

\$~16

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

+ W.P.(C) 5858/2014, C.M. NO.14371/2014

BHARAT HEAVY ELECTRICALS LTD. Petitioner

Through: Mr.Atul Sharma, Mr. Yash
Srivastava, Mr.Chaitanya Puri and
Mr.Sarojanand Jha, Advts.

versus

M/S. BHPV OFFICERS ASSOCIATION & ORS..... Respondents

Through: Mr. Vadrevu Pattabhiram, Adv. for
R-1 to R-3.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

%

1. The petitioner M/s Bharat Heavy Electricals Ltd. (hereinafter referred to as "BHEL") made a proposal to take over M/s Bharat Heavy Plates and Vessels Ltd. (hereinafter called "transferor company" BHPVL) which had been referred to the Board for Industrial and Financial Reconstruction (BIFR), under the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). Various proposals for its rehabilitation were pending and under examination. The Union Cabinet-- on 07.05.2008-- approved BHEL's take-over of the said transferor company holding it a subsidiary and an on going concern. The Operating Agency (OA) prepared a rehabilitation scheme which was sanctioned by the BIFR on 21.10.2010. This led to the process of merger and integration of the transferor company. The initial scheme of

constituting the transferor company as a subsidiary apparently was not very successful since it failed to revive financially. Consequently, a modified proposal whereby the BHEL offered a merger of the transferor company, was made. This ultimately shaped into a Modified Draft Rehabilitation Scheme (MDRS) which was approved by the Union Cabinet on 21.02.2013. Consequently, the transferor company filed an application under Section 18(5) read with Section 18(6) of SICA to take on board the MDRS, on 19.03.2013. BHEL contends that the MDRS was approved for circulation in the newspaper and notified objections and suggestions received from all interested parties. The MDRS was ultimately sanctioned on 29.08.2013.

2. The three respondents who are before this Court in the present proceedings moved an application for review of the order dated 29.08.2013 for approving the MDRS. This was, however, rejected. Aggrieved, they preferred appeals to the appellate authority “AAIFR”. The AAIFR reserved orders on the appeals on 16.04.2014. By its impugned order of 17.07.2014, the AAIFR allowed the appeals which had the effect of not only undoing the MDRS but the entire basis of sanction for rehabilitation of the transferor company. BHEL urges that the impugned order is passed on a narrow and hyper-technical appreciation of the terms of the MDRS and the so called seeming confusion between the “effective date or dates and the appointed date”. The BHEL’s counsel highlights the discussion by the AAIFR in this context which is at para 3 of its impugned order. The AAIFR pointed to several discrepancies, such as the BIFR giving different dates having direct bearing for giving effect to the provisions of the sanctioned scheme, there being different appointed date in para 2, and a different effective date in paras 9.2.7, 9.2.12 and 9.2.1. The AAIFR also wondered about the date of

the pronouncement of the order, which was given to one of the members for signing on 08.04.2013 and that the pronouncement of the order was made on 29.08.2013. The relevant discussion by the AAIFR in this regard which ultimately persuaded it to set aside the MDRS is extracted as under:

4. It is clearly seen from the above that the Board has passed the impugned order in a routine manner without any application of mind. As such we are constrained to set aside the impugned order dated 29.8.2013 (23.8.2013) and remand the matter back to the BIFR with a direction to consider the whole matter afresh along with the objections and suggestions submitted by the appellants earlier and pass a reasoned order after due application of mind and, if necessary, after hearing all the parties concerned. It is, however, made clear that the Board will not be influenced by its earlier order while considering the matter afresh.

3. On the basis of its understanding and discussion contained in the impugned order in the manner extracted above the AAIFR remitted the matter for reconsideration along with objections and suggestions of the appellants i.e. the three respondents presently before us.

4. The BHEL contended that the narrow premise on which the AAIFR set aside the MDRS has undermined the entirety of the rehabilitation package itself. Contending that the MDRS application on the merger of the transferor company with BHEL effectively stood undone, learned counsel submitted that the grievance of the respondents were unfounded, given that the BHEL had addressed the larger constituency of employees and not merely those of the respondents. It was contended that the workmen not represented by the respondents in this case would be severely affected by the impugned order.

5. Learned counsel for the respondents, on the other hand, urges that the MDRS was finalised without a proper hearing by the BIFR and consequently the AAIFR acted rightly in setting it aside. Learned counsel relied upon paras 13.18 and 14.1 of the BIFR orders to say that even while noticing that some objections had been received and further holding that they appeared to be concerned about the acceptance of the MDRS, there was no discussion, much less reasoning about the merits of the respondents' objections. It was contended that the respondents, especially those objecting to improper fitment had a right to contend and be heard that the pay-grades proposed by the BHEL for them were not according to the settled principles and, therefore, unsustainable. It is submitted furthermore that likewise other classes i.e. retired employees could legitimately have expected a higher compensation package than what was given. Therefore, counsel submits that BIFR order is bereft of reasoning and as a result the AAIFR correctly set aside and remitted the matter for reconsideration.

6. This Court has considered the submissions. It is apparent that the entire scheme is based upon the acceptance of the appointed date. Like in the case of amalgamation of a company or sanction of a compromise in an arrangement under the provisions of Companies Act, the compulsion of having an appointed date is to ensure uniformity vis-a-vis liability for statutory dues as well as for securing merger. Likewise, the practicability of this is further secured in that even dues of past employees etc., would get defined if there is an "appointed date". Because of the confusion with respect to the effective date which appears to have prevailed with the AAIFR, we are of the opinion that such conclusion ought not to have been arrived at. On first principle every order of the BIFR, sanctioning the

scheme would take effect from the date of its pronouncement. Thus the terms of the scheme become important; the liabilities to the extent defined in the sanctioned scheme would be fixed as on the appointed date. Wherever amalgamation takes place the need for having an effective date is also important.

7. This Court is of the view that the above confusion ought not to have prevailed with the AAIFR to set aside the entire MDRS without considering what larger ramification is, and for the benefit and determination of certain sections and classes of employees. Considering that the transferor company was referred to the BIFR in 2004 and was declared “sick” in 2005 and the first sanction took place in 2010, we are of the opinion that the AAIFR should consider the merits of the matter, including the question of the prejudice, if any, caused to the respondents on account of the approval given to the MDRS instead of preventing it. As to what is meant by the “effective date” it is specifically self-defined in clause II of the definition of scheme. Therefore, there was no occasion for the AAIFR to express confusion in its conclusion. We accordingly direct the AAIFR to hear the parties including their objections to the MDRS and render its final decision within three months from today.

8. List before AAIFR on 11.02.2015.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

JANUARY 29, 2015

mr