

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 20.10.2011

+ **WP (C) 7307/2011**

IFCI LTD ... Petitioner
versus

BHARAT STEEL TUBES LTD AND ANR ... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Parag Tripathi, ASG with Mr Apoorve Karol, Ms Purti Marwaha, Mr Chirag Kher and Ms. Monisha Handa, Advocates
For the Respondents : Mr Maninder Singh, Sr. Adv. with Mr Vivek Malik, Adv.
Mr Arun Bharadwaj, Sr. Adv. with Mr Amit Dhupar, Adv.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MS. JUSTICE VEENA BIRBAL

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

BADAR DURREZ AHMED, J. (ORAL)

1. We have heard the counsel for the parties and with their consent are disposing of this writ petition. It is also necessary to observe that we had not required the respondents to file their counter affidavit, therefore, it should not be construed that the factual averments made in the writ petition have

gone un rebutted or be deemed to have been admitted by the respondents. In fact, Mr Bhardwaj appearing for the respondent No.1 and Mr Maninder Singh appearing for the respondent No.2 have submitted that they are denying all the allegations made against them on factual matters which are contrary to the stand taken by them before various fora in this matter. Of course on legal issues there cannot be any affidavit and therefore the learned counsel appearing for the respondents have controverted the same in their submissions before court.

2. This case has had a chequered history with three rounds before this court and two rounds before the Supreme Court. In the first round the petitioner had filed a writ petition being W.P (C) 6652/2010 in which an interim order dated 29.09.10 had been passed by a Division Bench of this Court. However, that order became the subject matter of a Special Leave Petition before the Supreme Court being SLP (C) 29421/2010. Since the matter was pending before the Supreme Court the writ petition was disposed of on 11.11.2010. In the second round, two writ petitions being W.P. (C) 254/2011 and W.P. (C) 415/2011 were disposed of by a Division Bench of this court on 15.02.2011. In the third round, writ petition No. 2282/2011 was filed before this court by the present petitioner which was also disposed of

on 20.04.2011 by another Division Bench of this Court. Before the second round of writ petitions in this court, the Supreme Court disposed of the Special Leave Petition by virtue of an order dated 30.11.10 whereby the Supreme Court inter alia passed the following orders:-

“30. We, therefore, dispose of the Special Leave Petition with a direction upon the Debts Recovery Appellate Tribunal to dispose of the pending appeal as early as possible since it would not be proper on our part to express any definite view regard to the pending proceedings before the said Tribunal. Till a decision is arrived at by the Debts Recovery Appellate Tribunal in the matter, the auction proceedings being conducted under the SARFAESI Act shall remain stayed.”

3. Against the judgment and order dated 15.02.2011, the respondent No.1 sought Special Leave of the Supreme Court by filing a petition being SLP (C) No. 7631-7632/2011. The said Special Leave Petition was dismissed by the Supreme Court by its order dated 15.03.2011.

4. We need not refer to the contents of all the orders mentioned above nor do we need to set out the entire chronology of events as indicated by the parties in their respective list of dates. What is important for the present is that an order was passed by the Debt Recovery Appellate Tribunal on 22.03.2011 in Miscellaneous Appeal No. 352/2010 and Miscellaneous

Appeal No. 353/2010 in S.A. No. 370/2010 (Delhi-III) whereby, pursuant to the Supreme Court direction and the direction given by this Court, it heard and disposed of the two appeals in the following manner:-

“24. In the result, I hereby quash both the orders dated 10.09.2010 and 15.09.2010 passed by the learned trial Court and remand the matter back to the learned trial Court.

25. The learned counsel for the appellant strenuously argued that in the notice under Section 13(2) of the SARFAESI Act a demand in the sum of ₹. 1139.75 crores was raised as on 31.07.2009. The learned counsel for the appellant expressed his apprehension that the words “sweet end” appearing in the impugned order dated 15.09.2010 meant that the case would come to an end by merely payment of ₹. 35crores. The impugned order dated 15.09.2010 already stands quashed. This question is also being kept open and it will be considered by the learned trial Court.

26. The parties are directed to appear before the learned trial Court on 30.03.2011. The Trial Court would try to expedite this case. Till then *status quo* be maintained. The learned trial Court will decide whether the interim order is to continue or not. The trial Court will decide the question of limitation and maintainability of the application first of all.

27. With these observations, the appeals are disposed of.”

5. It is pertinent to note that the Debt Recovery Appellate Tribunal in the above order had noticed that three issues needed to be resolved by the Debt Recovery Tribunal. The issues being of limitation, maintainability and

interim relief. As noticed in paragraph 26 of the Debt Recovery Appellate Tribunal order it is clear that the parties were directed to appear before the Debt Recovery Tribunal on 30.03.2011 and the Debt Recovery Tribunal was also directed to try and expedite the case. It was clearly indicated that “*till then*” status quo would be maintained. It was also directed that the Debt Recovery Tribunal would decide whether the interim order was to continue or not. This was apart from the direction to the Debt Recovery Tribunal to decide the question of limitation and maintainability first of all.

6. We find that the petitioner challenged the said order dated 22.03.2011 by way of the W.P. (C) No. 2282/11. However, this court did not disturb the said order dated 22.03.2011 while disposing of the writ petition by virtue of its order dated 20.4.2011. In other words, the direction given by the Debt Recovery Appellate Tribunal by virtue of its order dated 22.03.2011 has become final.

7. To make it clear, the Debt Recovery Appellate Tribunal had directed that the Debt Recovery Tribunal would decide the question of whether interim orders are to continue or not. But, before that it was required to decide the question of limitation and maintainability of the application. The

question of limitation was decided on 14.06.2011 by the Debt Recovery Tribunal by condoning the delay of 290 days in filing the concerned S.A. (S.A. No.370/2010). Thereafter, the issue of maintainability was also decided by the Debt Recovery Tribunal on 04.08.2011 by holding that the said S.A. was maintainable. Being aggrieved by the said order dated 04.08.2011, the petitioner herein preferred an appeal before the Debt Recovery Appellate Tribunal being Miscellaneous Appeal No. 363/2011 in S.A. No. 370/2010. By an order dated 23.9.2011 the said appeal was dismissed and while doing so the Debt Recovery Appellate Tribunal also generally directed that the Debt Recovery Tribunal may decide the appeal 'finally and expeditiously'.

8. We may also point out that after W.P. (C) No. 2282/2011 had been disposed of by this court, an application being CM No. 12263/2011 had been filed in that writ petition seeking a direction for expeditious disposal of S.A. No. 370/2010. However, that application was dismissed as withdrawn on 24.08.2011.

9. There is another order dated 30.09.2011 passed in S.A. No. 370/2010 by the Debt Recovery Tribunal-III, Delhi, which was concerned with the

review application in respect of an order dated 03.08.2011. While disposing of the said application, the Debt Recovery Tribunal directed, in paragraph 6 of the said order dated 30.09.2011, that all remaining pending IAs shall be decided at the stage of final disposal in view of the directions passed by the Debt Recovery Appellate Tribunal, Delhi to decide this matter 'finally and expeditiously'. Thereafter, the matter has been directed to be listed for final disposal on 21.10.2011.

10. We must also point out that even though arguments with regard to the interim order were heard and orders were reserved and the matter was fixed for orders on 08.08.11, the same was not pronounced because in the meanwhile, that is, on 05.08.11, the Presiding Officer of the Debt Recovery Tribunal-III had changed. Thereafter, no further hearing was conducted in respect of interim relief by the present Presiding Officer of the Debt Recovery Tribunal- III and obviously no orders have been passed.

11. Both sides have argued vehemently on the issue as to whether the Debt Recovery Tribunal should first hear arguments on the interim order or should take up the matter for final disposal. We find that in the order dated 23.09.2011, the Debt Recovery Appellate Tribunal has, indeed, observed that

Debt Recovery Tribunal may decide the appeal ‘finally and expeditiously’. But, we find that that is a general remark. The matter was specifically dealt with by the Debt Recovery Appellate Tribunal in its order dated 22.03.2011 where specific directions were given with regard to the disposal of issues concerning limitation, maintainability and interim relief. As already pointed out above, the issues with regard to limitation and maintainability had been decided and settled. Insofar as the interim order is concerned there has been no hearing on that issue and consequently no orders have been passed either confirming or vacating the interim orders which have been in existence since 10.09.2010.

12. We may recall that by virtue of the order dated 22.03.2011, the Debt Recovery Appellate Tribunal had specifically directed, despite the fact that two interim orders dated 10.09.2010 and 15.09.2010 were being quashed, that status quo was to continue till the Debt Recovery Tribunal decides on the interim order to be passed. It therefore appears to us that the Debt Recovery Appellate Tribunal had made it clear that the Debt Recovery Tribunal should take a decision as to whether it was to continue the interim order or not. There is no doubt that the Debt Recovery Tribunal has now

fixed the matter for final arguments on 21.10.2011. However, we are not sure as to how long the arguments would continue and how long it would take the Debt Recovery Tribunal to pronounce its decision in S.A. No. 370/2010. There is already an order of the Debt Recovery Appellate Tribunal directing the Debt Recovery Tribunal to take a decision as to whether the interim order should continue or not. We feel that that direction has not yet been complied with. We must also note that in the judgement and/or order dated 15.02.2011 a Division Bench of this court had taken note of the decision of the Supreme Court in the case of **Kausalya Devi Bogra & Ors. v. LAC Aurangabad &Anr: 1984 (2) SCC 324**, wherein the Supreme Court had emphasised that a direction issued by a superior court had to be obeyed by a subordinate court or tribunal. The directions given by the Debt Recovery Appellate Tribunal by virtue of its order dated 22.03.2011 have been complied with insofar as the issues regarding limitation and maintainability are concerned but remain unfulfilled with regard to the issue of interim orders.

13. In this backdrop, we feel that it would be appropriate to dispose of this writ petition by directing that the Debt Recovery Tribunal should immediately take up and decide the issue with regard to continuance of the

interim order. The Debt Recovery Tribunal shall also, independently of the question of interim relief, expedite the hearing and disposed of S.A. No. 370/10. We make it clear that we have not expressed any opinion on the merits of S.A. No. 370/2010.

The writ petition stands disposed of as indicated above.

BADAR DURREZ AHMED, J

VEENA BIRBAL, J

MARCH 16, 2011

Kb