitation proposal to the operating agency because the proposal submitted by them were found to be not fully tied up on all counts.

8. Pursuant to this, BIFR also directed that any proposal submitted by any party would also be required to submit 25% of the finance required for the purpose of rehabilitation with the operating agency.

9. Accordingly, M/s R.R.Kabels Ltd. deposited a sum of Rs.25 crores with the operating agency and claimed that it had further made a provision of Rs.34 crores to invest as a capital expenditure

for the revival of the company. Although it complied with the portion of the order of BIFR but simultaneously it preferred an Appeal No.110/2006 wherein the order dated 12th April, 2006 passed by BIFR was challenged under Section 25 of The Sick Industrial Companies (Special Provisions) Act, 1985 on the grounds stated hereinabove. The said appeal came to be heard on 12th May, 2006 and AAIFR passed an order of status quo with regard to the properties of the Company.

10. In Writ Petition No.942/2007, titled as M/s R. R. Kabels Vs. AAIFR & Ors., this Court on the application bearing No.5413/2007 filed by M/s Incab Industries Ltd., The Indian Kabels Workers Union, M/s Incab Credit Staff Association and Kabels Union (INTEC) sought intervention in this petition, as well as leave of this Court to approach M/s Tata Iron & Steel Company Ltd. for rehabilitation and revival of M/s Incab Industries Ltd. The Court permitted the intervention and directed M/s Tata Iron and Steel Co. Ltd. to file a proposal for the purpose of rehabilitation of M/s Incab Unit which has already been done.

11. We have heard the learned counsel for the main contesting parties namely M/s R.R.Kabels Ltd. in Writ Petition No.942/2007, M/s Tata Iron & Steel Co. Ltd. respondent no.24, M/s Pegasus Assets Reconstruction Pvt. Ltd., Respondent no.32 and The Indian Kabels Workers' Union-respondent no.27, apart from other counsel.

12. So far as the submissions which have been made by the respective sides are concerned essentially constitute three groups. One group is headed by M/s R.R. Kabels Ltd. which is getting the support of respondent No.27-The Indian Kabels Workers' Union,

Respondent no. 28-Jamshedpur Mazdoor Union, respondent no.30-All India Trade Union Congress, respondent no.38-M/s Kamala Mills Ltd. and respondent no.39-M/s Fasqua Investment Pvt. Ltd.

13. The second group is represented by M/s Tata Iron & Steel Co. Ltd. which is respondent No.24 and although it had not given the scheme for rehabilitation originally but by virtue of the interim order passed by this Hon'ble Court on 23rd April, 2007, M/s Tata Iron & Steel Co Ltd., respondent no.24 was permitted to submit a proposal without prejudice to the rights and contentions of the other bidders. This proposal of M/s Tata Iron & Steel Co. Ltd. is supported by respondent nos.27, 29 and interveners which are stated to be M/s Incab group Staff and M/s Karamchari Union and 763 Individual Workers' whose individual affidavits are also purported to have been filed separately. It may be pertinent here to mention that both M/s RR Kabels and Tata Iron & Steel Co. Ltd. were claiming the support from the substantial number of workers of respondent no. 27 - a union. However, we feel it is not necessary to go into the question of which of the Union or a part thereof is supporting which of the proposal because once this is sought to be done, the main issue with regard to the seeing the validity of the impugned order for the purpose of rehabilitation of the sick company itself gets sidetracked.

14. The third scheme is that of M/s Pegasus Assets Reconstruction Pvt. Ltd.-respondent no.32. As regards, the forth party namely, LLJ there was really no serious claim to consider the said proposal.

15. All the three proposals which are purported to have been submitted by the three parties essentially raise the question as to which scheme is the best and for the larger benefit of the workers of

the company which has been lying closed since 1995 and has now got embroiled into litigation. So far as M/s Pegasus Assets Reconstruction Pvt. Ltd.-respondent no.32 is concerned, its grievance is not to the effect that its scheme has not been accepted but its grievance is to the effect that the order which was passed by AAIFR have not considered its appeal of restoring the status quo with regard to the assets of M/s Incab Industries Ltd. which are purported to have purchased by R. R. Kabels. It is alleged that M/s R. R. Kabels despite the status quo order having been passed by the AAIFR on 12th May, 2006 has purchased 85% of the secured credit of the company and thus upsetting the level playing field for all the players.

16. So far as the scheme of Pegasus is concerned R.R. Kabels had raised an objection to it on the ground that it is an asset reconstruction company under Securitization and Reconstruction of Financial Assets and Enforcement of Security Act, 2002 it cannot commence business without the approval of the RBI and thus it ought not be considered. The two schemes purported to have been formulated or submitted by M/s R.R.Kabels and M/s Tata Iron & Steel Co. Ltd. are really the main contesting parties before this Court.

17. So far as the grievance of the petitioner M/s R.R.Kabels Ltd. is concerned, it has raised the contention that AAIFR has fallen into error by giving a direction to BIFR permitting all the four parties namely, M/s Silver Jubilee Infrastructure Ltd., M/s Pegasus Assets Reconstruction Pvt. Ltd., M/s R.R.Kabels Ltd. and M/s Land Lease Company (India) Ltd. to submit a revised rehabilitation proposal

despite the fact that M/s R.R.Kabels Ltd. had already complied with the directions of BIFR inasmuch as it had deposited Rs.25 crores as its share in the interest bearing no lien account in addition to have been able to obtain a commitment for investment of Rs.34 crores into the capital assets of the company for its revival. In addition to this, it was contended on behalf of M/s R.R.Kabels Ltd. that it is essentially dealing with in the business of cables and so was the Incab and therefore, it was best suited for revival of the company. It was urged that the proposal which was submitted by it would have not only rehabilitated the Incab company but it was also going to ameliorate the condition of the workers in general. It was contended by M/s R.R.Kabels Ltd. that before passing of the order by BIFR on 21st April, 2006, it had entered into a memorandum of Understanding on 27th March, 2006 with respondent Nos.26, 27, 28 and 34 which are Union of workers who had supported the scheme of M/s R.R.Kabels Ltd. as it would have been highly beneficial to the workers in general. In addition to this, it had also been assigned 85% of the secured debt of Incab to M/s R.R.Kabels Ltd. from various statutory and financial institutions namely ARCIL, ICICI Bank Ltd., Kamla Mills, Specified Undertaking, UTI, UTI Mutual Fund and therefore, it was contended by them that no proposal for rehabilitation of the company floated by any other company including M/s Tata Iron & Steel Co. Ltd. would be workable without the approval of M/s R.R.Kabels Ltd. and thus the proposal which has been floated by M/s R.R.Kabels Ltd. ought to be accepted and all the other proposals be rejected.

18. As regards the proposal which was submitted by M/s Tata Iron & Steel Co. Ltd. it was contended on behalf of the petitioner that the

proposal which was submitted by M/s Tata Iron and Steel Co. Ltd. was highly belated inasmuch as despite M/s Tata Iron and Steel Co. Ltd. being a party both before BIFR as well as AAIFR for almost a period of seven years, they did not submit any proposal for rehabilitation of the company. No doubt M/s Tata Iron & Steel Co. Ltd. was an unsecured creditor but during the course of negotiations with the secured creditors they had also supported the scheme of M/s R.R.Kabels Ltd. It was contended that Tata's proposal was highly belated and therefore it cannot and may not be considered now. Further this proposal was permitted to be submitted without prejudice to the rights and contentions of the other parties.

19. It is further urged that the proposal which has been now submitted by M/s Tata Iron & Steel Co. Ltd. is a self-serving proposal which has been permitted to be submitted by virtue of an ad interim order passed by the High Court on 23rd April, 2007 without prejudice to the rights and contentions of the parties and if the said proposal is permitted to be entertained, it will only give a back door entry to M/s Tata Iron & Steel Co. Ltd. It was also urged that even on merits, the proposal which has been submitted by M/s Tata Iron & Steel Co. Ltd. is not better than the proposal submitted by M/s R.R.Kabels Ltd. inasmuch as the proposal which has been submitted by M/s Tata Iron & Steel Co. Ltd. involved 'right sizing' the work force which would result in retrenchment of workmen and it would also ensure that it retrieves its total unsecured loss while as the interest of other secured creditors will not be fully protected. It was also urged on behalf of the respondent Nos.27,28 and 30 that so far as the proposal which has been given by M/s Tata Iron and Steel Company Ltd. is concerned, it has been invited by way of a surrogate

interim applications in the shape of so called interveners/applicants namely M/s Incab Graded Staff Association, M/s Kabels Karamchari Union and 763 individual workers/Deponents whose affidavits are attached. It was also urged that so far as the interveners are concerned, such an application cannot be entertained inasmuch as no permission under Order 1 Rule 8 of CPC has been sought to place on record the individual affidavits and reliance in this regard has been placed on case titled as R.C.Sunita Vs. UOI & Others 1999 (9) SCC 105. It was further urged that according to Section 36 of the Industrial Disputes Act, 1947, the representation of parties before a Tribunal can be only through its Trade Union and not by individual workmen and therefore, these applications with individual affidavits cannot be taken cognizance of by the Court. Reliance was placed on Shramik Uttarsh Sabha vs. Raymond Woolen Mills Ltd & Ors. JT 1995 (II) SC 284 para 15.

20. It was urged that the interest of the workers in general as well as in particular is governed by the Trade Unions which have already entered into the Memorandum of Understanding on 27th March, 2006 with the petitioner. The respondent No.38 M/s Kamla Mills Ltd. and respondent no.39 Fasqua Investment Pvt. Ltd. are also assignees of the secured debt of the financial institutions and are vehemently supporting the scheme of the petitioner on all counts.

21. Per contra, it was contended on behalf of respondent no.24-M/s Tata Iron & Steel Company Ltd. and respondent no.27-The Indian Kabels Workers' Union and respondent no.29- Incab Employees' Association and the interveners that the proposal which has been submitted by M/s Tata Iron and Steel Company Ltd. is

better than the proposal of M/s R.R. Kabels Ltd. inasmuch as not only it did not envisage any retrenchment but the benefits which are being given by M/s Tata Iron and Steel Company Ltd. are better than the benefits which would accrue to the workers in general if the scheme of M/s R.R.Kabels Ltd. is accepted. It was also contended on behalf of M/s Tata Iron and Steel Company Ltd. that the entire township where the main plant of the sick industrial unit M/s Incab Industries Ltd. is located in Jamshedpur which land belongs to M/s Tata Iron and Steel Company Ltd. Even the essential amenities like water, electricity, sanitation and other facilities in the township are maintained by M/s Tata Iron and Steel Company Ltd. In addition to this, so far as M/s Tata Iron and Steel Company Ltd. is concerned, it has a brand name and goodwill in the industrial set up of the country and therefore, there is absolutely no reason to ignore its scheme from the purview of consideration for the purpose of rehabilitation of the sick industrial unit.

22. So far as the proposal which is purported to have been submitted by M/s R.R.Kabels Ltd. is concerned, it was urged that it has a sister concern in the M/s Kamala Mills Ltd. and M/s Fasqua Investment Pvt. Ltd. respectively which are respondents No. 38 and 39. It was contended that so far as M/s Kamala Mills Ltd. is concerned, it is a real estate company and the entire exercise of M/s R.R.Kabels Ltd. is actuated not with the intention of rehabilitation of the sick industrial unit but only to develop the land which belongs to the sick industrial unit and thereafter make a substantial profit by either development of the property or the sale of the property. So far as the stand of the M/s R.R. Kabels Ltd. that consideration of Tata's proposal would cause further delay is concerned, it was contended

that no delay would be caused because after the passing of the order by the BIFR the revised proposal which was submitted by the M/s R.R. Kabels Ltd. on 10.5.2006 was yet to be examined by the OA alongwith the other proposals submitted by other parties. Learned counsel for M/s Tata Iron and Steel Company Ltd. has placed reliance on case titled as Navnit R.Kamani & Ors. Vs. R.R.Kamani (1988) 4 SCC 387 to para 7 at page 397 reads as under:-

“8. When the two schemes are viewed in juxtaposition, there is no manner of doubt that the scheme presented by the applicant appears in a rather poor light. In fact the said scheme suffers from some fundamental infirmities. It is not shown that there is any commitment on behalf of any bank or financial institution to provide the requisite financial resources to enable the applicant to modernize the plant and to run it. The applicant ‘hopes’ to purchase a second hand plant from some foreign country. It is not known whether any such second hand plant in working condition with reasonable life expectancy is available. It is not known what would be the cost thereof. It is not known whether the Central Government would release foreign exchange in order to enable the applicant to purchase the said plant. Thus the entire scheme is wrapped in imponderables and there is no concrete basis to entertain a reasonable belief that the ‘hope’ entertained by the applicant would materialise at all in the foreseeable future. It is proposed to finance the cost of the additional plant and machinery to the tune of Rs. 694 lakhs out of which it is stated that Rs. 520 lakhs will be by way of term loan assistance from banks and financial institutions. It is conceded that there have been no negotiations with any bank or financial institution and there has not been even a tentative, not to speak of a firm commitment in this behalf. With regard to the remaining Rs.174 lakhs it is stated that it will be by way of promoters contribution or through issue of share capital. Whether or not Rs. 174 lakhs can be so raised is in the realm of wishful thinking and conjecture. It merely reflects the hope of the applicant which is not rooted in reality. It is built on a non-existent foundation. Nor is it shown whether the applicant himself has any sizeable financial resources of his own. Or whether he is in a position to raise such resources. The scheme is a manifestation of

the 'hope' and 'desire' of the applicant and no more. There is little doubt about the fact that no useful purpose will be served by granting the request of the applicant in these circumstances. Even so we would have considered the matter further if the applicant had satisfied this Court about his bona fides and provided an assurance that delay will not be to the detriment or prejudice of the workers or at their cost. An enquiry was accordingly made from the learned counsel for the applicant whether the applicant was prepared to deposit a sum of Rs. 1 crore representing about 15 per cent of the arrears of wages which have by now become payable to the workers to enable the court to examine the matter notwithstanding the aforesaid shortcomings. The learned counsel for the applicant frankly stated that the applicant was not in a position to deposit such a sum. In fact he did not even mention that the applicant was prepared to deposit a lesser sum in order to show his good faith and bona fides and in order to protect the legitimate interests of the workers. Counsel wanted the court to consider the scheme without any such provision being made merely on the assertion that the scheme presented by the applicant was the only feasible scheme which appears to be an altogether ill-founded assertion for the foregoing reasons. Under the circumstances we do not have the slightest hesitation in refusing the applicant's prayer in this behalf."

23. Reliance was also placed on Aarey Drugs & Pharmaceuticals Ltd. Vs. Appellate Authority 1995 (34) DRF (DB), para 4 at page 148-149 reads as under:-

"4. On filing of this petition, we issued notice to show cause as to why rule nisi by not issued and in answer thereto respondents 5,6 and 7 do not object to the prayer being allowed. There is no response from respondent No.4, the Operating Agency, and from that it would appear that it also has no objection to this petition support the petition, of course it has also the support of the second respondent, the sick industrial company. The Appellate Authority had noticed that the matter had been pending for number of years and no solution could be found in spite of the efforts of the BIFR who be proceeded against judicially."

24. On the basis of the aforesaid two authorities, it was contended by M/s Tata Iron and Steel Co. Ltd. that the Court can refer the proposal submitted by M/s Tata Iron and Steel Co. Ltd. as well as the proposal which are already submitted by M/s R.R.Kabels Ltd. and M/s Pegasus Assets Reconstruction Pvt. Ltd. or the other two companies for fresh evaluation by the Operating Agency so that there is maximum benefit to the maximum number of workers.

25. As regards, the proposal which has been submitted by M/s Pegasus Assets Reconstruction Pvt. Ltd. although there was no serious submission on the part of the learned counsel to contend that their scheme is in any manner better than M/s Tata Iron and Steel Company Ltd. or M/s R.R.Kabels Ltd. but it was contended on their behalf that if at all this Court refers the proposals for fresh evaluation by Operating Agency that they be permitted to submit a fresh proposal duly tied up for fresh evaluation of the revival of the company in question.

26. We have considered the submissions of the respective sides. We are cognizant of the fact that the scope of Judicial Review is hedged in with certain limitations. It is also true that this Court is also ill equipped to assess the comparative merit of the proposal submitted by the contesting parties and arrive at a finding whether proposal A or proposal B is for the betterment and the benefit of the majority of the workers. This is a specialized job which is to be done by the operating agency.

27. But it cannot be lost sight of the fact that despite such highly intricate, contentious issues involved, there are precedents where the Apex Court has considered the proposal of a party even though it has been submitted at a late stage and judged its comparative merits

in the light of the other schemes. Reliance in this regard can safely be placed on **Navnit R.Kamani's** case (Supra).

28. So far as the proposal submitted by M/s Tata Iron & Steel Company Ltd. is concerned, the same has been submitted by virtue of an interim order passed in this writ petition by Division Bench. Though the said proposal was permitted to be submitted without the prejudice to the rights and contentions of the respective sides but we feel that this Court in exercise of its jurisdiction neither has the expertise nor ought to sit as a body to evaluate the respective merits and demerits of the proposal. This exercise ought to be done by the Operating Agency only. So far as the objection which has been raised by the petitioner herein that the scheme which has been floated by M/s Tata Iron and Steel Co. Ltd. is highly belated or has come on record through surrogate intervention of a group of applicants who have joined hands together and filed individual affidavits and not sought the permission of the Court, we are of the view that these pleas are too technical and that these objections which should not deter the Court to pass an order in its writ jurisdiction to consider the merit of the scheme floated by Tata in comparison to the other schemes given by M/s R.R.Kabels or Peagasus. No doubt the Tatas had initially not filed any scheme despite being a party to the proceedings before BIFR or AAIFE for more than seven years. We are of the view that ideally this was a very valid objection raised by the petitioner but keeping in view the fact that even the revised scheme submitted M/s R.R. Kabels Ltd. on 10.5.1996 after the passing of the order dated 12.4.2006, is yet to be examined by the OA, therefore, the consideration of the proposal submitted by Tatas will not in our view cause any serious delay. The

present ultimate goal of the entire exercise is not only to revive the sick company which has been lying closed for almost a decade but also the formulation of a scheme for the rehabilitation which will see minimum retrenchment of the workers. We are of the view if this is the consideration, then this objection of the petitioner also loses its sting to stop the consideration of the scheme of the Tatas. Further, one cannot lose sight of the fact that notwithstanding the fact that originally Tata Iron & Steel Co. Ltd. did not submit the proposal before the BIFR or the AAIFR despite being a party, almost six/seven years. But in our view that should hardly be a ground to oust it now specially when this Court has permitted it to submit the present proposal during the pendency of the writ petition apart from the fact that the schemes of M/s R.R. Kabels Ltd. and others are yet to be evaluated by the OA.

29. But there is another aspect of the matter which can also not be ignored. This is the fact that M/s R.R.Kabel in terms of the proposal has blocked its substantial amount of Rs.25 crores for the last more than two years and further made arrangements to pool in resources to the tune of Rs.34 crores. This shows their bonafides and sincerity to go ahead with their revival proposal. Further they have purchased 85% of the secured credit. Therefore, these considerations have also to be borne in account while considering the efficacy of the relative merits of the two schemes by OA.

30. So far as the objection raised by M/s R.R. Kabels Ltd. with regard to the locus of the interveners or the individual/applicants duly supported by their affidavits is concerned, we feel that the judgment which has been referred by the learned counsel in support of its contention would not be applicable to the present case for the

simple reason that in the said judgment what was observed was that an independent writ petition of an individual workman without seeking permission under Order 1 Rule 8 of CPC would not be maintainable. While as in the instant case, the interveners/applicants or the individuals whose affidavits have placed on record are not seeking any independent relief but are only voicing their concern before the Court to urge that 'A' proposal or 'B' proposal is better for their interest which ought not to be ignored because this exercise cannot be done by the High Court but only by a specialized agency which is called the Operating Agency in the instant case. Therefore, we are of the considered opinion that the matter deserves to be remanded back to the Operating Agency for considering the two proposals , (a) of the petitioner and (b) that of M/s Tata Iron and Steel Co. Ltd. for fresh evaluation by Operating Agency. However, it is made clear that this consideration would be open only to the petitioner and M/s Tata Iron and Steel Co. Ltd. This would be notwithstanding the fact that M/s R.R. Kabels Ltd. is purported to have deposited Rs.25 crores in pursuance to the directions passed by BIFR earlier and the fact that it is purported to have purchased 85% of the secured debt from various statutory/ financial institutions. But at the same time we want to add a caveat that as the M/s R.R. Kabel has already deposited 25 crores of rupees and has shown its bonafide and has also purchased the 85% of the secured credit, this would certainly be a factor which may weigh in their favour if all other parameters of the rival schemes are equal or are marginally differential. We hope and trust that on submission of these proposals will be finalized by Operating Agency as expeditiously as possible.

WP(C) No.2865/2007

31. One of the submissions, which was made before us by M/s Peagaus was that the order of AAIFR is bad in law inasmuch as it has not considered the application of M/s Pegasus Assets Reconstruction Pvt. Ltd. for initiation of contempt proceedings on account of M/s R.R.Kabels Ltd. having violated the order of status quo dated 12th May, 2006 which in fact M/s R.R.Kabels Ltd. itself had obtained from AAIFR. For this purpose, it was contended by M/s Pegasus Assets Reconstruction Pvt. Ltd. and other respondents that after filing of the appeal by M/s R.R.Kabels Ltd. is purported to have purchased 85% of the secured debt of the financial institutions and statutory bodies and thus it has not only violated the orders willfully of AAIFR but also altered the level playing field for various parties who had submitted proposal before the Operating Agency. This argument was supported by Tata's also along with its unions of fraction of unions that M/s R.R. Kabels Ltd. has itself breached the order of status quo passed by the AAIFR. It was also urged that this charge in the status quo has affected the viability of the other schemes. For this purpose, learned counsel has relied upon the following authorities; **Delhi Development Authority vs. Skipper Construction & Another (1995) 3 SCC 507, Surjit Singh & Others etc. etc. vs. Harbans Singh & Others etc. etc. 1995(6) SCC 50 and Satyabrata Biswas & Others vs. Kalyan Kumar Kisku & others (1994) 2 SCC 266.**

32. As against this, M/s R.R.Kabels Ltd. contended that there is no infirmity in the order passed by AAIFR dated 22nd September, 2006 in not taking cognizance of the applications filed by M/s Pegasus Assets Reconstruction Pvt. Ltd. for having violated the order dated

12th May, 2006 inasmuch as there was no violation of the order dated 12th May, 2006. It was contended that under Section 22A of The Sick Industrial Companies (Special Provisions) Act, 1985, AAIFR and BIFR has the power to pass an order only with regard to the assets of the Sick Industrial Unit and admittedly the debt of the Sick Industrial unit or Non-Performing Asset of the industrial unit could hardly be said to be an asset of the sick company and thus if the petitioner M/s R.R.Kabels Ltd. has purchased the debt or the non-performing asset of the sick industrial unit it can hardly be said to be violation of the order dated 12th May, 2006. For this purpose, learned counsel for the petitioner relied upon on the judgment of the Division Bench of this Court in case titled as Haryana Steel & Alloy Ltd. Vs. IFCI Ltd. (137) 2007 DLT 554 where the Division of the High Court has held that a Non-Performing Asset of a sick industrial company could not be said to be an asset.

33. We have gone through the provision of Section 22A of The Sick Industrial Companies (Special Provisions) Act, 1985, which reads as under:-

“[22A, Direction not to dispose of assets.—The Board may, if it is of opinion that any direction is necessary in the interest of the sick industrial company or creditors or shareholders or in the public interest, by an order in writing direct the sick industrial company not to dispose of, except with the consent of the Board, any of its assets—

(a) during the period of preparation or consideration of the scheme under section 18; and

(b) during the period beginning with the recording of opinion by the Board for winding up of the company under sub-section (1) of section 20 and up to commencement of the proceedings relating to the winding up before the concerned High Court.]”

34. A perusal of the aforesaid provision would clearly show that the power of the Tribunal to issue interim orders only pertains to the disposal of assets of the sick industrial company and in the light of the judgment of Division Bench of our own High Court is to the effect that a non-performing asset of a sick industrial company cannot be said to be an asset. We are of the view that the purchase of non-performing asset of the sick industrial company by the petitioner cannot be said to be violation of order of status quo, which was passed by the AAIFR though it was obtained by the petitioner himself. In any case, it will be too technical to give such an interpretation to the provision so as to read as non-performing asset of a sick company to be treated as an asset and thereby hold that the interim order dated 12th May, 2006 passed by the AAIFR precluded or restrained the appellant from purchasing the non-performing asset would be doing not only violence to the Section 22A of the Act. It will be also against the letter and spirit of the Section. The authorities which are also cited by the learned counsel for Tatas also pertain to different facts, situations and for punishment of the alleged contemnor in the said case which are distinguishable from the facts of the present case. Accordingly, we hold that the purchase of non-performing assets by M/s R.R. Kabels Ltd. cannot be considered to be a violation of orders of status quo passed by AAIFR.

WP(C) No.2880/2007

35. So far as the writ petition No. 2880/2007 is concerned does not call for passing a separate order as no notice were issued in the same and it was simply tagged along with WP(C) 942/2007 and the both writ petition has been disposed with certain directions.

Conclusion

36. We, therefore, feel that the writ petition of the M/s Pegasus Assets Reconstruction Pvt. Ltd. bearing WP(C) No. 2865/2007 is totally misconceived and accordingly the same is dismissed.

37. So far as the writ petition bearing 942/2007 titled R. R. Kabels Vs. AAIFR & Ors. is concerned, the same is disposed of with the direction that the proposal submitted by M/s Tata Iron and Steel Co. Ltd. which was submitted by way of an interim order before this Court deserves to be evaluated by the Operating Agency along with the scheme which has been submitted by the M/s R. R. Kabels and both the parties are given three weeks time for the purpose of submission of schemes, from the date of the judgment and further the said schemes will be evaluated by the Operating Agency as expeditiously as possible but not later than four months from the date of pronouncement of the judgment. However, it is also clarified that the deposit of Rs. 25 cores by the petitioner herein or the purchase of 85% of secured debt by the petitioner M/s R.R.Kabels Ltd. will not come in the way of Operating Agency to evaluate the respective merits of the scheme though while evaluating the said factum, if the operating agency considers is a factor which has an overall bearing on the respective merits of the scheme, it may do so.

38. The BIFR would take into account while evaluating the schemes inter alia :-

(a) The petitioner R.R. Kabels proposal was given earlier than the Tata's and that they had purchased 85% of the secured debt of the financial institutions and that the petitioner had invested a sum of Rs.25.00 crores in the company.

(b) Which of the two schemes protects the interests of the workmen better by taking into account

(i) The payment of arrears of wages.

(ii) The wage packet and security of service.
(iii) Whether retrenchment is contemplated and if so of how many?

(c) Even if the petitioner R.R. Kabel's proposal is not found acceptable, then the amount invested by them not only in purchasing 85% of the secured debts but also the amount invested by them in the sick company has to be returned to the petitioner at the option of the petitioner with reasonable interest by the party chosen by the BIFR for reviving the company.

39. It is further clarified that the order of stay of proceedings before AAIFR and BIFR passed on 13th February, 2007 stands vacated however, status quo with regard to the assets and the properties of the Sick Industrial Unit shall be maintained till the time the scheme is approved by the BIFR or till the time the BIFR modifies the interim order, whichever is earlier. With this observation all the pending CMs in this writ petition also stands disposed of and they do not warrant passing of any separate order.

No order as to costs.

(V.K.SHALI)
JUDGE

(MUKUL MUDGAL)
JUDGE

April 9th, 2009
RN/KP/RS