

* **HIGH COURT OF DELHI: NEW DELHI**

+ **Writ Petition (Civil) No. 9152/2009**

% Judgment reserved on: May 22 , 2009
Judgment delivered on: July 07, 2009

Damodar Valley Corporation Petitioner

Through Mr.Janaranjan Das with
Mr.Dwetaketu Mishra, Advs.

Versus

Appellate Authority for Industrial & Financial
Reconstruction & Others Respondents

Through None
Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE A.K. PATHAK

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

A.K. PATHAK, J.

1. The petitioner has filed this writ petition challenging the order dated 26th February, 2009 passed by the Appellate Authority for Industrial & Financial Reconstruction (hereinafter

referred to as AAIFR) as well as order dated 4th July, 2007 passed by the Board for Industrial & Financial Reconstruction (hereinafter referred to as BIFR) and praying therein that the petitioner be permitted to file objections to the Draft Rehabilitation Scheme (DRS).

2. Brief facts are that the petitioner is a Statutory Corporation established under the Damodar Valley Corporation Act, 1948. Its functions are the promotion and operation of schemes for irrigation, water supply and generation, transmission and distribution of electrical energy.

3. Respondent No.3 company was consumer of the petitioner and defaulted in making the payment of electricity bills and till 31st August, 2001 a sum of Rs.2.73 crores was due and payable by respondent No.3 company to the petitioner.

4. Respondent No.3 company became sick and a reference was made to BIFR. It was declared as sick company under Section 3 (1) (o) of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short SICA) vide order dated 26th November, 1997 passed by the BIFR.

5. Draft Rehabilitation Scheme (DRS) was prepared and circulated for revival of respondent No.3 company to all the concerned parties inviting the objections/suggestions.

6. DRS was sent to petitioner by the BIFR on 23rd March, 2007 and was received by it on 6th April, 2007. The petitioner did not file any objections to the DRS though it appeared before the BIFR during the hearing. Vide order dated 4th July, 2007, BIFR sanctioned the rehabilitation scheme. Though petitioner did not file any objections/suggestions but BIFR suo moto deleted reliefs and concessions proposed qua the petitioner as contained in clauses No.(ii), (iv) (v) and (vi) of paragraph 9.3 of DRS and added a condition of restoration of power supply.

7. Petitioner aggrieved by the order dated 4th July, 2007 passed by the BIFR, filed an appeal before the AAIFR. Grievance of the petitioner was that BIFR did not grant time to the petitioner to file objections/suggestions to the DRS despite its request. BIFR wrongly recorded that the representative of the petitioner did not raise any objection to the DRS. DRS was received by the petitioner on 6th April, 2007 and the same was under examination of the petitioner corporation. In the

meanwhile, the petitioner received a letter dated 21st May, 2007 from respondent No. 3 company which raised grave apprehensions about the intention of respondent No.3 company. Under these circumstances, BIFR should have given time to the petitioner to file objections under Section 19 (2) of the SICA. In the order BIFR did not mention that there was deemed consent of the petitioner corporation. Sixty days as provided under Section 19 (2) of SICA should have been calculated from the date of communication of respondent No.3 company dated 21st May, 2007 whereby it had reduced its offer given in the DRS. BIFR had wrongly ordered for supply of electric power to respondent No.3 company even though not a single instalment was paid by the said company. BIFR also unilaterally deleted some clauses of the scheme.

8. These contentions of the petitioner were considered by the AAIFR but did not find favour with the AAIFR for the reasons mentioned in the impugned order, consequently, appeal was dismissed vide the impugned order.

9. It has been observed in the impugned order that the DRS was sent by the BIFR to the petitioner on 23rd March, 2007

and same was received by it on 6th April, 2007. The petitioner failed to file objections to the DRS within the stipulated period of 60 days from the receipt thereof i.e. by 6th June, 2007. Petitioner did not apply for extension of time though it could have applied for further time not exceeding 60 days before the expiry of the stipulated period of 60 days from the date of circulation of the DRS. Petitioner had failed to place on record any document or application/communication to show that it had made a request for extension of time prior to the hearing conducted by the BIFR on 4th July, 2007 when the impugned order was passed. Thus according to Section 19 (2) of SICA it will be deemed that the consent had been given by the petitioner. Since Section 19 (2) of SICA was a deeming provision it was immaterial for the BIFR to record any finding in the impugned order regarding “deemed consent”. Certain reliefs and concessions were proposed vide clauses (ii), (iv) (v) and (vi) of para 9.3 of DRS qua the petitioner and the same were deleted by the BIFR even without filing any objections/suggestions by the petitioner. Direction regarding restoration of power supply was imperative to enable rehabilitation of respondent No.3 company. Respondent No.3 company was bound by the sanctioned scheme with regard to the

payments of dues of the petitioner and the petitioner was at liberty to bring to the notice of the BIFR any failure on the part of respondent No.3 company in case schedule was not adhered to. In the light of above observations AAIFR dismissed the appeal.

10. Petitioner has reiterated the same contentions which were raised before the AAIFR and the same have been considered by us. To support his contentions that BIFR ought to have given time to the petitioner company to file objections/suggestions beyond a period of 60 days as provided in Section 19 (2) of the SICA, petitioner has placed reliance on two judgments rendered by the Hon'ble Apex Court tilted as Topline Shoes Ltd. Vs. Corporation Bank reported in (2002) 6 Supreme Court Cases 33 and India House Vs. Kishan N. Lalwani reported in (2003) 9 Supreme Court Cases 393.

11. Section 19(2) of the SICA reads as under:-

19(1) XXXXXXXXXXXXXXXXXXXX

19(2) Every scheme referred to in sub-section (1) shall be circulated to every person required by the scheme to provide financial assistance for his consent within a period of sixty days from the date of such circulation [or within such further period, not exceeding sixty days, as may be allowed by the Board, and if no consent is received within such

period or further period, it shall be deemed that consent has been given.

12. It is apparent from the above that every person required to give financial assistance had to file his consent within a period of 60 days from the date of circulation of the scheme or within such further period, not exceeding sixty days, as may be allowed by the Board. It is further provided that if no such consent is received by the BIFR within sixty days or within extended period, it shall be deemed that consent had been given. In this case scheme was circulated by the BIFR to all the concerned persons including the petitioner, DRS was received by the petitioner on 6th April, 2007. Thus, objections/suggestions, if any, should have been filed by the petitioner on or before 6th June, 2007. However, petitioner failed to do so. Petitioner has not placed on record any document to show that it had made any written request on or before the expiry of 60 days period. BIFR held hearing on 4th July, 2007 wherein petitioner had participated. Even, during the hearing no written request was made by the petitioner for extension of time. It is highly improbable that BIFR would have avoided to record such request

had it been made by the petitioner more so, when no bias has been alleged.

13. Sub-section 2 of Section 19 of SICA clearly provides that if no consent is received within a period of 60 days it shall be deemed that consent had been given. Since petitioner had failed to file objections to the DRS, “deemed consent” has to be inferred.

14. Judgments relied upon by the petitioner, are in different facts and the laws and are of no help to the petitioner. In Topline Shoes case (supra) Section 13 (2) of the Consumer Protection Act was involved. Similarly in India House case (supra), court was seized with the interpretation of Section 12 (2) of the Limitation Act. Section 19 (2) of the SICA is not *pari materia* with Section 13 (2) of the Consumer Protection Act and Section 12 (2) of the Limitation Act.

15. In this case, it has been specifically stipulated under Sub-section (2) of Section 19 of the SICA that in case consent is not received from the concerned person, it shall be deemed that consent had been given. Petitioner did not raise any objection to the DRS nor gave written consent. Consequence of remaining silent by a party to the scheme has also been provided under the

aforesaid provision of law. There was no occasion for the BIFR to extend the period beyond a period of 60 days without any request made in this regard by the petitioner. Thus, it is deemed that petitioner had consented to the DRS.

16. In view of the above discussions, we do not find any jurisdictional error in the impugned orders. In our opinion petition is devoid of merits.

17. Accordingly, we dismiss the writ petition in limine.

A.K. PATHAK, J

MADAN B. LOKUR, J

July 07, 2009
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