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

Decided on : May 26, 2015.

\+ W.P.(C) 4569/2015

M/S NATUROL BIOCHEMICAL AND FOODS LIMITED
..... Petitioner

Through Mr. Rejeeve Mehra, Sr. Adv. with Mr. Gautam Awasthey, Mr. Ayush and Ms. Shruti Aggarwal, Advs.

versus

BOARD FOR INDUSTRIAL & FINANCIAL RECONSTRUCTION & ANR
..... Respondents

Through Mr. Sanjay Bhatt and Ms. Vidushi Shubham, Advs. for IDBI

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 petitioner seeks a declaration that it is not a sick company within the meaning of the expression under the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) by virtue of its net worth having turned positive. The petitioner had applied to be declared as a sick company – which was eventually accepted and the Board of Industrial and Financial Reconstruction (BIFR) registered its application and declared it to be such on 07.04.2011. Pursuant to this development, the Industrial Development Bank of India (IDBI) was nominated as the operating agency to oversee

rehabilitation efforts and ensure that the company achieved positive net worth.

2. In the course of the proceedings before BIFR, the petitioner-company's, efforts to achieve positive net worth were largely supplemented by capital infused from a strategic investor, and it managed to pay off its dues to both secured and unsecured creditors. It also cleared liabilities of six statutory authorities (sales tax, central excise, customs, provident fund, etc.). In the light of these subsequent efforts and developments, and the fulfillment of the OTS agreements which it had entered into with the secured creditors, the company applied by filing MA 443/14 before the BIFR contending that it has positive net worth as in 2014. The BIFR's proceedings reflected in its minutes of meeting for proceedings dated 15.12.2014. The petitioner contends that it complied with various directions issued by BIFR such as filing of the Chartered Accountant's certificate, lodging No Dues Certificate issued by erstwhile secured creditor etc. The petitioner's Director also filed an affidavit on 10.2.2015 indicating the pattern of shareholding at the time of filing the reference and the present shareholding. On 15.4.2015, the operating agency i.e. IDBI filed its report. After recounting the sequences of events leading up to the filing of the application for seeking discharge of the company from SICA, the OA also noted the affidavit of company's Director and, *inter alia* stated as follows :

> *"In this connection, we wish to inform that IDBI Bank (OA) has received the following letters/documents from the company furnishing the clarifications/information called for by IDBI(OA)/directed by BIFR.*
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> > *1. An endorsement of company's letter dated 10.02.2015 (Annexure-IV) originally addressed to the Board*

forwarding therewith (1) Affidavit signed by Shri Y. Gopalkrishna, Director of the company, (2) Screen shot of page on MCA web

site giving list of signatories of the company & (3) A statement showing details of Equity and Preference Shareholders as on date of filing reference, 31.03.14 and 31.03.15.

2. Company's letter dated 10.04.15 (Annexure-V) giving status of listing of company's shares at Stock Exchanges.

3. Company's letter dated 09.04.15 (Annexure-VI) in reply to IDBI(OA) letter dated 16.12.14.

On scrutiny of the above letters/documents and information available on record the facts which emerge are as under:-

(i) Shri C.S. Bhaskar resigned from the post of (Managing Director of the company on 08.11.2014 due to his personal reasons and pre-occupations.

(ii) The information as at (i) above was received at IDBI(OA) office on 15.12.14 in the afternoon i.e. after the hearing at BIFR had held.

(iii) IDBI(OA) called for explanation from the company vide letter dated 16.12.15 with copy to BIFR.

(iv) Subsequently Shri Bhaskar withdrew his resignation and the company informed BIFR about this development vide its letter dated 23.12.14. A copy of the screen shot (Annexure-

VII) taken from MCA site confirms the same. He has been reappointed as Director for the period from 10.12.14 to 13.11.2016.

(v) As per the affidavit submitted by Shri Y.Gopalakrishna the share holding of the promoters as on the date of reference to BIFR, 31.03.14 and 31.03.15 is unchanged at 17.83%. However there are changes in the remaining shareholding as the Strategic Investors

> *have acquired majority shares from public and Venture Capitalist.*
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> *(vi) It has been also confirmed by the company that shares of the company had never been listed and since inception it is a closely held company.*
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> *In view of the foregoing IDBI(OA) has no objection in case the prayer of the company for deregistration is acceded to by the Hon'ble BIFR. You are requested to please place the above facts before the Hon'ble Bench."*

3. Learned senior counsel contends that since the BIFR has virtually been rendered non-functional on account of vacancies, prolonged delay in the disposal of the application MA 443/14 has led to a mass view that even though the company actually achieved net worth, it cannot secure fresh lines of credit. Learned counsel submits that BIFR is already burdened with several references and that if the matter is relegated, the petitioner would meet a fate no different from what it had to grapple with all the while after the filing of MA 443/2014. Counsel for IDBI submitted that the report furnished to the BIFR substantiates the petitioner's argument that it has achieved positive net worth. He also submitted that the report filed before BIFR, which is a part of the record, clearly shows that on IDBI's independent appraisal, the petitioner's dues have been cleared and in this circumstance this Court may pass appropriate orders.

4. We have considered the submissions and the record. Ordinarily, upon a company fulfilling the requisite criteria to be treated as a sick company, a declaration to that effect is granted under Section 15. This declaration in effect effectuates Section 22 which in turn suspends legal obligations or their enforcements against the company. At the same time, the negative

effect of such declaration is that there is a freeze upon the company's functioning till the time it is within the purview of SICA. The rehabilitation effort then proceeds through the orders made under Section 17(2) or Section 17(3), as the case may be, and in the event BIFR is of the opinion that rehabilitation in the normal sense is not possibly a scheme is mandated under Section 18 which is duly considered and then sanctioned. In the present case, after the petitioner was declared a sick company under 17(2), the material on record discloses that according to the OA, the company had achieved net worth as on 31.3.2014. The petitioner did approach the BIFR for a declaration to that effect – because it can continue to function only upon securing credit or establishing its credit worthiness. BIFR, however, has been plagued by vacancies on account of retirement. What is evident is that in the peculiar circumstance of this case, the OA after independent appraisal of the petitioner's application and verification of its claims concluded that it is no longer sick and had achieved positive net worth on 31.3.2014. More than a year has elapsed since then. In these circumstances, this Court hereby declares that the petitioner has achieved its positive net worth and can no longer be treated as a sick company. The writ petition is allowed in the above terms.

S. RAVINDRA BHAT
(JUDGE)

R.K. GAUBA
(JUDGE)

MAY 26, 2015

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