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

**Decided on : 29.04.2015**

\+ **W.P.(C) 4226/2013, C.M. NOS.9854/2013, 5227/2014 & 1457/2015**

ATV PROJECTS INDIA LIMITED ………………Plaintiff

Through: Mr. U.K. Chaudhary, Sr. Advocate with Mr. Kuljeet Rawal, Mr. Saurabh Malhotra, Mr. H.P. Sharma and Mr. Himanshu Vij, Advocates.

Versus

PUNJAB NATIONAL BANK & ORS. ………..Respondents

Through : Mr. Neeraj Chaudhary, Advocate, for Respondent No.2 with Mr. Avtar Singh, Chief Manager (Legal), Central Bank of India.
Mr. P.K. Mullick, Advocate, for Respondent No.3.
Mr. Rajiv Kapur, Advocate, for Respondent No.4.
Mr. Karan Khanna, Advocate, for Respondent No.19.
Mr. Sarat Chandra with Mr. Sachin Chandra, Advocates, for Respondent No.17.
Mr. Abhishek Anand, Advocate, for IDBI.
Mr. Kunal Manav, Advocate, for Respondent No.20.
Ms. Nupun Kanungo, proxy for Ms. Rama Ahluwalia, Advocate, for Sales Tax Department, State of Maharashtra.

**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. The writ petitioner is a sick company which had approached the Board for Industrial and Financial Reconstruction (BIFR) under the Sick

Industrial Companies (Special Provisions) Act, 1985 (SICA). Its secured creditors and debenture trustees sought leave of BIFR to continue legal proceedings, which was granted conditionally on 09.07.2002. The petitioner approached the appellate authority (AAIFR), aggrieved by the said order. During the pendency of its appeal, a meeting of its creditors was held where an agreed schedule of certain payments and a proposal for One Time Settlement (OTS) for ₹72 crores was apparently examined. The company expressed its agreement and deposited 10% of the amount in terms of the proposal. One creditor, i.e. Central Bank of India (CBI) had reservations and a meeting was held on 15.01.2008 wherein the creditors were of the opinion that the aggregate value that can be realized from sale was in the range of ₹85 crores. It was agreed that fresh valuation of assets would take place. When these proposals were pending consideration, the AAIFR passed an order dated 13.02.2008. The AAIFR directed the company to deposit ₹82 crores within two months.

2. The company felt aggrieved by the AAIFR's order and challenged it before this Court under Article 226 by filing W.P.(C) 5659/2010. The writ petition was disposed of and the matter was remitted to the AAIFR for further hearing of the appeals in the following terms. This Court directed inter alia as follows:

> *"On hearing learned counsel for the parties at length we find the grievances justified. The proposal of the company was not for the lumpsum payment of Rs.82 crores, but for payment of Rs. 82 crores instead of Rs.72 crores as per the terms of meeting dated 13.01.2007. The Central Bank of India was not agreeable to the OTS. The matter was, thus, at an initial stage. The effect of the impugned order is that both the sides of the parties have been thrust with the OTS of Rs.82 crores to be paid in terms of the*

*impugned order while this was not the proposal or the acceptance of any of the parties. Whether the OTS is possible or not is determined on the consent of all the parties and the Appellate Authority could, thus, have only explored the matter further in pursuance to the OTS proposal of the company contained in its letter dated 16.01.2008 inviting the comments of Central Bank of India and other creditors. Thus, the impugned order cannot be sustained.*

*Learned counsel for the company points out that a large number of secured creditors have taken their proportionate amount out of Rs.7.2 crores deposited by the company and have given their consent. This aspect would have to be examined by the Appellate Authority.*

*The impugned orders dated 13.02.2008 and 09.07.2008 are, accordingly, set aside and the matter remanded back to the Appellate Authority for further hearing on the appeals in terms of the observations made. Petitions are accordingly allowed leaving the parties to bear their own costs."*

3. It is thus evident that the AAIFR was directed to monitor the further progress of the OTS proposals. On 15.05.2013, the AAIFR held that the BIFR's order permitting conditional leave to secured creditors and debenture trustees of company to go ahead with legal proceedings was in order. The AAIFR inter alia observed that the CBI had refused to accept the OTS offer of ₹11.02 crores plus interest. The AAIFR was of the opinion that even though secured creditors had accepted their proportionate amount out of ₹7.2 crores deposited, nevertheless, the CBI's position rendered the overall settlement unfeasible since consent of the other secured creditors could not compel the CBI to agree with the proposal. On the basis of these findings, the AAIFR held as follows:

*"8. Since there is no consent of the secured creditors on the*

*OTS offered by the company, it is not possible to work out a rehabilitation scheme for the revival of the appellant company. Moreover, the reference of the company has been pending for the last 14 years. A sick company has to be revived within a reasonable period of time so as to achieve the objectives of SICA. Any prolonged delay in the process only puts undue burden on the financial institutions as they are unable to recover their dues due to pending reference under SICA. If their dues were recovered, the same could have been used for lending to others, thereby increasing the production as well as employment. The delay of 14 years is far beyond any reasonable time required for revival of a company. As such, reference of company pending for such a long period is liable to be dismissed on this ground alone.*

*9. For the aforesaid reasons, we do not find any infirmity or illegality in the impugned orders passed by the BIFR which may require any interference by this Authority. There is no merit in the appeals and these are liable to be dismissed."*

4. The company in these writ proceedings has made various submissions. Firstly, it contends that the CBI is a secured creditor only to the extent of 13% of the overall credits and that its views cannot prevail against those of other 27 secured lenders who formed 87% of the lending strength. It is also contended that AAIFR had incorrectly assumed that CBI's consent is necessary and that such view is contrary to Section 19(2) of the SICA. It was thirdly contended that during the pendency of these proceedings, all the while the present petition was adjourned from time to time to explore the possibility of an agreement, overwhelming number of company's secured creditors have accepted OTS and also issued a no dues *certificate*. It is submitted that similarly OTS proposal has been accepted by other secured creditors, including banks such as SBI, PNB, UTI and that even CBI has now given its consent.

5. In the light of the submissions made and considering that adjournments were being granted by the Court on several occasions, the Court had called the Operating Agency (OA), i.e. Industrial Development Bank of India (IDBI) to file a status report supported by an affidavit as to the current developments with respect to the OTS proposal. The IDBI accordingly issued notice to the 24 secured creditors out of which it apparently received response from 13 secured creditors; copies of its letters have been placed on record. It also mentions that on 27.01.2015, BIFR had observed that since the company had settled dues of 27 secured creditors, excluding CBI, it was expected to file a fully tied-up DRS. Importantly, IDBI submits that a DRS was in fact circulated and given to it in the capacity as an OA on 16.04.2015.

6. During the course of the hearing, all the parties were present, including the CBI; learned counsel for the parties, including that of IDBI asserted that since there is some progress with respect to the acceptance of the OTS, proceedings before the BIFR should go ahead unimpeded. Learned counsel for the CBI submitted that as a secured creditor, the bank cannot be compelled to accept the scheme and that its right to insist upon the remedies available with it should be preserved. It was submitted on behalf of the State of Maharashtra that certain statutory dues are pending and outstanding from the petitioner and that it should be permitted to take steps to enforce the same.

7. Having regard to the totality of the circumstances, this Court is of the opinion that there has been a significant change in the circumstances on account of developments which occurred during the pendency of the present

petition. The sick company/petitioner is aggrieved by the AAIFR's order which approved the conditional permission granted to its secured creditors to maintain and continue legal proceedings. In view of the OTS proposals apparently accepted by a large number of creditors, this Court is of the opinion that it would not be conducive and in the interest of the sick company to allow the order of the BIFR to stand. At the same time, this Court is of the opinion that instead of requiring the AAIFR to monitor OTS proposals it would be in the fitness of things if the BIFR does so as is its statutory duty. Accordingly, the observations of the AAIFR as to the maintainability of the proceedings before the BIFR are hereby set aside. All other portions of the impugned order regarding the nature of the progress with regard to OTS and DRS are part of the record and shall be considered in further proceedings before the BIFR. The DRS lodged with BIFR is directed to be circulated to all the concerned parties, i.e. secured and unsecured creditors who are parties before the BIFR. The State of Maharashtra is at liberty to file such application concerning its dues as is permissible in law before the BIFR. The order of the BIFR, permitting the petitioner's secured creditors to go ahead with legal proceedings shall be kept in abeyance till final decision is recorded on the DRS dated 16.04.2015 circulated before it.

8. The parties are, therefore, directed to appear before the BIFR on 06.07.2015 which shall proceed to consider the DRS at its earliest convenience having regard to the fact that the present matter pertains to an old case. The decision on the DRS shall be rendered expeditiously, preferably by end of October 2015.

9. The impugned order of AAIFR is set-aside. The writ petition and the

pending applications are allowed in the above terms with no order as to costs.

**S. RAVINDRA BHAT**
**(JUDGE)**

**R.K. GAUBA**
**(JUDGE)**

**APRIL 29, 2015**