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

+ W.P.(C) 9320/2015

% *Judgment dated 4th December, 2015*

M/S GANESH BENZOPLAST LTD.

..... Petitioner

Through : Ms.Maneesha Dhir, Ms.Varsha Banerjee
and Ms.Divya Krishnan, Advs.

versus

UNION OF INDIA & ORS

..... Respondents

Through : Ms.Shiva Lakshmi, CGSC, and
Mr.Arindam Dey, Advs. for respondent
no.1.
Mr.Manish Mohan, CGSC, Mr.Shivam
Chanana and Ms.Pooja Mishra, Advs. for
respondent no.3.
Mr.Harish Kumar, LDC from BIFR.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. Learned counsel for respondents no.1 and 3 are present in Court. Despite service none is present on behalf of respondent no.2/IDBI Bank.
2. Present writ petition has been filed by the petitioner under Articles 226 and 227 of the Constitution of India seeking a direction to sanction the Scheme of the Company pending in BIFR Case No.42/2009.
3. Learned counsel for the petitioner submits that in the absence of one of the Members, the BIFR is not functioning, which has forced the petitioner to approach this Court.

4. On 26.11.2015, when the matter was listed in the Court, counsel for the petitioner had submitted that recommendation for sanctioning the revised scheme had been made by the BIFR on 21.10.2015 but the order cannot be implemented as no formal order of sanction can be passed in the absence of Member of BIFR. The Order dated 26.11.2015 reads as under:

“Learned counsel for the petitioner submits that recommendation for sanctioning the revised scheme has been made by the Board for Industrial Financial Reconstruction (BIFR) on 21.10.2015 but the order cannot be implemented as no formal order of sanction can be passed in the absence of Member of BIFR.

Learned counsel appearing for respondent No. 3 wishes to take instructions in the matter and also produce necessary record to enable this Court to satisfy itself that such scheme has been recommended.

List on 4th December, 2015.”

5. Mr.Mohan, learned counsel for respondent no.3, has produced the original record in Court, and has drawn the attention of the Court to the Office Noting dated 21.10.2015, which reads as under:

“BOARD FOR INDUSTRIAL AND FINANCIAL RECONSTRUCTION

CASE No.42/2009 M/s Ganesh Benzoplast Ltd. (GBPL)(B-II)

Refer noting on pre-pages.

In the last hearing held on 01.06.2015 in MA No. 86/2015 (Flat A'). Earlier the DRS was circulated on 18.04.2013 with cut off date as 31.03.2011 and the statutory hearing was held on 25.07.2013 in which the Hon'ble Bench has directed the OA (IDBI) to clarify the mismatch of cash flow, reconciliation of APCL

dues, to obtain view of SEBI on the letter dated 12.07.2013 regarding funding of Rs.16.56 crores to FOSCL by GBL, reconciliation of IT dues and to clarify the unexplained in flow of funds through a shell company. Subsequent hearings have been took place on 26.08.2013, 12.12.2013, 16.01.2013, 13.3.2014, 19.3.2014, 17.11.2014, 13.01.2014 and 01.06.2015. The scheme could not be sanctioned due to various objections and suggestions.

Now, OA vide their letter dated 11.09.2015 has submitted the revised and up-dated DRS along with all clarifications, as pointed out by Board as well as in various hearings.

The DRS is now modified as per the directions of Hon'ble Bench and Sanctioned Scheme is prepared and is being submitted along with order for kind approval of Hon'ble Member and Hon'ble Chairman.

Accordingly, the scheme is being submitted for kind sanction of HM(SCS) and HC.”

6. The original record and the aforestated noting would show that the Consultant of the BIFR has approved the scheme. Resultantly, the present petition is allowed. The scheme annexed to the report stands sanctioned.
7. Writ petition stands disposed of.

CM APPL.21587/2015

8. Application stands disposed of in view of the order passed in the writ petition.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

DECEMBER 04, 2015 msr