

IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON: 07.05.2015

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PRONOUNCED ON: 15.05.2015

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W.P. (C) 2639/2015, CM No.4729/2015

M/S TRINITY AUTO COMPONENTS LTD. ...Petitioner

Through: Ms. Henna George & Ms.
Purti Marwaha, Advocates.

versus

UNION OF INDIA AND ANR. ...Respondents

Through: Mr. Ashish Dholakia and
Ms. Shradha Bhargava, Advs. for R-1.
Mr. Joy Savla and Mr. Abhiman
Sharma, Advocates for respondent -
Ex-Promoter (Deepanker Basu).

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K. GAUBA

S.RAVINDRA BHAT, J.

1. In this proceeding under Article 226 of the Constitution of India, an order of the Appellate Authority for Industrial and Financial Reconstruction ("AAIFR") constituted under Sick Industrial Companies (Special Provisions) Act, 1985 ("SICA") dated 6.2.2015 in Appeal No.207/2014 has been impugned. Though the AAIFR set aside the order of the Board for Industrial and Financial Reconstruction ("BIFR") dated 14.10.2014 partly, the petitioner is aggrieved to the extent of the consequential directions given by AAIFR and also by its

not entertaining the appeal with respect to the other parts of BIFR's order.

2. Briefly, the facts are that M/s Trinity Auto Components Ltd. (hereafter referred to as "the sick company") lodged a reference with BIFR in 2011 and was declared sick under Section 3(1)(o) of SICA on 6.9.2011. An unsuccessful attempt was made by unsecured creditors to be impleaded in the proceedings under SICA and the BIFR rejected their application on 26.9.2011. Since the existing promoters of the sick company had sought for change of management, the BIFR directed the Operating Agency (OA) i.e. the Axis Bank to submit a comprehensive report with regard to such change. Ultimately on 6.3.2012, the BIFR held that M/s Tarini Steels Company Ltd. had offered the highest bid; it was declared as successful bidder for change of the management of the company. During the succeeding hearings, the Draft Rehabilitation Scheme (DRS) was submitted by the OA. On 4.3.2013, BIFR directed the examination of the DRS. By an order dated 20.3.2013 BIFR circulated the DRS to all concerns for consent in terms of Section 19 of the Act. It was noted on 20.6.2013 that objections from the Sales Tax Department and two unsecured creditors of the sick company had been received. No objection to the DRS from the sick company was filed or lodged. Subsequently, various hearings took place and pursuant to directions of the BIFR, the OA filed its synopsis and submissions. On 25.2.2014, BIFR was requested to pronounce final orders under Section 18 (4) since hearings had been concluded. Since no orders were forthcoming, a writ petition - W.P.(C)5176/2014 was initiated before this Court, in which notice was issued on 19.08.2014.

Within two days of that order – on 21.08.2014, BIFR issued its order in respect of the matter, which had been reserved on 30.1.2014. On two different occasions, the OA was directed to examine what BIFR termed as “gaps” in the DRS. On 7.11.2014, BIFR released its reserved orders.

3. The petitioner felt aggrieved by directions contained in paragraph 6.2 on two counts, viz the de-rating valuation of shares and consequent pay out to promoters. As against the derating of 60% proposed, BIFR directed the full face value of the shares to be paid. Secondly, the petitioner had proposed to compensate Fixed deposit holders at a certain ratio; the BIFR however again directed the full value to be compensated.

4. Ms. Hanna George, learned counsel contends that BIFR could not have issued the direction that it did. Contending that neither the shareholder/promoters nor the Fixed depositors had voiced any objections or reservations that called for consideration, it was urged that once a DRS is circulated the BIFR would note only the views of the OA and issue necessary or consequential orders. In the present case, since the existing shareholder/promoters were responsible for the sickness, a premium should not be placed on their inefficiency and bad management; counsel emphasized that the de-rating of shares @ 60% was the norm accepted by BIFR in several cases and the present instance did not call for any exception. Arguing that likewise, the proposal for compensating fixed deposit holders was just and reasonable and that none among them sought for higher relief, counsel pointed out that a substantial number of such depositors were the

promoters or their relatives. They consequently did not deserve any better treatment. For these reasons, counsel urged the court to set aside the impugned directions of the BIFR and remit the matter to it, to work out the modalities of sanctioning the scheme.

5. Mr. Joy Savla, learned counsel appearing on behalf of the promoter/shareholders, through the erstwhile Managing Director of the sick company, resisted the submissions of the Petitioner. He submitted that the BIFR rightly disallowed the de-rating of shares and directed the full value of shares to be paid to the shareholders. Counsel pointed out that the assets of the sick company are sufficient to pay the full value, as loans due from the company to Axis Bank and Kotak Mahindra Bank have been paid off after the registration of reference with BIFR. Specifically, it is stated that Axis Bank's loan was paid off by making a payment of ₹7 crores on 29.02.2012 and Kotak Mahindra Bank's loan was fully settled by making payment of ₹5.64 crores in May and June 2011, which was duly acknowledged by the bank in its letter dated 12.08.2011. These payments were made by Trinity India Ltd. – the corporate guarantors to the two banks and led to a reduction in liability of the sick company to the tune of ₹12.64 crores. Thus, counsel states that BIFR's observations - that sacrifice from existing shareholders cannot be allowed if the sick company's assets are sufficient to meet existing obligations - cannot be faulted with. Further, DRS is subject to the supervision/modification of BIFR and the scheme becomes operational only upon BIFR's approval. Reliance is placed on the Supreme Court's ruling in *Raheja Universal Ltd. v.*

NRC Ltd., (2012) 4 SCC 148. Since BIFR is monitoring the preparation of the scheme, this Court's interference is not required.

6. Learned counsel further states that the new management of the sick company having taken over the running of the company has defaulted in releasing Respondent No. 3 – the company's main promoter and erstwhile Managing Director – from the personal guarantees offered by him. The new management has failed to take any effective steps to defend two complaints filed under Section 138 of the Negotiable Instruments Act against Respondent No. 3 by an unsecured creditor (M/s Mahindra Ugine Steel Company Ltd.) to recover its dues against the sick company. Thus, the Petitioner is only seeking to take over the assets of the sick company and not its liabilities.

7. It is evident that the Petitioner's grievance is that though the DRS was circulated as far back as in 2013 and deliberated upon, the BIFR went ahead and directed two modifications (by which it is aggrieved), concerning the de-rating of shares and the compensation payout to Fixed depositors. Having heard counsel for the parties, this court is of the opinion that the directions of the BIFR – without any objection or protest by the shareholders/promoters *at the stage when the DRS was circulated, with the original proposal of de-rating shares to the extent that 40% of face value was to be received by the shareholder/promoters*, there is no *rationale* or principle on which the direction to pay out full face value of the shares is founded. The AAIFR, in our opinion entirely – and erroneously overlooked this aspect. Having been apprised of the fact that there was no objection to

the original proposal, - the intervening delay having occurred entirely due to procedural tangles (and to an extent, the inability of BIFR to pronounce its orders) - the Petitioner investor could not have without any reason, been saddled with the liability of an additional payout. The question of “sacrifice” of shareholder/promoters has to be also judged from the perspective of their having been primarily responsible for the sickness of the company, which led to reference under SICA. So far as the submissions of the shareholders/promoters that they should have been paid in full as they would be required to deal with liabilities that may potentially arise on account of proceedings and complaints against them under the Negotiable Instruments Act is concerned, that cannot constitute a basis to pay the full value of shares to all shareholders, when the guarantees have been furnished only by a select class of shareholders. Further, even in the objections filed by the Respondent No. 3 before the BIFR (on 10.06.2013), the pendency of cases under the Negotiable Instruments Act was not taken as a ground to seek the full value of shares. As to whether they wish to settle with such complainants, or seek some additional compensation is not a matter that appears to have been agitated before the BIFR. As regards fixed depositors, the Petitioner’s arguments are not justified and this court finds no infirmity with the orders of BIFR and AAIFR to that extent. They stand on a different footing as compared with shareholders/promoters. It cannot be said that merely because some fixed depositors are relatives of the promoters, the entire class has to receive a low payout. We do not propose to disturb that part of the impugned orders.

8. In view of the above discussion, the petition has to succeed in part. The directions of BIFR and AAIFR with regard to de-rated value of the shares are modified. Instead of the 100% value of shares, the original payout proposal to derate 60% of the face value shall be substituted. The matter shall be re-examined and final orders made by the BIFR, keeping in mind the above directions.

9. The writ petition and pending applications are allowed to the above extent. There shall be no order as to costs.



**S. RAVINDRA BHAT
(JUDGE)**

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

MAY 15, 2015