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

Decided on 20th February, 2015

+ W.P.(C) 1544/2015 & C.M.No.2747/2015

KOTAK MAHINDRA BANK LTD. Petitioner

Through: Ms.Sushmita Banerjee, Adv.

versus

CANARA BANK AND ANR. Respondents

Through: Mr.V.K.Tandon, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. Issue notice.
2. Mr.V.K.Tandon accepts notice on behalf of the respondents.
3. In view of the fact that the impugned order dismissed the petitioner's appeal in limine, the facts only to that extent are necessary.
4. Learned counsel for the parties agreed that matter can be disposed of at this stage.
5. The petitioner is aggrieved by the order of the Appellate Authority for Industrial and Financial Reconstruction (AAIFR) dated 10.12.2014 in Appeal No.48/2014. In that appeal, the petitioner was aggrieved against the order of Board for Industrial and Financial Reconstruction (BIFR) dated

20.01.2014. The matter pertains to the sick company Electrex (India) Ltd. in respect of which the petitioner was appointed as the Operating Agency (OA) by an order dated 19.8.2011, which directed change of management. The petitioner, being OA, was expected to take consequential steps. It appears that the sick company preferred an appeal against this order. In the appellate proceedings, stay of the order directing change of management (made by the BIFR) on 11.08.2011) was made. Ultimately, the appeal was dismissed on 24.06.2013.

6. The petitioner submits that it had not been issued notice in the said appeal and that in the meanwhile on 08.11.2011 the BIFR adjourned the proceedings *sine die*. Apparently, after dismissal of the sick company's appeal, the proceedings before the BIFR were revived on 12.09.2013. The record of proceedings of that day shows that only few parties, including the respondent appeared. Accordingly the present writ petitioner was not so represented; same position persisted on 19.11.2013 and the BIFR noticed that the OA had not taken steps to advertise the change of management and issued Show Cause Notice in this regard to it. Apparently, noting that the petitioner was not represented the BIFR issued notice. Even on 19.11.2013 the petitioner was not represented before the BIFR but became aware of the proceedings later on and claims to have written to the sick company asking for particulars, to comply with the directions in respect of the change of management. The petitioner sought to represent, but against the show-cause notice received by it. The BIFR was not satisfied with its response. The petitioner had, *inter alia*, contended that the six weeks' time was necessary to comply with the directions to advertise change of management given that the sick company had sought some more time to furnish particulars. It was

under these circumstances that the BIFR directed criminal proceedings to be initiated before the competent Court against the OA. OA's appeal was rejected by the appellate order.

7. We have carefully considered the records and the submissions that there was stay of the proceedings (of the order directing change of management) itself noticed in the order of BIFR dated 12.09.2013. This Court is also conscious after the grant of stay, on 08.11.2011, the BIFR had adjourned the proceedings *sine die*.

8. Having regard to these circumstances, the Court is of the opinion that the AAIFR should not have similarly dismissed the petitioner's appeal given the nature of the consequences the petitioner is likely to face. Consequently, the impugned order is hereby set aside, the petitioner's appeal is directed to be taken on record and heard on its merits after considering the views of the concerned parties.

9. The AAIFR shall pass its final order in the appeal expeditiously and in accordance with law. The petition and the pending applications are allowed to the above terms.

10. No cost.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

FEBRUARY 20, 2015

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