

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(C) No. 13505/2009

%

21st September, 2010

M/S. SYNERGY STEELS LIMITED

..... Petitioner

Through: Ms. Pooja M. Saigal, Advocate.

VERSUS

THE APPELLATE AUTHORITY FOR INDUSTRIAL AND FINANCIAL
RECONSTRUCTION & ORS.

....Respondents

Through: Mr. Ajay Veer Singh Jain,
Advocate for the respondent
No.3.
Mr. Abhay Mani Tripathi,
Advocate for the respondent
No.6.
Ms. Prabjyot K. Chadha,
Advocate for the respondent
No.11.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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

VALMIKI J. MEHTA, J(Oral)

1. The petitioner company by this petition under Articles 226 and 227 of the Constitution of India impugns the order dated 21.9.09 passed by the Appellate Authority for Industrial and Financial Reconstruction (AAIFR) upholding the order dated 22.3.06 passed by the Board for Industrial and Financial Reconstruction (BIFR), whereby the petitioner company has been discharged from the purview of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) on the ground that its net worth turned positive, although, the sanctioned scheme had not yet been fully implemented and the petitioner company had not got the necessary concessions as envisaged from the Govt. of Rajasthan under the sanctioned scheme.

2. The petitioner (earlier known as M/s. Paliwal Mini Steels (I) Limited) M/s. Synergy Steels Limited was registered under Section 15 of SICA by the order dated 4.9.1990 passed by the BIFR. The draft scheme after being circulated, was sanctioned by the BIFR with cut off date fixed as 1.4.02. This sanctioned scheme is referred to as SS-02. SS-02 was put into implementation. The net worth of the petitioner company turned positive for the financial year ending on 31.3.03 and remained positive at Rs.998.09 lacs at the end of financial year ending on 31.3.05.

3. The BIFR found that since the company had ceased to be sick industrial company, it was liable to be discharged from the purview of SICA.

4. The petitioner company was aggrieved by the order of BIFR inasmuch as the concessions and reliefs as envisaged in the SS-02 were not given to the petitioner company by the Government of Rajasthan. It was pleaded that the petitioner company had filed a writ petition before the Rajasthan High Court for grant of the envisaged reliefs and concessions.

5. After noting that the net worth of the petitioner company had turned positive, AAIFR in the impugned order held as under:

“6. So far as directions on which the objections were made, direction No.1 discharging the PNB from the responsibility of M.A. is nothing but an order relating to the appointment of PNB as M.A. and the direction relating to payment of MA fee for the calendar year 2005 there is no illegality therein as the payment was due for the calendar year 2005. The direction No.(iv) regarding the discharge of the Special Director appointed by the BIFR on the Board of the company and complying the provisions of the Companies’ Act by the Company before the Registrar of Companies are nothing but the consequential to the orders of discharge. So far as other order relating to the un-implemented provisions of SS-02 are concerned, these provisions cannot be implemented by the concerned agencies any more as the company has been discharged from SICA on account of the fact that it is no more a sick company as its net worth has turned positive. So far as the pendency of the Writ Petition before the Rajasthan High Court is concerned, it is the settled position in the law that if any order is passed by the High Court of Rajasthan in the Writ Petition, it shall be binding on the parties.”

6. Before us, the learned counsel for the petitioner argued that it would result in an incongruous position prejudicial to the sick company in case the sanctioned scheme is not implemented as a whole. It was further argued that if the view as taken in the impugned

order is upheld, then, a sick company which makes efforts to pay of its secured creditors by arranging for finances, would be denied the benefit of concessions which are necessary to again prevent the company from becoming a sick company. It is said that the sanctioned scheme necessarily has to be taken as a whole and it cannot be torn into bits and pieces which would frustrate the entire object of sanctioning of a scheme with respect to a sick company. Learned counsel for the petitioner seeks to support his submissions by relying on Section 18 more specifically sub-Section 12 of the SICA which confers power on the authorities for monitoring and implementing the sanctioned scheme. Learned counsel for the petitioner has also drawn attention of this Court to a recent judgment of the Supreme Court in the case of *Bombay Dyeing & Manufacturing Co. Ltd. vs. Bombay Environmental Action Group, 2006(3) SCC 434 (Head Note : YH)* wherein it has been held that it is only the authorities acting under SICA who have the power to decide on the violations and the implementation of the sanctioned scheme.

7. We agree with all the contentions as raised by the counsel for the petitioner. Surely, a sanctioned scheme is a scheme in its entirety. Implementation is also therefore to be in entirety. To show that a part implementation can result in absurdity, let us take the example where under a sanctioned scheme a company takes all the benefits of reliefs and concessions but does not perform the obligations as envisaged in a sanctioned scheme. Surely, this is impermissible. If

this is impermissible, then, it is equally impermissible that if the sick company perform its obligations, then, it should be deprived of its rights under the sanctioned scheme. Merely, because a writ petition has been filed in the Rajasthan High Court would not mean that the proceedings cannot continue under SICA. May be the petitioner was not properly advised in filing of the writ petition or it took that action out of abundant precaution though it need not have, yet it does not mean that the authorities acting under SICA can simply discharge a sick company from the provisions of SICA although the sanctioned scheme is not fully implemented.

8. The Supreme Court in the aforesaid case of ***Bombay Dyeing & Manufacturing Co. Ltd. (supra)*** has categorically held that all actions with respect to breach or implementation of the sanctioned scheme have necessarily to be either by BIFR or AAIFR under SICA.

9. In view of the above, we accept the petition and quash the impugned orders dated 21.9.09 of AAIFR and 23.3.06 passed by the BIFR. It is directed that the matter be listed before the BIFR on moving an application by the petitioner for monitoring and implementation of the sanctioned scheme in its entirety, especially as regards the reliefs and concessions as are envisaged to be available to the petitioner company in terms of the sanctioned scheme SS-02.

10. The writ petition is therefore allowed, leaving the parties to bear their own costs.

C.M. No.15004/2009 in W.P.(C) No.13505/09

No directions are called for in view of disposal of writ petition.

Application stands disposed of.

VALMIKI J. MEHTA, J.

SEPTEMBER 21 , 2010
lb/Ne

SANJAY KISHAN KAUL, J.