

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

Date of decision: 21st January, 2011

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W.P.(C) 14999/2006

HINDON RIVER MILLS LTD.

..... Petitioner

Through: Dr. A.M. Singhvi, Sr. Advocate with
Ms. Maneesha Dhir, Ms. Jayashree
Shukla, Ms. Preeti Dalal, Ms. Arti
Marwaha, Mr. Abhirup Dass Gupta &
Mr. Tannu Goswami, Advocates.

Versus

IFCI LTD. & ANR

..... Respondents

Through: Ms. Nidhi Minocha & Ms. Sangeeta
Bharti, Advocates for R-1.
Mr. T.K. Ganju, Sr. Advocate with
Mr. Sursh Dobhal & Mr. Rahul
Tyagi, Adv. for R-3 Kotak Mahindra
Bank Ltd.

AND

+

W.P.(C) 9662/2007

KOTAK MAHINDRA BANK LTD.

..... Petitioner

Through: Mr. Subramonium Prasad with Miss
Jasmit Kaur, Advocates.

Versus

IFCI LTD. & ANR.

..... Respondents

Through: Ms. Nidhi Minocha & Ms. Sangeeta
Bharti, Advocates for R-1.
Dr. A.M. Singhvi, Sr. Advocate with
Ms. Maneesha Dhir, Ms. Jayashree
Shukla, Ms. Preeti Dalal, Ms. Arti
Marwaha, Mr. Abhirup Dass Gupta &
Mr. Tannu Goswami, Advocates for
R-2.

AND

+ CONT.CAS(C) 461/2008

HINDON RIVER MILLS LTD.

..... Petitioner

Through: Dr. A.M. Singhvi, Sr. Advocate with
Ms. Maneesha Dhir, Ms. Jayashree
Shukla, Ms. Preeti Dalal, Ms. Arti
Marwaha, Mr. Abhirup Dass Gupta &
Mr. Tannu Goswami, Advocates.

Versus

S.P. GUPTA & ORS.

..... Respondents

Through: Ms. Nidhi Minocha & Ms. Sangeeta
Bharti, Advocates for R-1.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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

RAJIV SAHAI ENDLAW, J.

1. W.P.(C) No.14999/2006 has been filed by the Hindon River Mills Ltd. (HRML) impugning the action of the respondent Industrial Finance Corporation of India Ltd. (IFCI) of selling/assigning its financial assets/debts qua HRML and for setting aside the bid/auction process initiated by IFCI and for restraining IFCI from so selling/transferring its debts payable by HRML. Direction has also sought to IFCI to consider the settlement of its dues as proposed by the HRML in the Draft Rehabilitation Scheme pending consideration before the Board for Industrial & Financial

Reconstruction (BIFR). Yet another relief of allowing HRML to match the highest bid received by IFCI for the assignment of its debts qua HRML is also claimed. Besides IFCI only BIFR was impleaded as the other respondent in the petition when filed.

2. W.P.(C) No.14999/2006 came up before this Court on 6th October, 2006 when while issuing notice of the petition, IFCI was directed “to maintain *status quo* with respect to Non-Performing Assets of the petitioner”. On 26th April, 2007, in view of the plea of IFCI that it had transferred its debts qua HRML to Kotak Mahindra Bank Ltd. (KMBL) in terms of the Reserve Bank of India (RBI) circular dated 13th July, 2005 and finding that the rights of KMBL would be affected by any decision in the writ petition and being of the view that HRML ought to have made KMBL as a party to the proceedings this Court ordered KMBL to be impleaded as respondent no.3 to the petition. The interim order earlier made was continued.

3. On 19th December, 2007, the counsel for the IFCI informed this Court that the proposal submitted by HRML to IFCI vide its letter dated 20th September, 2006 for settlement of all disputes was acceptable to IFCI provided that the entire settlement amount was paid on or before 31st December, 2007, in addition to interest @13% per annum from 21st September, 2006 till the date of payment. KMBL opposed the same.

4. It was thereafter that KMBL filed W.P.(C) No.9662/2007 for

restraining IFCI from entering into any arrangement/settlement with HRML qua the debts owed by HRML to IFCI and which had already been sold / assigned by IFCI to KMBL. The said writ petition came up before this Court first on 26th December, 2007 when notice thereof was issued. No interim relief was granted.

5. However notwithstanding IFCI on 19th December, 2007 having expressed willingness as aforesaid to settle with the HRML, HRML did not make the payment by 31st December, 2007 and filed CM No.18281/2007 for extension of time for making the payment. This Court on 28th December, 2007 extended the time by four days. However payment was still not made. On 4th January, 2008, this Court ordered that on 19th December, 2007 only the offer of IFCI had been recorded and the Court had not permitted HRML to make any deposit and as such it was not for this Court to extend the time for payment by HRML and the application was dismissed.

6. Thereafter IFCI has also filed short affidavit in W.P.(C) No.9662/2007 stating that no settlement proposal had been submitted by HRML with IFCI and no proposal was under consideration. The counsel for the IFCI has during the hearing opposed W.P.(C) No.14999/2006 of HRML. As such both, counsel for KMBL and counsel for IFCI have stated that W.P.(C) No.9662/2007 has become infructuous.

7. Contempt case No.461/2008 was filed by HRML against the officials of IFCI and KMBL on the ground that till the order dated 6th October, 2006

(supra) of *status quo*, KMBL had paid and IFCI had received only 25% of the bid amount, however after the order of *status quo*, KMBL had on 9th October, 2006 paid and IFCI had received the balance 75% payment also. It is further averred that the said fact was concealed from this Court in the affidavits filed by IFCI & KMBL in W.P.(C) No.14999/2006 and surfaced later only. Besides seeking prosecution of the said officials of IFCI and KMBL for contempt, direction is also sought against IFCI to refund the said 75% amount to KMBL. Notice of the contempt case was issued and the counsels have been heard thereon.

8. CM No.11850/2006 of HRML for interim relief and on which the order aforesaid of *status quo* was made sought to restrain the auction/bid process initiated by IFCI to sell/assign the debts qua HRML; interim relief of restraining IFCI from selling or assigning the said debts was also claimed. Another CM No.12165/2006 for interim relief also claimed relief only of maintenance of *status quo* regarding financial assets held by IFCI qua debts payable by HRML. It is now the admitted position that the bids were invited, submitted, opened and the bid of KMBL accepted by IFCI before the institution of W.P.(C) No.14999/2006 and/or in any case before the order dated 6th October, 2006 of *status quo*. It is also worth mentioning that before that the writ petition was listed before this Court on 22nd September, 2006, 25th September, 2006, 26th September, 2006, 28th September, 2006, 4th October, 2006 & 5th October, 2006 when neither notice

was issued nor any interim relief granted. It is also not in dispute that 25% of the bid amount was paid by KMBL to IFCI before 6th October, 2006. The only question which thus arises is whether the payment of the balance 75% of the bid amount can be said to be in contempt of the order dated 6th October, 2006.

9. In my opinion, no. HRML had not sought any interim relief of restraining IFCI from receiving any payment/further payment from the highest bidder. This Court also directed maintenance of *status quo* with respect to non-performing assets of HRML. It is not the case of HRML that any further rights were created by IFCI in favour of KMBL in the said non-performing assets beyond acceptance of bid. It is rather the argument of the senior counsel for KMBL that owing to the order of *status quo*, inspite of paying full consideration, KMBL is unable to get assignment in its name or to deal with the assets, causing immense loss to KMBL. Mere payment of the balance price without any reciprocity thereagainst by IFCI would not in my opinion be in the teeth of the order of *status quo* of this Court. It has further been demonstrated that care was taken to pay the balance 75% amount in 'No Lien Account' and subject to the term of refund in the event of the petition being allowed. No case for proceeding against for contempt is found to have been made.

10. That leaves only the challenge by HRML to the action of assignment by IFCI to KMBL of the debts owed by HRML to IFCI.

11. It is the case of HRML in W.P.(C) No.14999/2006 that its reference under Section 15(1) of Sick Industrial Companies Act (SICA), 1985 was registered by the BIFR in the year 2002-2003 and on 8th August, 2005 IFCI was appointed as Operating Agency (OA) under Section 17(3) of SICA to take necessary measures for revival of HRML; that HRML on 26th November, 2005 submitted a Draft Rehabilitation Proposal to IFCI as OA proposing settlement of dues with the banks/financial institutions on payment of 55% of the principal amount to the first charge holders over a period of three years and 20% of the principal amount to the second charge holders, also over a period of three years. The counsel for HRML informs that while IFCI and EXIM Bank were the first charge holders, the State Bank of India, Punjab National Bank and Indian Bank were the second charge holders. It is further the case of HRML that the creditor banks and financial institutions of HRML including the IFCI in the joint meeting convened on 1st February, 2006 asked HRML for a Revised Proposal; that HRML on 15th June, 2006 submitted a Revised Rehabilitation Proposal, proposing payment of 70% of the principal amount to the first charge holders and of 30% of the principal amount to the second charge holders; that the creditor banks/financial institutions in the meeting held on 30th June, 2006 considered the Revised Proposal and again asked HRML to better the proposal; a Revised Proposal envisaging payment of 85% of the principal outstanding within six months from the date of approval was submitted; however the same was also rejected on 7th August, 2006; that HRML on 13th

September, 2006 further revised the settlement proposal at 100% payment of the principal amount entailing payment of ₹30.60 crores. It is further the case of HRML that IFCI while on the one hand asking HRML to submit Revised Proposals, behind the back of HRML on 11th May, 2006 invited bids for sale/assignment of the financial assets in the form of loans availed by HRML. HRML avers that IFCI had already identified/selected an entity to assign/sell the said financial assets and that the said entity was acting at the behest of certain third parties interested in the real estate of HRML. Though HRML pleaded so but neither mentioned the name of the third entity nor impleaded the same. HRML further pleads that in the circumstances it offered to IFCI the same amount which the said selected entity was willing to pay to IFCI and a letter dated 18th September, 2006 was written to IFCI in this regard.

12. HRML pleading that IFCI appointed as the OA to explore measures for revival of HRML, in complete disregard of the revival efforts and the benevolent provisions of SICA was going ahead with assigning its debts with respect to the loan facilities availed by HRML to a selected entity and which it was not entitled to, filed W.P.(C) No.14999/2006. It was further pleaded that the sale by IFCI was without notice or intimation to HRML and in gross violation of principles of natural justice and in the teeth of revival of HRML. It is yet further pleaded that the sale by IFCI would create road blocks in the sanctioning of Revival Scheme of HRML and the selected

entity may take action against HRML under the provisions of The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002.

13. HRML further pleaded that it, vide its letter dated 20th September, 2006 to IFCI offered to IFCI 5% over and above the best bid received by it or ₹32 crores whichever is higher against the full and final settlement of all claims of IFCI against HRML. Pleading that no prejudice would be caused to IFCI if the bid/auction process is set aside, the writ petition was filed.

14. The senior counsel for HRML has raised the following legal contentions:-

- (i). that IFCI as OA owed a duty to BIFR and sale by it of its financial assets qua HRML is in breach of the said duty;
- (ii). HRML had approached KMBL for funding its Rehabilitation Proposal and had in this regard made available all the information regarding itself and its affairs to KMBL. KMBL however without disclosing to HRML, in the bids invited by IFCI, bid for the debts of the HRML, again in violation of the relationship with HRML;
- (iii). that HRML having offered to IFCI 5% more than the best bid received by it, IFCI was bound in law to give an opportunity to

HRML to pay 5% more than the best bid by KMBL; without giving such opportunity IFCI could not have dealt with KMBL, at the loss of public monies of IFCI.

15. The counsel for HRML has fairly conceded that there is neither any provision in SICA nor any law which prevented IFCI as an OA from selling the financial assets qua HRML. It is however contended that since it was mandatory for IFCI as OA to frame a Rehabilitation Scheme of HRML, IFCI could not have sold its financial assets qua HRML. It is contended that the said sale is contradictory to the role of IFCI as the OA. It is argued that though HRML on 20th September, 2006 had offered to pay 5% over and above the best bid received by IFCI but IFCI on 20th September, 2006 itself accepted the bid of KMBL for ₹35 crores.

16. It is further argued that the *bona fides* of HRML are apparent from the fact that HRML in December, 2007 settled with the other creditors on payment of 35% of the working capital term loan. It is informed that in December, 2007 itself EXIM Bank being the other first charge holder assigned its financial assets qua HRML to Yes Bank with the consent of HRML.

17. The counsel for IFCI has urged that the role of IFCI as OA is different from its role as a lender of HRML. It is informed that as on the date of filing of the counter affidavit, a sum of over ₹140 crores was due from HRML. On enquiry it is informed that as on 20th September, 2006, over ₹100 crores was

due and HRML was offering to settle initially for only 55% of the principal amount and ultimately for 100% of the principal amount. It is contended that if HRML has any grievance against the role of IFCI as an OA, it can always approach BIFR for change of OA. In this regard it may be noticed that I had as far back as in the order dated 4th October, 2010 observed that perhaps the allegations of HRML against IFCI as OA are to be made and adjudicated before the BIFR which had appointed the OA. The senior counsel for HRML had then taken time to take instructions on the said aspect. The senior counsel for HRML has today argued that the said grievance would lie before this Court only. He has however been unable to show how. OA having been admittedly appointed by the BIFR, the grievance of breach if any by OA of the terms of its appointment and failure if any to perform duty and obligations owed by it under SICA, would lie before BIFR only. No such complaint / grievance is shown to have been made before the BIFR. I fail to see as to how the grievance can be made before this Court in the first instance by this writ petition.

18. The senior counsel for KMBL has contended that on the same day when IFCI had auctioned the financial assets qua HRML, it had also auctioned the financial assets qua another company namely Haryana Steel & Alloys Ltd. (HSAL) also and which financial assets also were acquired by KMBL. It is contended that HSAL through the same counsel as of HRML had also filed a writ petition being W.P.(C) No.14915/2006 in this Court

challenging the sale of financial assets qua HSAL in this Court. A copy of the said petition has been handed over in the Court and it has been contended that the factual and legal pleas as raised in the present petition are the same as raised in the petition of HSAL. It is argued that the said writ petition was dismissed by a Single Judge of this Court, intra court appeal of HSAL dismissed by a Division Bench of this Court in the judgment reported in *Haryana Steel & Alloys Ltd. v. IFCI Ltd.* AIR 2007 Delhi 65 and an SLP thereagainst dismissed by the Apex Court and Review petition filed also dismissed by the Apex Court. From the judgment in *Haryana Steel & Alloys Ltd.* (supra) it is shown that the grounds raised therein also were that no notice or opportunity before disposing of the financial assets qua HSAL was given and that HSAL had also made a higher offer than that made by KMBL in that case. The Division Bench held that the sale of such financial assets by IFCI was in accordance with the guidelines of the RBI and which did not permit the sale of such assets to entities other than financial institutions/non-banking financial companies. It was thus held that IFCI could not have sold the financial assets to HSAL. It was further held that what was sold by IFCI did not belong to borrower i.e. HSAL but was the financial asset of IFCI and IFCI was entitled to deal with the same for the purpose of resolving its NPAs. It was held that it was not an asset of HSAL to which it could claim a right. It was yet further held that the borrower HSAL had not been able to show as to how it stood to lose by the NPAs being sold by IFCI to KMBL and the result whereof would only be of

KMBL stepping into the shoes of IFCI and the extent of NPA shall remain same even upon transfer. The reason given by HSAL and in fact which reason is given by HRML also, that the sale/transfer would result in depressing the net worth of HSAL was not accepted. It was yet further held that no direction or order could be issued to IFCI to enter into an OTS with its borrower. It was also held that the writ would not be issued in contractual matters and this Court in exercise of powers under Article 226 would not sit as an Appellate Authority over the acts and deeds of statutory corporations taking administrative actions.

19. The senior counsel for KMBL thus contends that that the matter in controversy is fully covered by the judgment of the Division Bench in ***Haryana Steel & Alloys Ltd.*** case. It is contended that the only difference argued in the present case is of IFCI also being the OA. It is however contended that no such ground has been taken in the petition. It is also contended that the other ground argued of *mala fides* of KMBL also does not find any basis in the petition. It is averred that HRML had not even bothered to implead KMBL as a party to the present petition.

20. The senior counsel for KMBL has also invited attention to ***ICICI Bank Ltd. v Official Liquidator of APS Star Industries Ltd.*** (2010) 10 SCC 1. It is contended that the notice in the present petition was issued primarily on the ground that the Banking Regulation Act, 1949 did not permit

assignment of debts/NPAs between Banks *inter se*. It is contended that the said question is now settled vide the said judgment holding that such activities are within the ambit of the Banking Regulation Act. Reliance is also placed on paras 41 & 46 of the said judgment explaining NPA and financial assets. Attention has also been invited to para 49 of the judgment reiterating that such assignment of debts on discounted prices is not against public policy and to para 52 laying down that NPAs are created on account of breaches committed by the borrower and such borrower has no equity in his favour.

21. The counsel for the IFCI has also contended that HRML was proclaimed a “willful defaulter” by the Reserve Bank of India (RBI) and found to have indulged in fraudulent measures to divert the public money disbursed by IFCI for purposes other than for implementing the Rehabilitation Scheme as far back as in the year 2002-2003 and was in the year 2001 found guilty of sale of stocks without depositing any monies with the Banks and thereby diluting the security.

22. The senior counsel for the KMBL has also vehemently contradicted the pleas of HRML of *mala fides* on the part of KMBL. It is contended that HRML was fully aware of the bid being made by KMBL for the financial assets of IFCI qua HRML. Reliance in this regard is placed on the communication dated 26th August, 2006 of HRML to KMBL, filed by HRML itself along with the contempt case which records :-

“However no termination fee will be payable if termination is caused by participation of “KOTAK” in auctioning process or assignment of debt by IFCI to any other institutions/party.”

23. The senior counsel for the HRML has in rejoinder contended that the factum of the HRML being a defaulter qua banks/financial institutions will not displace equities. It is contended that SICA is concerned with defaulters only. It is argued that it is in the interest of IFCI as well as the public in general that the IFCI receives maximum monies for its debts qua HRML and if IFCI is found to be indulging in disposing of/assigning the said debts at anything lower than what it can receive, the Court can certainly intervene in the same. Reliance in this regard is placed on ***Divya Manufacturing Company Pvt. Ltd. v. Union Bank of India*** (2000) 6 SCC 69 (paras 13, 15) and the judgments cited therein. However the said judgment is found to be in the context of sale of assets of a company in liquidation. The senior counsel for HRML however contends that the principles thereof would apply to the present situation also.

24. The senior counsel for HRML has stated that the offer of HRML of 5% more than the best bid i.e. of KMBL would have translated into ₹37.285 crores. It is contended that IFCI did not even give an opportunity to HRML to pay the said amount; that without giving such opportunity the sale/assignment is bad; that the matter would have been different had any opportunity been given and HRML defaulted thereon. It is contended that HRML as of today also is willing to pay the said amount together with

interest at 10% per annum from 14th September, 2006 onwards. During the course of hearing, a letter dated 23rd December, 2010 of Yes Bank to HRML conveying to HRML that it was willing to arrange and provide bank finance for debt financing subject to completion of detailed due diligence approvals, meeting of conditions precedent etc. to the extent of ₹75 crores. It is contended that together with interest as of now about ₹53.3024 crores would be due and which HRML is willing to pay within three months. The senior counsel has sought adjournment of the matter by giving such an opportunity to HRML, to test the veracity of the claims of HRML.

25. The senior counsel has further contended that para 29 of the Division Bench judgment in *Haryana Steel & Alloys Ltd.* carves out an exception in cases where there is a violation of law or where the lender is found to have acted unfairly and unreasonably. It is contended that the conduct aforesaid of IFCI in the present case is unreasonable and unfair. Reliance in this regard is again placed on non-disclosure in the affidavits of IFCI and KMBL filed before this Court of receipt of the balance 75% amount inspite of *status quo* order of this Court. It is contended that even if there was any ambiguity in the order of *status quo*, they should have approached this Court for clarification on the said basis. It is also contended that the judgment of the Division Bench in *Haryana Steel & Alloys Ltd.* is not applicable.

26. Reliance is also placed on *Karnataka State Industrial Investment & Development Corporation Ltd. v. Cavalet India Ltd.* (2005) 4 SCC 456

laying down that even a wrong decision taken by Financial Corporation is not open to challenge unless *mala fide* and that in the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold and that a Financial Corporation is always expected to try and realize the maximum sale price by selling the assets by following a procedure which is transparent and acceptable.

27. I am unable to find HRML entitled to any relief. Most of the arguments raised are covered by the judgment of the Division Bench in ***Haryana Steel & Alloys Ltd.***

28. The senior counsel for KMBL is correct in contending that there is no basis in the pleadings qua arguments raised distinguishing the judgment in ***Haryana Steel & Alloys Ltd.*** Both the petitions i.e. the present one and the one by Haryana Steel & Alloys Ltd were filed at about contemporaneous time by the same Advocate. The argument of the present case being different owing to IFCI having also been appointed as the OA and action of KMBL also being *malafide* for the reason of HRML negotiating with it to finance debt re-structuring proposal have been raised as an afterthought without caring to amend the petition. The same cannot be permitted. The pleas/observations in this regard in the rejoinder cannot be a substitute in as much as IFCI and KMBL have had no opportunity to rebut the same.

29. Even otherwise, I am unable to hold that merely because a lender is

appointed as an OA, it would lose its right under the circular of the RBI to transfer its NPAs. A Division Bench of the Calcutta High Court recently in *Imperial Tubes (P) Ltd. Vs. BIFR* AIR 2008 Cal 15 has held that merely because the BIFR had appointed the secured creditor as the OA, such fact cannot take away the right of secured creditors to invoke Section 13(4) of the SARFAESI Act which has the overriding effect upon the provisions contained in SICA. The appointment of a secured creditor as the OA was also upheld by the Division Bench of the Madras High Court in *Asian Health & Nutri Foods Ltd. Vs. AAIFR* MANU/TN/2994/2010.

30. It is also not as if no opportunity was given to HRML. According to HRML itself, as many as four proposals were made by it. HRML attempted to settle the dues for as low as 55% of the principal amount. No error can be found in the decision of IFCI to then proceed to invite offers for the said NPA.

31. The question which arises is whether any error can be found in the decision of IFCI in proceeding to accept the bid of KMBL in the face of offer made by HRML on the same day to pay 5% more than the bid amount.

32. It cannot be lost sight of that IFCI was compelled to sell/transfer its debts qua HRML, then of over ₹100 crores for mere ₹35 crores owing to the default of HRML and its reluctance to make a reasonable settlement offer to IFCI. The offer made by HRML at the last minute was of a mere 5% more which translated to approximately ₹2 crores only. No fault can be found

with the commercial decision of IFCI at that stage to then proceed to deal with KMBL from which there was certainty of receiving the money rather than to take a chance whether HRML would abide by its offer or not. I have during the course of hearing repeatedly enquired from the counsel for HRML whether there was at the contemporaneous time anything to show that HRML was in a position to pay the amount or to make IFCI believe that HRML will abide by its proposal. Nothing has been shown. A prudent commercial person would rather receive about ₹2 crores less from a person from whom payment is assured than deal with a person who had a history of default and who was unable to assure any payment. Experience of life shows that the process of inviting bids, giving due diligence etc. costs money and time. IFCI as on 20th September, 2006 had completed the said process with KMBL. If IFCI had abandoned the auction/bid process initiated by it, for the reason of the offer of HRML, there is nothing to show that HRML would have within the promised time made the payment. Upon such default by HRML, IFCI would have been again required to initiate the process of auction/bid causing expenditure / loss of money and time. The difference in amount over and above the bid offered by HRML was not such owing whereto a commercial person would defer receipt of monies.

33. There is another serious aspect of the matter. The senior counsel for KMBL and the counsel for IFCI have stated that HRML by filing the present petition and obtaining the interim order has for the last over four

years again created a situation to the detriment of IFCI and KMBL. It is contended that owing to the situation created of IFCI having agreed to assign the debts and the assignment in favour of KMBL having not come into force because of the interim order, in the last four years, neither any proceedings could take place before BIFR nor could anyone take any steps for recovery of the dues. It is contended that HRML has been delaying the disposal of the present writ petition with the said motive only. It is common experience that in such times assets offered as security start dissipating/disappearing causing further loss to the lenders/creditors.

34. The knowledge of HRML of the auction/bids by IFCI and the offer made by KMBL though not expressly admitted by HRML is evident from the tenor of the petition and the communication dated 26th August, 2006 (supra) with KMBL. Had the offer of HRML been *bona fide*, HRML along with its offer would have either made earnest money deposit with IFCI, opportunity wherefor was being asked during the hearing now or would have at least satisfied IFCI that it was in a position to honour the proposal made. Nothing of this sort was done. IFCI cannot be blamed for not considering the said offer.

35. I am also of the view that in the absence of any pleas of *malafide*, the argument cannot be raised.

36. HRML is also not found to have any locus to challenge the conduct either of IFCI or of KMBL. The OTS offered by HRML to IFCI was not

under any scheme of RBI which has been dealt with by the Apex Court in ***Sardar Associates Vs. Punjab & Sind Bank*** 2009 (8) SCC 257. HRML thus could not have compelled IFCI to accept the offer. Similarly the talks between HRML and KMBL for debt financing appear to have been at negotiation stage only and no agreement had been entered into. It is not understandable as on what basis it is argued that KMBL owing to the said negotiation could not have bid. It has not been disclosed as to what confidential information was disclosed by HRML to KMBL during the course of negotiation so as to tempt KMBL to acquire the financial assets from IFCI in preference to financing OTS of HRML.

37. I am also unable to accept the argument of the senior counsel for HRML that HRML remains entitled to invoke equity. In my view the passages in the recent judgment in the ***ICICI Bank Ltd.*** case of the Supreme Court are squarely applicable. The huge loss of public monies caused to IFCI in having to assign debts of over ₹100 crores for ₹35 crores is squarely attributable to HRML. The Supreme Court in ***Andhra Pradesh State Financial Corporation Vs. M/s GAR Re-Rolling Mills*** 1994 (2) SCC 647 also held that there is no equity in favour of a defaulting party which may justify interference by the Courts in exercise of its equitable, extraordinary jurisdiction under Article 226, to assist it in not repaying its debts. It was held that the aim of equity is to promote honesty, and not to frustrate the legitimate rights of financial corporations which after advancing the loans

take steps to recover their dues from the defaulting party. HRML inspite of the decision in the case of *Haryana Steel & Alloys Ltd.* entailing similar questions persisted with the present petition, obviously because the interim order operating herein was to its advantage. It is rather the conduct of HRML which is found *malafide* and in an attempt to deprive public monies. HRML for this reason also is not entitled to any equitable relief under Article 226 of the Constitution of India.

38. Accordingly, W.P.(C) 14999/2006 is without any merit; the same is dismissed and the interim order is vacated. HRML to also pay costs of this petition of ₹1 lac each to IFCI and KMBL. W.P.(C) 9662/2007 is dismissed as infructuous. CONT. CAS(C) No.461/2008 is also dismissed, no case of contempt having been made.

**RAJIV SAHAI ENDLAW
(JUDGE)**

**JANUARY 21, 2011
PP**