

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

Date of Decision: 19th August, 2016

+ C.M.No.9905/2016 in W.P.(C) 8693/2014

HEENA GEORGE Petitioner
Through Ms.Purti Marwaha Gupta, Advocate
Versus

UNION OF INDIA & ORS. Respondents
Through Mr.Akshay Makhija, CGSC with
Ms.Mahima Bahl & Mr.Siddhant Thakur,
Advocates for the UOI.

+ W.P.(C) 527/2016 & C.Ms.No.12998-99/2016

HENNA GEORGE Petitioner
Through Ms.Purti Marwaha Gupta, Advocate
Versus

UNION OF INDIA AND ORS. Respondents
Through Mr.Dev. P. Bhardwaj, CGSC for the
Union of India

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE JAYANT NATH

J U D G M E N T

: **Ms.G.ROHINI, CHIEF JUSTICE**

1. W.P.(C)No. 8693/2014 was filed in December, 2014 with a prayer to direct the respondents to ensure appointment of sufficient number of members in BIFR and to provide adequate staff and infrastructural facilities to enable expeditious and proper adjudication of the matters.
2. The said writ petition was disposed of by this Court by order dated 27.11.2015 with the following directions:

“19. We accordingly dispose of this petition with the direction to the Central Government to (i) within a period of 30 days from today make an assessment of the number of vacancies in the post of members of BIFR required to be filled up to ensure expeditious disposal of the pending cases as directed by the Supreme Court in SRF Limited and Uptron Employees Union supra; (ii) in accordance with the said assessment initiate the process of appointment and to make appointments within three months thereof; and, (iii) to ensure that the appointments for which the process had already been initiated are filled up within 45 days hereof.”

3. A fresh application being C.M.No.9905/2016 came to be filed on 15.03.2016, alleging that the Central Government failed to comply with the directions of this Court dated 27.11.2015 and that the BIFR has been rendered non-functional since not even a single member is available. Accordingly, the petitioner prayed for appointment of an appropriate person from the Sub-ordinate Judiciary/a sitting or retired Judge of the High Court to function as a member of BIFR.

4. On 12.05.2016 we passed a detailed order in C.M.No.9905/2016 as under:

“The main petition was disposed of by order dated 27.11.2015 with a direction to the respondent No.1 to fill up all the vacancies in the BIFR within 3 months.

The present application has been filed by the writ petitioner stating that respondent No.1 failed to comply with the order of this court and no appointments have been made till date.

We adjourned the matter on 06.04.2016 to enable the learned CGSC to get instructions.

When the matter is taken up today, it is represented by Shri Akshay Makhija, learned CGSC that by order dated 22.04.2016 Bench-I of BIFR has been reconstituted and the same is

functional as of today. However, the learned counsel for the petitioner disputed the same pointing out that both Shri Ashish Kalia, Presiding Officer, DRT-III, Delhi and Shri Shashank Saksena, Economic Advisor, Department of Financial Services have been assigned additional charge of the posts of Chairman and Member of BIFR respectively and that the same cannot be said to be in compliance with the directions of this court.

We therefore direct the respondent No.1 to file an affidavit explaining the reasons as to why the vacancies are not filled up on regular basis. The same shall be filed within one week from today without fail.

Call on 25.05.2016.”

5. In compliance with the order dated 12.05.2016 an affidavit dated 24.05.2016 was filed by the Under Secretary, Government of India, Ministry of Finance stating that with a view to ensure continued functioning of BIFR until its dissolution/abolition with the establishment of National Company Law Tribunal (NCLT) prompt and immediate steps have been taken to fill up the two sanctioned posts of the members of BIFR by giving additional charge of the said post vide Notifications dated 01.03.2016, 18.04.2016 and 21.04.2016 with the approval of the Appointments Committee of the Cabinet (ACC) and that BIFR has started functioning with effect from the date of assumption of additional charge by two members of the Board, namely, Sh.Ashish Kalia and Dr.Shashank Saxena, who have been appointed in the vacancies caused due to the expiry of tenure of the erstwhile members, Sh.S.C.Sinha and Sh.J.P.Dua. While explaining the reasons for appointing the members by giving additional charge, it is further submitted that the Ministry of Corporate Affairs, which is the administrative Ministry for setting up NCLAT and NCLT in place of AAIFR and BIFR

respectively by letter dated 30.03.2016 has indicated that NCLAT and NCLT were likely to be established on 01.05.2016.

6. It is relevant to note that the petitioner in W.P.(C) No.8693/2014 filed another Writ Petition being W.P.(C) No.527/2016 in the month of January, 2016 bringing to the notice of this Court that AAIFR is also non-functional since the vacancies to the posts of Chairman as well as the members were not filled up. The petitioner, therefore, sought a direction to the respondents to ensure appointment of sufficient number of members so that at least 3 to 4 Benches can operate simultaneously.

7. In the counter affidavit dated 22.02.2016 filed on behalf of the Ministry of Finance, Government of India, it was stated that though the member of AAIFR, Sh.G.K.Chaturvedi retired from service on attaining the age of 65 years on 23.01.2016, the tenure of the other member, Sh.R.C.Mishra, who has been designated as Chairman has been extended upto 23.11.2017 and to ensure smooth functioning of AAIFR a proposal for filling up the vacant post of Member was submitted on 05.02.2016 itself and the approval of the Competent Authority was awaited.

8. An additional affidavit dated 02.05.2016 has been filed on behalf of the Ministry of Finance, Government of India stating that though the Sick Industries Companies (Special Provisions) Repeal Bill envisaging repeal of SICA, 1985 and abolition of BIFR/AAIFR was passed by both Houses of the Parliament in the year 2003 itself, the said Act has not yet been enforced awaiting the Notification for the constitution of NCLT and NCLAT under the Companies Act, 2013. It is further stated that though the Department has made all necessary efforts to fill the vacancies in AAIFR/BIFR through concerted efforts, the same has not been materialized due to non-availability

of the suitable candidates and non-joining of the selected candidates. The proposals made for filling up the vacant post of Chairman, AAIFR and the reasons for not filling up the said vacancies till date have also been explained in detail. It is further stated that Sh.Girish Shankar, Secretary, Department of Heavy Industries has been given additional charge of Member, AAIFR on 18.04.2016 with the approval of ACC and, thus, the Bench of AAIFR has now regular sittings with 2 Members.

9. We have heard the learned counsels appearing for both the parties.

10. It is brought to our notice by the learned counsel for the Petitioner that though BIFR was functioning till 04.08.2016 with two Members on additional charge, since the term of Sri Ashish Kalia expired on 04.08.2016, BIFR is now left with only one Member on additional charge. The said fact has not been disputed by the learned counsel for the Respondents.

11. So far as AAIFR is concerned, the same is also functioning with a Bench of two Members. One of them has been working on additional charge.

12. The specific case of the petitioner is that since the Members both in BIFR and AAIFR have been working on additional charge and since the said officers being senior officers of the Government of India, the Bench at BIFR is able to function only for 1 or 2 hours in the late evening and the Bench in AAIFR has been sitting only for about 2 hours in the morning and because of irregular timings great inconvenience is being caused to the litigants who come from all over the country.

13. As already expressed by us while disposing of W.P.(C)No.8693/2014 by order dated 27.11.2015, the Government of India pleads that non-filling up of the vacancies in BIFR and AAIFR is on account of the proposed

repeal of SICA and the proposal to take over the matters pending before BIFR and AAIFR by NCLT and NCLAT. It would be apt to reproduce Paras 11 and 12 of the said order in this context:

"11. We have considered the matter. The Government of India does not dispute that the functioning of BIFR has slowed down considerably owing to the vacancies in the office of the Chairperson/member thereof. The reason of the Government of India for not filling up the said vacancies is the proposed repeal of SICA under which BIFR has been constituted and the proposed taking over of the pending cases before the BIFR by the NCLT, to be constituted. However the hard reality is that the aforesaid state of affairs has continued for a considerably long time and which has resulted in the matters which by their very nature require time bound consideration, languishing. Our country in the last some years has seen the trend of "Tribunalization". Special fora have been created to deal with the matters/disputes which would have ordinarily come to the Civil Court. One of the purpose of this "Tribunalization" was to provide for and ensure expeditious disposal of cases as it was felt that the long time normally taken for adjudication in the Civil Courts would be prejudicial to such matters in need of immediate decision. Reference in this regard may be made to **L. Chandra Kumar Vs. Union of India** (1997) 3 SCC 261.

12. However the aforesaid purpose appears to have been totally defeated by bringing the functioning of one such Tribunal i.e. the BIFR to a virtual halt by non-filling up the vacancies therein."

14. We are pained to notice that the same situation continues even after more than a year. Even as of today, the pending cases of BIFR and AAIFR have not been taken over by NCLT and NCLAT nor the Government of India is in a position to make BIFR and AAIFR functional with the required strength of Members to deal with the cases expeditiously and efficiently. In these circumstances, it appears to us that it is essential on the part of the

respondents to at least assign additional charge to more number of eligible Government officers so that BIFR and AAIFR can function meaningfully with sufficient number of Members.

15. We, therefore, direct that immediate steps be taken by the Respondents to assign additional charge to not less than six eligible Government officers to act as Members of BIFR and AAIFR in addition to those who are already working and they shall hold proceedings on all working days not later than 3:00 p.m. The necessary orders to that effect shall be issued by the Respondents within four weeks from today.

16. We also direct that in case the entrustment of cases of BIFR and AAIFR to NCLT and NCLAT is likely to be delayed further, the directions of this Court dated 27.11.2015 in W.P.(C) No.8693/2014 shall be given effect to within three months from today without fail.

17. C.M.No.9905/2016 in W.P.(C) No.8693/2014 and W.P.(C) No.527/2016 are accordingly disposed of. All pending applications shall also stand disposed of.

18. Order dasti under the signatures of the Court Master.

CHIEF JUSTICE

JAYANT NATH, J

AUGUST 19, 2016

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