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

\+ W.P.(C) 8954/2015

% **Judgment dated 28.09.2015**

M/S HINDUSTAN MOTORS LTD. ..... Petitioner
Through : Ms.Maneesha Dhir, Ms.Varsha Banerjee and Ms.Divya Krishnan, Advs.

versus

BOARD OF INDUSTRIAL AND FINANCIAL RECONSTRUCTION ..... Respondent
Through : Mr.Manish Mohtaa, Mr.Amit Mahajan and Mr.Sidhartha Das, Advs.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (*ORAL*)

W.P.(C) 8954/2015 & CM APPL. 20131/2015 (STAY)

1. Present writ petition has been filed by the petitioner under Article 226 read with Article 227 of the Constitution of India seeking a direction to set aside the Communication/Order dated 27.6.2014.
2. Learned counsel for the petitioner submits that the grievance of the petitioner is that upon filing of the reference before the Board for Industrial and Financial Reconstruction (hereinafter referred to as "*BIFR*", the Registrar, by a communication/order dated 27.6.2014, has restrained the petitioner from disposing of or allowing in any manner any assets of the company, without the consent of the Board. Counsel also submits that this order was passed without any authority. It is further submitted that although the order suggests that the same has been passed as per the

decision of the Board yet no order has either been passed or made available to the petitioner, nor the same is available in the records of the respondent. Ms.Dhir has placed reliance on Section 22A of Sick Industrial Companies Act (hereinafter referred to as "*SICA*") in support of her submission. Section 22A of SICA reads as under:

> "*[22A. Direction not to dispose of assets – The Board may, if it is of opinion that any direction is necessary in the interest of the sick industrial company or creditors or shareholders or in the public interest, by order in writing direct the sick industrial company not to dispose of, except with the consent of the Board, any of its assets –*
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> (a) *during the period of preparation or consideration of the scheme under Section 18; and*
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> (b) *during the period beginning with the recording of opinion by the Board for winding up of the company under sub-section (1) of Section 20 and up to commencement of the proceedings relating to the winding up before the concerned High Court.]*"

3. It has also been contended by Ms.Dhir that the order has been passed without any authority, without following the due process of law and without following the principles of natural justice, as neither any opportunity of hearing was granted to the petitioner nor the petitioner was permitted to make submissions. It has further been contended that the Registrar and/or the Board has exceeded his jurisdiction.

4. We have heard learned counsel for the parties. It is not in dispute that prior to the passing of the order of injunction the petitioners were not heard. It is also not in dispute that no formal order has been passed by the Board and in fact a printed notice has been issued, which we are informed

is issued to every party where a reference has been filed. We are not familiar with such a procedure as an order of injunction undoubtedly would have far reaching consequences. The Rule of law provides that in case any order is passed, which would have legal consequences, the person is entitled to be heard, which is an age old well recognized principle of natural justice.

5. A perusal of Section 22A of SICA would show that a direction not to dispose of assets can also be passed by the Board if the Board is of the opinion that such direction is necessary in the interest of Sick Industrial Company or its creditors or shareholders or in the interest of public. Thus, an order is to be in writing.

6. In this case, no such order has been passed. We are also informed that in all matters, the procedure, as laid down in Section 22A of SICA, is not being followed.

7. In an identical matter, being W.P.(C) 1822/2014 titled as ***M/s Maneesh Pharmaceuticals Ltd. v. Board of Industrial and Financial Reconstruction***, decided on 15.5.2014, on an identical issue the following order was passed:

> *"O R D E R*
> *15.05.2014*
>
> *The petitioner's grievance is that by a letter dated 07.12.2012, upon a reference preferred by it before the Board of Industrial and Financial Reconstruction (BIFR), the Registrar communicated its decision that the company?s assets ought not to be transferred or disposed of in any manner by invoking Section 22A of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). The petitioner's complaint is that the communication was infact not premised upon any decision by the Court and that its applications preferred under the Right to Information Act (RTI) elicited no response as to when such positive decision by the Board was taken. It is contended that such procedure by which the Registrar*

communicates a restraint order is unfeasible in law given the judgment of the Supreme Court in U.P. State Sugar Corpn. Ltd. v. Karamchari Assn.: AIR 1995 SC 1484. It is therefore, stated that the representation in this regard was made on 28.08.2013 to which no response has been received.

This Court had on the previous date of hearing required the BIFR to produce the relevant files to assist in determination as to whether infact the Board had consciously given the directions to the petitioner of which the petitioner is aggrieved. However, the Board's records are not forthcoming. In these circumstances, we have considered the pleadings and the decision taken in the U.P. State Sugar Corpn. Ltd (supra). This Court hereby directs the BIFR to give its decision after hearing the petitioner and to communicate the decision of the Board, within three weeks from today directly to the petitioner who shall then, if aggrieved, be entitled to seek such remedies as are available in law.

The writ petition is disposed of in above terms.

Dasti."

8. In the case of ***U.P. State Sugar Corpn. Ltd. v. U.P. State Sugar Corpn. Karamchari Assocn. And Others***, reported at AIR 1995 Supreme Court 1484, it was held that making a reference under Section 15 of SICA does not *ipso facto* attract restriction on the right of a sick industrial company. Relevant portion of the judgment reads as under:

"*The making of reference under Section 15, does not ipso facto attract the restriction on the right of a sick industrial company to dispose of its assets. Such a restriction has to be imposed by the Board by a specific order passed under Section 22-A, of the Act and such an order can be passed only after the Board has considered the matter in accordance with the provisions of Sections 16 and 17 of the Act and passed an order for framing a scheme under Section 18 of the Act."*

9. We find that despite the order dated 15.5.2014 passed by the Division Bench of this Court, the BIFR has failed to follow the due process of law and also failed to follow the procedure laid down under Section 22-A of SICA.
10. Accordingly, for the reasons stated hereinabove, we allow the present writ petition. The communication/order dated 27.6.2014 passed by Registrar, BIFR, is quashed to the extent that it has restrained the petitioner from disposing of or alienating in any manner any fixed assets of the company without the consent of the Board, however, we make it clear that the respondent will be well within its rights if deem appropriate to pass any order in the petition filed under Section 22A of SICA after serving a notice to the petitioner.
11. Learned counsel for the petitioner on instructions undertakes that till the date of hearing the status quo with regard to title and possession shall not be changed.
12. List this matter before BIFR on 1.10.2015.
13. Writ petition stands disposed of in view of above.
14. Let a copy of this order be brought to the notice of the Chairman and Members of BIFR by the Registrar for strict compliance.
15. A copy of this order shall be given DASTI under the signature of Court Master to the parties.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 28, 2015 msr