

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

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Date of decision: 20.01.2010

+ WP (C) No.12599 of 2009 & CM No.13170 of 2009

M/S. VIZAG PROFILES LIMITED ...PETITIONER

Through: Ms. Maneesha Dhir,
Ms. Jayshree Shukla &
Ms. Preeti Dalal, Advocates.

Versus

M/S. RAAM TYRES LIMITED & ORS. ...RESPONDENTS

Through: Mr. Vivek Sibal, Ms. Pooja M. Saigal
& Mr. Rahul Sharma, Advocates for
Respondent No.1.

Mr. Sandeep Sethi, Sr. Advocate with
Mr. Arvind Nayar, Mr. Sanjay Abbot
& Mr. Vineet Nayar, Advocates for
Respondent No.2.

AND

+ WP (C) No.12606 of 2009 & CM No.13180 of 2009

M/S. RAAM TYRES LIMITED & ANR. ...PETITIONERS

Through: Mr. Vivek Sibal, Ms. Pooja M. Saigal
& Mr. Rahul Sharma, Advocates.

Versus

M/S. APPELLATE AUTHORITY FOR INDUSTRIAL
& FINANCIAL RECONSTRUCTION & ORS. ...RESPONDENTS

Through: Mr. Sandeep Sethi, Sr. Advocate with
Mr. Arvind Nayar, Mr. Sanjay Abbot
& Mr. Vineet Nayar, Advocates for
Respondent No.7.

Ms. Altaf Fathima, Advocate for
Respondents 9 & 13.

Mr. Atul Nanda & Mr. Gaurav Gupta,
Advocates for Respondent No.16.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MS. JUSTICE VEENA BIRBAL

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

SANJAY KISHAN KAUL, J. (Oral)

1. Rule DB.
2. Learned counsels for the respondents accept notice.
3. At request of learned counsels for the parties and keeping in view the directions passed by the Hon'ble Supreme Court on 27.11.2009, these petitions are taken up for final disposal.
4. There are two writ petitions filed aggrieved by the same order of the AAIFR dated 18.9.2009 and of the BIFR dated 24.10.2008 – one by the company in respect of which proceedings are pending and the other petition by a strategic investor in the company.
5. M/s. Raam Tyres Limited (for short 'RTL'), one of the petitioners has been before the BIFR Board from 1997 onwards. The endeavours to revive the company were proving to be fruitless and thus it was agreed to change the Management for which an advertisement was issued on 2.8.2006. M/s. Pelican Rubber Private Limited, respondent No.2, the only contesting party in the present petition, submitted its proposal. There were two separate proposals submitted by said respondent No.2 – one envisaged a complete takeover of the Management; the other with the participative

Management of the existing Management. The first proposal was withdrawn and it is the second proposal which was acted upon in pursuance to an MOU dated 5.1.2007 between RTL and respondent No.2. There were disputes between the existing Management and respondent No.2 with the result that the funds which were to be brought in by respondent No.2 were never so fully brought in though substantive funds were brought in by respondent No.2. There was some difference of view as to the amount of funds infused by respondent No.2 whether it was 3.07 crore or 2.97 crore. In the proceedings of the BIFR held on 26.07.2007, it was specifically recorded that respondent No.2 would not be entitled to any special privileges or rights or claims whatsoever in nature on the assets of RTL or in the management till the sanctioned scheme is brought into effect. In the subsequent proceedings held on 25.10.2007, IDBI has confirmed that respondent No.2 had not fulfilled the terms of the bid on account of their failure to deposit the remaining amount by the stipulated date of 16.08.2007 and that IDBI had not given any further extension of time for making balance payment. The BIFR thus declared that the bid of respondent No2 was invalid and unacceptable because of non completion of the terms of the bid.

6. Be that as it may, respondent No.2 wanted to put an end to the arrangement and informed the BIFR that it would like to walk out of the deal and the funds should be refunded to it. It is not necessary to go into more details in this aspect but suffice to say that on 24.10.2008 an order came to be passed by the BIFR with a majority of two Members and one Member dissenting to the effect that the

amount infused by respondent No.2 should be refunded by 6 per cent interest. The second part of the direction was that a suitable advertisement should be issued for change of Management in the leading newspapers as the earlier bid was to be treated as null and void. We may notice that the dissent was on this aspect. Respondent No.2 did not challenge this order.

7. The order came to be only challenged before the AAIFR by RTL. It was the plea of RTL that the strategic investor was only infusing funds as per the proposal and there was no transfer of Management. It was further pleaded that all the existing stakeholders being the creditors and shareholders and others were acceptable to this change as the funds were being brought in would liquidate the liabilities of these shareholders. The proceedings recorded on 24.01.2008 show that the plea of the existing management of RML was that they should be given liberty to choose their investor/revival partner and change of management would not be required in the case. The operating agency IDBI submitted that RML had settled the dues of secured creditors as per terms and conditions of OTS Act along with interest and the entire amount had been paid. The company had also agreed to refund the amount to respondent No.2, but respondent no.2 was refusing to take the amount. Not only that, representative of SBI submitted that all dues had been settled and the entire amount paid and the stands of Karnataka Bank Limited and ISCI were also to the same effect. The AAIFR, however, by the impugned order dated 18.9.2009 dismissed the appeal. The order of the AAIFR is based on a premise that the proposal before the BIFR furnished by RTL was

for introduction of a new promoter involving the change of Management though this was being disputed by RTL. The AAIFR found force in the finding of the BIFR that there was lack of clarity in the proposal as to whether infusion of funds would ultimately result in conversion into equity and the MD of RTL was called upon to take a categorical stand in this behalf. The MD of RTL gave an undertaking that there was no change of Management or conversion into equity but despite that the BIFR was not convinced of the undertaking.

8. It is interesting to note that the order of the AAIFR records the submissions of the opposite side which are really of respondent No.2. Thus, respondent No.2 pleaded that a strategic investor was not an entity having experience in the same business while respondent No.2 had vast experience. Transparency required that a fresh advertisement should be issued so that even respondent No.2 could participate in that process and once again seek to come into the Management of RTL. Reliance was placed on the observations of a Division Bench order of this Court in WP (C) No.8048/2007 titled Arrow Syntex P. Ltd. & Ors. Vs. AAIFR & Ors. dated 11.3.2008.
9. We have heard learned counsels for the parties at length and perused the record including the impugned orders.
10. We are of the considered view that the impugned orders are predicated on a wrong presumption of there being a change of Management in pursuance to the strategic investor coming into the picture. A bare reading of the proposal submitted by the strategic investor would show that the proposal did not envisage a

participation in the Management of the strategic investor or transfer of shares. The funds were being infused against security of assets. The funds were to be utilized to clear all liabilities.

11. The relevant portion of the proposal for revival of the company by the existing management specified the role of the strategic investor as under:

“G. PROMOTER MR.S.RAMACHANDRA STRATEGIC PARTNER/CO-PROMOTERS M/S. VIZAG PROFILES LIMITED:

- a) Strategic partner/Co-promoters to this Scheme M/s.Vizag Profiles Limited to induct and bring in Rs.12.00 Crores (Rupees Twelve Crores Only) as fresh investment into the company by way of Secured Loan, secured by first charge on the Fixed Assets of the Company. The loan will carry this interest until the net worth of the company become positive.
- b) The investment primarily is being made to clear off the entire Secured Creditors of the company under OTS Scheme, to invest further monies for major repairs, purchase of the machinery and renovation of plant to invest into the working capital of the company for conducting production process.
- c) Strategic Promoters/Co-promoters to bring in interest free unsecured loans to meet the shortfall if any arises between the estimated requirement of the scheme and actual if any and to guarantee profitability projections and shortfall in funds flow due to any reason.
- d) Strategic Promoters/Co-promoters to discharge any other liability whatsoever not foreseen in this scheme.
- e) All statutory liabilities are to be met by the promoters/co-promoters as and when need arises.
- f) To raise the necessary term loan for establishing the new product line to the tune of Rs.8.00 Crores.”

12. There is nothing recorded to show any opposition by secured or unsecured creditors or the operating agency possibly because they may have been satisfied with the arrangement. In fact, these entities,

despite being served, have not come before the Court to oppose the present petitions.

13. It is no doubt true that respondent No.2 came into the picture in pursuance to an advertisement issued earlier when the existing Management had agreed for a change of Management. However, that arrangement did not result in satisfactory result and the consequence was that respondent No.2 wanted to walk out of the deal there being trouble between respondent No.2 and the existing Management. Respondent No.2, in fact, even accepted the order of 24.10.2008 of the BIFR declaring the earlier arrangement as null and void and directing payment to respondent No.2 of the funds brought in with interest. This was, in fact, as per the request made by respondent No.2 earlier and thus interest of respondent No.2 was fully taken care of.
14. We may notice that the order in Arrow Syntex P. Ltd. & Ors. Vs. AAIFR & Ors. (supra) is based on its own facts. In the given facts of the case a change of Management was sought to be brought about without prior approval of the BIFR and there was even opposition by some secured creditors. It was in those circumstances that the direction issued by BIFR for issuance of a fresh advertisement for change of Management was not interfered with.
15. In the present case the change of Management is not envisaged and the strategic investor is only infusing funds. What is more important is that all stakeholders seem to be satisfied with the arrangement.
16. Learned counsel for respondent No.2 strenuously contended that the issuance of a fresh advertisement was in the larger interest of

transparency. We are unable to accept the plea for the reason that in a matter of this nature which is not dealing with the public contract what is really required to be considered is the interest of the stakeholders and if all the stakeholders are satisfied with the arrangement something must weigh very heavily to ignore it.

17. We are of the considered view that the BIFR appears to have proceeded on an incorrect premise and what was required was that the proposal of the existing Management for continued Management with the strategic investor infusing funds should have been explored on merits taking into consideration the stand of the stakeholders. This has not been done by the BIFR. We feel such an exercise needs to be undertaken by the BIFR.
18. We, thus, set aside the impugned order of the BIFR dated 24.10.2008 and of the AAIFR dated 18.9.2009 to the extent they direct an advertisement to be issued for change of Management with the direction to the BIFR to examine the proposal of the existing Management for infusion of funds through a strategic investor taking into consideration the interest of all the stakeholders and calling upon the stakeholders to take a stand in this behalf.
19. Needless to say that respondent No.2 is not a stakeholder and is only entitled to the return of the amount with interest as directed vide order dated 24.10.2008 of the BIFR.
20. At this stage learned counsel for respondent No.2 states that during the course of hearing he could not inadvertently point out that before AAIFR one of the creditors, Karnataka Bank, had taken a stand against the strategic investor. This position is, however, disputed by

the two petitioners stating that it is recorded in the order of the BIFR that under OTS the dues of Karnataka Bank stand settled and paid.

21. The petitions are allowed to the aforesaid extent leaving the parties to bear their own costs.
22. The next date fixed in WP (C) No.12606/2009 stands cancelled and the matter need not be listed on the said date.

SANJAY KISHAN KAUL, J.

JANUARY 20, 2010
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VEENA BIRBAL, J.