HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Writ Petition Nos.14771 and 15208 of 1994, 15217 of 2002, 15015, 15016 and 15017 of 2003, 9914, 9915 and 9916 of 2006, 6073, 6085 and 6127 of 2007 and 10836 of 2008

Common Order: (per V. Ramasubramanian, J)

There are thirteen writ petitions on hand, five of which were filed by M/s. Seshasai Plastic Industries, five filed by Diamond Plast Industries and three filed by Sri Karthikeya Industries. Since the history of the dispute spans over a period of 33 years, it is imperative to bring on record the historical background.

2. It appears that the petitioners in these writ petitions were established in the year 1982-83, allegedly as small scale ancillary industries dependent upon a State-owned Public Sector Undertaking by name Hyderabad Allwyn Limited, for the supply of plastic presentation watch boxes, stainless steel watch straps, dial holding rings etc.

3. It appears that Hyderabad Allwyn Limited to whom these three small scale industrial units sold and supplied material, became due and liable to pay to these three units some amounts. On the ground that those amounts were not paid, the petitioners approached this Court and seem to have obtained an order in W.P.No.15129 of 1992 directing Hyderabad Allwyn Limited to pay the said amount together with interest, at 12% per annum from 30-6-1993, on the basis of the undertaking purportedly given by them.

4. However, even before the aforesaid order was passed in W.P.No.15129 of 1992, the Andhra Pradesh State Financial Corporation issued a notice dated 08-12-1993 under Section 29 of the State Financial Corporations Act, 1952 calling upon these

ancillary industrial units to pay a sum of Rs.25,79,457/-. Pursuant to the notice, the officials of the Andhra Pradesh State Financial Corporation also seized the units on 02-8-1994. Therefore, challenging the notice dated 08-12-1993 and the seizure effected on 02-8-1994 by the Andhra Pradesh State Financial Corporation, M/s. Seshasai Plastic Industries came up with the writ petition in W.P.No.14771 of 1994 seeking not only to set aside the demand notice and seizure but also seeking a direction to the Government to settle a sum of Rs.340.11 lakhs allegedly due as on 31-10-1993, together with interest as per the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993. This writ petition is the first of the 13 writ petitions on hand. After the filing of the writ petition, the petitioner has also come up with a miscellaneous petition in W.P.M.P.No.10407 of 1997 seeking a direction to the State Financial Corporation to disburse the amount of Rs.37,07,791/- lying in deposit.

5. In the meantime, the Government of Andhra Pradesh decided to disinvest its shares in Hyderabad Allwyn Limited and to transfer the same to private parties. Pursuant to the said decision, the Government of Andhra Pradesh entered into Memorandum of Understanding on 28-3-1993 with Voltas Limited for hiving off the watch division and transferring it to the said company. Immediately, the second petitioner by name Diamond Plast Industries came up with a writ petition in W.P.No.16293 of 1992 seeking payment of a sum of Rs.29.33 lakhs and also the incorporation of a clause in the Memorandum of Understanding, so as to protect the ancillary status even while transferring the watch division of the company. At that time, the Government is said to have filed an undertaking before this Court for safeguarding the interest of Diamond Plast Industries. Therefore, the writ petition W.P.No.16293 of 1992 was

disposed of granting protection to one of the three ancillary units.

6. Thereafter, the Andhra Pradesh State Financial Corporation initiated proceedings against Diamond Plast Industries also, which culminated in a sale notice dated 11-8-1994. Challenging the notice dated 11-8-1994 issued by the Andhra Pradesh State Financial Corporation and also seeking a direction to the Government to make payments before the actual transfer and handing over of the watch division to the private party, Diamond Plast Industries filed the second writ petition W.P.No.15208 of 1994.

7. It is relevant to note at this stage that there were also collateral proceedings initiated by these three ancillary units, for the fixation of appropriate prices for the goods sold and delivered by them to Hyderabad Allwyn Limited. To resolve this issue, a joint inspection team was appointed which appears to have made some recommendations. Therefore, the petitioner came up with a miscellaneous petition in W.P.M.P.No.1978 of 1997 in W.P.No.15208 of 1994 seeking a direction to implement the recommendations of the Joint Inspection Team and settle the amounts.

8. However, Hyderabad Allwyn Limited itself became a sick unit and the reference made to it was taken on file by the Board for Industrial and Financial Reconstruction (BIFR) in Case No.631 of 1992. The BIFR issued notices to all creditors and the promoters/ partners of these three units appeared before the BIFR. Though a claim was made by the three industrial units before the BIFR seeking payment of the amounts purportedly due to them, the BIFR rejected their claim by an order dated 14-08-2002. The rejection was on the ground that disputed claims and questions are matters of consideration for Civil Courts and that the BIFR cannot examine the same.

9. All the three units filed appeals in Appeal Nos.287, 289 and 292 of 2002 on the file of the Appellate Authority for Industrial and Financial Reconstruction (AAIFR) as against the order of the BIFR dated 14-8-2002. Simultaneously, the units also filed a writ petition in W.P.No.15217 of 2002, seeking a direction to the BIFR to quantify the arrears due to them in Case No.631 of 1992. This writ petition was filed on the ground that after hearing the petitioners on 02-4-2002, the BIFR proceeded to pass an order on 09-5-2002 permitting the State Government to dispose of the assets of the watch division, without making any whisper about the claim of the three units. But such a claim made by these petitioners in W.P.No.15217 of 2002 was completely contrary to the facts, as the BIFR actually rejected the claims of the petitioners by order dated 14-8-2002 and the petitioners also challenged the same before the AAIFR in three independent appeals. Therefore, W.P.No.15217 of 2002 was actually an abuse of the process of law. Probably after realising the same, the petitioner came up with a miscellaneous petition in W.P.M.P.No. 37371 of 2013 seeking an amendment of the prayer in W.P.No.15217 of 2002. The effect of the amendment sought, is to direct the Government of Andhra Pradesh to quantify the amounts payable to the petitioner in the case before the BIFR as per the proceedings off BIFR dated 12-04-2006 and as per the directions issued by a Bench of this court in the course of the hearing of the writ petitions. But the amendment sought by the petitioner cannot be allowed in view of the fact that the BIFR did not issue any direction in its proceedings dated 12-04-2006 to make any payment to the petitioner. On the contrary, the BIFR rejected the claim of the 3 units and the same has become the subject matter of challenge in separate writ petitions. Therefore, if a Bench of this had issued any such directions or if the

Government Pleader had given any such undertaking by presuming that there was a direction from BIFR, the same cannot be taken now at the time of final disposal off the writ petition. Therefore, the petition for amendment deserves to be dismissed.

10. The AAIFR dismissed the appeals filed by the three units, by a common order dated 14-5-2003. Challenging the dismissal of their appeals in Appeal Nos.287, 292 and 289 of 2002, the three units filed writ petitions in W.P.Nos.15015, 15016 and 15017 of 2003. After the filing of these writ petitions, the petitioners have come up with a few miscellaneous petitions. Two miscellaneous petitions (W.P.M.P.No.11171 and 11172 of 2005) are for a direction to pay at least half of the claim amount, on the basis of the recommendations made by the General Manager, District Industries Centre. The other 3 miscellaneous petitions (W.P.M.P.Nos.12525, 12521 and 125218of 2012) are for clarifying an order passed by this court on 26.8.2010 at the request of the Additional Advocate General to appoint a negotiation committee for an out of court settlement.

11. After the BIFR rejected the claim of the three ancillary units by the order dated 14-8-2002 and after the AAIFR confirmed the same on appeals by order dated 14-5-2003, the BIFR passed an order on 12-4-2006, directing the winding up of Hyderabad Allwyn Limited with certain further directions. Challenging the said order dated 12-4-2006, of the BIFR, as well as challenging the permission granted by the BIFR to the Industrial Development Bank of India (IDBI) to sell the assets of Hyderabad Allwyn Limited, all these 3 units filed independent writ petitions in W.P.No.9914 to 9916 of 2006. After filing these writ petitions, the petitioners, as usual, came up with a few miscellaneous petitions. One miscellaneous petition (W.P.M.P.No.29898 of 2007) is for condoning the delay in filing some documents, One miscellaneous

petition (W.P.M.P.No.21852 of 2014) is for filing some documents as additional material papers. Three miscellaneous petitions (W.P.M.P.Nos.12522, 12523 and 12524 of 2014) are for clarifying an order passed by this court on 26.8.2010 at the request of the Additional Advocate General to appoint a negotiation committee for an out of court settlement. Three miscellaneous petitions in W.P.M.P.Nos. 25455, 21540 and 21541 of 2014 are for amendment of the prayers made.

12. It appears that M/s. Voltas Limited which took over one division, filed a statutory appeal before AAIFR in Appeal No.119 of 2006 challenging the order of the BIFR dated 12-4-2006, directing the winding up of Hyderabad Allwyn Limited. This appeal filed by Voltas Limited was allowed by the AAIFR by an order dated 15-01-2007, on the ground that after the amalgamation of all the 3 divisions of Hyderabad Allwyn Limited with three different companies, the same ceased to exist and that therefore the question of winding up of the same would not arise. Challenging the said order, all the three units came up with three independent writ petitions in W.P.Nos.6073, 6085 and 6127 of 2007 contending that M/s. Voltas Limited should be directed to discharge the contingent liabilities of the erstwhile company, as per the quantification made by the General Manager of the District Industries Centre, dated 03-4-2001. As in the case of the other writ petitions, the petitioners have bombarded this court with several miscellaneous petitions even in these 3 writ petitions. The prayers made in these M.Ps. are either for clarifying the order dated 26.8.2010 or for suspending the operation of the order of the AAIFR.

13. It appears that in the meantime, Diamond Plast Industries was issued with a recall notice by the Andhra Pradesh State Financial Corporation on 11-8-1994 under Section 29 of the

State Financial Corporations Act and the same was challenged by Diamond Plast Industries in W.P.No.15208 of 1994. This writ petition seems to have dismissed for default on 26-3-2008, as a consequence of which, the Andhra Pradesh State Financial Corporation issued a fresh notice of demand under Section 29 of the State Financial Corporations Act, on 06-5-2008. Challenging the said notice, Diamond Plast Industries came up with a writ petition in W.P.No.10836 of 2008.

14. Thus, we have on hand, thirteen writ petitions filed by the three ancillary industrial units. These 13 writ petitions have given birth to host of miscellaneous petitions. These miscellaneous petitions are mostly for clarifying an order passed on 26.8.2010 or for amendment or for direction to make payment or for constituting a committee for an out of court settlement. If all the miscellaneous petitions are kept aside for a minute, all these thirteen writ petitions can be grouped together into six categories, depending upon the reliefs sought therein. For the purpose of easy appreciation, these six categories are presented in a tabular form as follows:

Category	W.P.No.	Order under challenge	Subject matter
I	14771/94 10836/08	Notice u/S.29 of SFC Act Notice u/S.29 of SFC Act	Dispute between the petitioner and APSFC Dispute between the petitioner and APSFC
II	15208/94	---	Seeking direction against the Govt. to settle the dues to the petitioner before the transfer of undertaking t o Allwyn Watch, Hyderabad.
III	15217/02	---	Seeking a direction to BIFR to quantify the dues payable by HAL to the 3 petitioner units.

IV	15015/03 15016/03 15017/03	Order of AAIFR dated 14-5-2003	The claim of the 3 petitioner units for a direction to HAL and to the Govt. to settle their dues was rejected by BIFR and the rejection order confirmed by AAIFR.
V	9914/06 9915/06 9916/06	Order of BIFR dated 12-4-06	BIFR directed the winding up of HAL and permitted IDBI to sell the assets.
VI	6073/07 6085/07 6127/07	Order of AAIFR dated 15-01-07	Voltas Ltd., filed an appeal before AAIFR against the order of BIFR dt.12-4-06 directing the winding up o f HAL. This appeal was allowed by AAIFR.

15. We have heard Mr. Prabhakar Rao, petitioner appearing in person, in all the writ petitions, the learned Special Government Pleader representing the learned Advocate General for the State of Telangana, Sri M.S. Srinivasa Iyengar, learned counsel for Voltas Company Limited and M/s. Y.N. Lohita, learned Standing Counsel for APSFC.

16. At the outset, the writ petition W.P.No.15217 of 2002 is liable to be dismissed for the simple reason that the relief sought in the said writ petition is for a direction to the BIFR to quantify the dues payable by Hyderabad Allwyn Limited as well as the Government of Andhra Pradesh to the three petitioner units.
But the BIFR has admittedly dismissed the claim of the petitioners by an order dated 14-8-2002. These orders were also confirmed by the AAIFR in 3 independent appeals, by a separate order dated 14-5-2003. The order of AAIFR is separately under challenge in 3 writ petitions. Hence nothing survives in **W.P.No.15217 of 2002 and accordingly it is first dismissed.**

17. The prayer in W.P.No.15208 of 1994 has also become infructuous in view of the fact that the transfer of undertaking of the watch division has already taken place. Therefore, a direction to invoke Article 146A of the Articles of Association of Hyderabad Allwyn Limited does not arise, when that company itself is not in existence. Hence, **W.P.No.15208 of 1994 is also dismissed**.

18. The writ petitions W.P.Nos.14771 of 1994 and 10836 of 2008, challenge the demand notices issued by the Andhra Pradesh State Financial Corporation under Section 29 of the State Financial Corporations Act. The petitioners had not anywhere disputed their liability to pay the amounts due to the State Financial Corporation. Their only contention was that they had already obtained orders from this Court in the presence of the Andhra Pradesh State Financial Corporation, directing the Government to settle their dues. Therefore, the petitioners contend that the Andhra Pradesh State Financial Corporation should wait till the Government settles their dues.

19. But we do not think that the Andhra Pradesh State Financial Corporation is under any obligation to wait. They have waited for more than 30 years. The notices issued under Section 29 of the State Financial Corporation Act are not challenged on any legally tenable grounds. Therefore, **W.P.Nos.14771 of 1994 and 10836 of 2008 are dismissed as devoid of merits**.

20. The writ petitions W.P.Nos.9914, 9915 and 9916 of 2006 challenge the order of the BIFR dated 12-4-2006 directing the winding up of Hyderabad Allwyn Limited and permitting the IDBI to sell the assets.

21. These three writ petitions have become infructuous, in view of the fact that the order impugned therein has already merged with the order passed by the AAIFR on 15-01-2007, on an appeal

filed by Voltas Limited in Appeal No.119 of 2006. The Appellate Authority's order dated 15-01-2007 is separately under challenge by the petitioners in the next three writ petitions. Therefore, **W.P.Nos.9914, 9915 and 9916 of 2006 are dismissed** as infructuous.

22. Coming to the writ petitions W.P.Nos.6073, 6085 and 6127 of 2007 challenging the order of the AAIFR, dated 15-01-2007, it is seen that the AAIFR, by its order dated 15-01-2007 set aside the order of the BIFR for the winding up of Hyderabad Allwyn Limited. We do not know how the petitioners could be aggrieved by the same. The petitioners cannot even be aggrieved by the permission granted to the IDBI to sell the assets, since IDBI was a secured creditor. The petitioners were not. Therefore, **W.P.Nos. 6073, 6085 and 6127 of 2007 are dismissed as devoid of merits.**

23. That leaves us with the last three writ petitions, namely W.P.Nos.15015 to 15017 of 2003. The challenge in these three writ petitions is to the order of the AAIFR dated 14-5-2003 upholding the order of the BIFR rejecting the monetary claim made by the petitioners.

24. A close look at the facts leading to the order of BIFR, which was confirmed by the AAIFR, would reveal that Hyderabad Allwyn Limited was a Public Sector Undertaking promoted by the Government of Andhra Pradesh. It was engaged in manufacturing activities under 3 different divisions, viz., Refrigerator Division, Watches Division and Auto Division. According to the writ petitioners, these 3 units were set up as Small Scale Ancillary Industrial Units of Hyderabad Allwyn Limited, wholly dependent upon the HAL. It is the further case of the petitioners that on the basis of the decisions taken at a joint meeting held on 13-08-1986, between the representatives of HAL, the State and Central

Governments, these 3 industrial units continued the supply of watch components to the Watch Division of HAL at tentative prices. The petitioners claim that for the purpose of fixation of the final prices of the components by the 3 units, a Joint Inspection Team comprising of Technical Officers of the Commissionerate of Industries and Director, M.S.M.E. (Government of India), was constituted in terms of the guidelines dated 02-07-1987 issued by the Bureau of Public Enterprises. According to the petitioners, the prices fixed by the joint inspection team were approved by the State Government and orders passed on 17-08-1987 and 28-09-1987.

25. The petitioners claim that the State Government as well as HAL failed to make payment as per the decisions taken by the Joint Inspection team, forcing the petitioners to file a writ petition in W.P.No.13531 of 1987. It appears that certain directions were issued in the said writ petition by a learned Single Judge and it is claimed that those directions were confirmed by a Division Bench of this Court in W.A.No.388of 1988 by order dated 15-03-1991.

26. However, the Government constituted an Officers Committee, which, by its report dated 31-03-1992 reduced the price. At about the same time, the State Government decided to disinvest from HAL. Therefore, the Government accepted the report of the Officers' Committee dated 31-03-1992, and passed G.O.Rt.No.451 dated 8-5-1992 for payment of a sum of Rs.27.49 lakhs to one these three units.

27. It appears that HAL filed a Special Leave Petition before the Supreme Court against the order of the Division Bench in W.A.No.388 of 1988 and the Supreme Court granted an order of status quo on 15-05-1992. Upon coming to know of the same, the 3 ancillary units rushed to the High Court and filed a writ petition

challenging the disinvestment proposed to be made by the State Government. The petitioners claim that an interim stay of this disinvestment was granted by this Court.

28. In the mean time, HAL became a Sick Industrial Undertaking and they moved an application before BIFR. BIFR took up the matter for investigation in Case No.831/1992. On account of this, the State Government moved an application before BIFR seeking permission for disinvestment. But BIFR felt disinclined to pass any orders in view of the interim orders granted by this Court. Therefore, the Government is stated to have filed an undertaking on 31-03-1993 before this Court to safeguard the interests of the 3 ancillary units. As per their commitment, the Government also passed orders on 30-06-1993 to release the admitted amount of Rs.57.49 lakhs.

29. At this stage, BIFR sanctioned a scheme of Rehabilitation-cum-Amalgamation/Merger on 04.04.1994. The scheme was called SS-94. As per the scheme, the Watches Division and Auto Division of HAL were transferred respectively to Allwyn Watches Limited and Allwyn Auto Limited. In so far as the Refrigerator Division was concerned, it was taken over by Voltas Limited, together with the assets and liabilities.

30. In the mean time, the petitioners made a request to the BIFR to issue appropriate directions for the settlement of the amounts due to them. Since their claims were completely ignored by BIFR in the scheme SS-94 sanctioned by them, the petitioners filed three appeals in Appeal Nos.98, 99 and 100 of 1994. These appeals were dismissed by AAIFR. With this rejection, the fate of the monetary claim that the writ petitioners had against the Government and the Hyderabad Allwyn Limited was sealed.

31. But the petitioners once again went before BIFR and sought an adjudication of their claim and a direction to make

payment. Since the petitioner-units were neither secured creditors nor creditors whose claims had been adjudicated by any forum, BIFR ignored these claims.

32. However, the petitioner-units repeatedly appeared before BIFR and sought an adjudication again and again. Ultimately, BIFR passed an order dated 14-08-2002, rejecting the claims of the 3 units on the short ground that disputed claims cannot be examined by BIFR and that the Government of Andhra Pradesh had not accepted any of the claims of the petitioners.

33. As a matter of fact, heavy reliance was placed by the petitioners, upon an adjudication allegedly and purportedly made by the General Manager, District Industries Centre, Sangareddy quantifying the claims of the 3 units. But it is not known how the General Manager of the District Industries Centre arrogated to himself, the power of such adjudication. Therefore, BIFR rightly rejected the claim of the petitioners on the ground that they had no competence to adjudicate upon these claims.

34. The orders passed by the BIFR on 09-05-2002 and 14-08-2002, ignoring the claims of the petitioners by the former and rejecting the claims positively by the latter, became the subject matter of the challenge in three appeals, Appeal Nos.287, 289 and 292 of 2002. These three appeals were rejected by the AAIFR on the ground inter alia (1) that the Sick Industrial Companies Act did not contemplate the adjudication of such disputes; (2) that BIFR is not a Civil Court and hence, it cannot decide any dispute between two contracting parties; (3) that even in the decisions of this Court in two writ petitions W.P.Nos.15129 and 16293 of 1992, the High Court did not adjudicate and quantify the amount payable to all the 3 units, but directed the petitioners to approach the Civil Court; and (4) that the General Manager, District Industries Centre was not

competent to take upon himself the adjudication.

35. Assailing the common order passed by the AAIFR on 14-05-2003 dismissing all the three appeals Appeal Nos.287, 289 and 292 of 2002, it is contended by Mr. Prabhakara Rao, the petitioner appearing in person that this Court had already issued directions way back in 1991 in Writ Appeal No.388 of 1988 for settlement of the dues and that the General Manager, District Industries Centre already determined the amounts payable and the same was accepted by the BIFR in the previous hearing and that therefore, AAIFR ought to have allowed the appeals.

36. We have carefully considered the above submissions.

37. At the outset, we are of the considered view that these writ petitions are completely devoid of merits and are nothing but an abuse of process of law. The petitioners rely upon (1) the order passed by the General Manager, District Industries Centre; (2) the order passed in Writ Appeal No.388 of 1988; (3) the directions allegedly issued by BIFR in the course of hearings; (4) a report submitted on 14-03-2015 by a Consultant Cost Accountant to the Government of Telangana and (5) repeated orders passed by this Court directing the Constitution of a High Level Committee to put an end to this litigation.

38. But the reliance placed by the petitioners upon every one of the above is completely misplaced.

39. As rightly pointed out by the BIFR, the General Manager, District Industries Centre was not competent to decide whether the petitioners have a genuine and valid claim or not. The General Manager, District Industries Centre cannot arrogate to himself the role of the Industry Facilitation Council, under Section 7A of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993. He is not conferred with the power of adjudication even under the Micro, Small and Medium

Enterprises Development Act, 2006. Therefore, the reliance placed upon a report purportedly given by the General Manager, District Industries Centre long long ago, cannot form the basis of any claim.

40. The reliance placed upon the orders in Writ Appeal No.388 of 1988, is also thoroughly misplaced. After the dismissal of the said writ appeal, several claims were made before several forums including BIFR and they have all been rejected. In any case, the petitioners are not seeking in the present batch of cases, to enforce the orders passed in Writ Appeal No.388 of 1988. Even according to the petitioners, the direction issued in Writ Appeal No.388 of 1988 was only to enforce the BPE guidelines and to grant reliefs. But the matter was taken on appeal to the Supreme Court and the order was put on hold. Thereafter, the order became unworkable due to the subsequent development of the HAL going before BIFR and the petitioners suffering an order from BIFR. Therefore, the order passed in Writ Appeal No.388 of 1988, even if it was in favour of the petitioners, cannot any more be of any assistance to the petitioners.

41. In the course of arguments, the petitioner appearing in person repeatedly reiterated that the Government of Andhra Pradesh ought to have complied with the directions issued by the BIFR and that even the Supreme Court already held that the directions issued by the BIFR were binding on the Government. But the learned counsel appearing for Voltas Limited invited our attention to the fact that contrary to the oral submissions made by the petitioners, the BIFR had in fact rejected their claims. When we confronted the petitioner as to how he could make a false and misleading statement, he told us that in the course of hearings before BIFR, oral directions were issued to the Government to

settle the dues. We do not know how anyone can rely upon oral directions purportedly made by an adjudicating body, especially when the written order passed by such a body stands in complete contrast.

42. Coming to the report of the Consultant Cost Accountant dated 14-03-2015 relied upon by the petitioners, we think the less said, the better. First of all we do not know how a copy of the Expert opinion allegedly tendered on 14-03-2015 by the Consultant Cost Accountant to the Government of Telangana, came into the hands of the petitioners. The petitioners have filed a copy of the Expert Opinion in their paper book. Adding fuel to fire, the petitioners have also filed portions of the current file in C.No.867/IE, Sugar & IFR/2001 of the Government. When we questioned him as to how he got possession of several portions of the current file handled by the Government, the petitioner appearing in person stated that along with a copy of letter addressed by the Government to the Consultant Cost Accountant, the xerox copies of the several portions of the current file were also sent to him. It would have been a different matter if the petitioners had applied under the Right to Information Act, 2005 and obtained copies of the portions of the current file. That was not the case here. The manner in which a copy of the professional advice tendered by an expert to the Government has come into the hands of the petitioners, leaves much to be desired.

43. Be that as it may, the report of the Consultant Expert proceeds on certain extraordinary presumptions without reference to the factual details. The Consultant, very unfortunately, failed to take note of the order passed by the BIFR and confirmed by AAIFR rejecting the claims of the petitioners. Without even verifying the orders passed by the BIFR, the Cost Accountant has indicated in Point No.2 of his opinion that the BIFR had already upheld the initial

claim of the petitioners to the tune of Rs.2,119.74 lakhs and that the same was also upheld by the Hon'ble Supreme Court. Both these statements are completely contrary to the facts. BIFR never upheld any claim of the petitioners at any point of time by an order in writing. Therefore, the Supreme Court could not have had an occasion to uphold the adjudication by BIFR. Except recording our displeasure at the manner in which the Consultant had given his opinion, we do not wish to go further as he is not before us.

44. The petitioners rely upon several orders repeatedly passed by this Court. But he is unable to point out any single order in which his claim stood adjudicated and any direction issued.

45. Unfortunately, by repeatedly knocking at the doors of this Court for the past nearly 29 years, the petitioners have created a huge litigation bank in this Court with reams and reams of paper made into volumes of paper books. Startled by such volumes of paper, which are nothing but a mountain created out of a mole hill, a few orders appear to have been passed in some writ petitions either directing the Government to constitute a Committee to look into the matter or directing the Government to explore the possibility of an out of Court settlement. Such orders either directing the constitution of any Committee to quantify the amounts due to the petitioners or directing the Government to look for an out of Court settlement, cannot form the basis of any claim for payment of money.

46. There are two things in this batch of litigation that actually baffles us. The first is that today the petitioners are seeking a direction to the Government to pay the value of the goods allegedly sold and delivered by them about 30 years ago, to a company which is not in existence for the past 20 years. The monetary claims of the petitioners, which are 30 years old, are

against a non existent company. Therefore, no Court can ever issue a direction of the nature prayed for by the petitioners.

47. The second baffling aspect of the litigation is that what was found way back in 1987 as a claim for payment of Rs.27.00 lakhs, had now grown according to the petitioners appearing in person, to more than Rs.1600 crores. When we questioned the petitioner about this, he stated that he is entitled as per the 1993 Act as well as the 2006 Act, to have interest compounded on a monthly basis and that therefore, his claim for payment of nearly about Rs.1600 crores is legally tenable.

48. Again shockingly, the Consultant Cost Accountant, in his report dated 14-03-2015, has made three different suggestions to the Government for the settlement of the claims. It will be useful to extract the concluding portion of the report of the Cost Accountant dated 14-03-2015 as follows:

"**<u>Opinion:</u>**

1. The matter is sub-judice and has been pending for over two decades.

2. It is a fact that these SSI Units have suffered for a very long time due to protracted delays and their initial claim of Rs.2119.74 lakhs has also been upheld by BIFR and amply supported by the orders of Hon'ble Supreme Court. Further to this, the amount of Rs.534.56 lakhs due to supplies received from SSI as confirmed by ED, HAL and the price difference fixed by Joint Inspection Team that was approved by State Govt. is also payable. This is also evidenced by the factual note submitted before the Hon'ble High Court of A.P. The total amount payable amounts to Rs.2654.30 lakhs (subject to recalculation of correct interest applicable from time). State Government has no option but to pay the amount as it has accepted before the Hon'ble High Court subject to adjusting payments/ deposits made with High Court (Rs.31,60,026/- stated to have been deposited with Hon'ble High Court vide Ch.482588 dt.27-9-1994).

3. The second part of the claim pertains to interest on the above amount of Rs.2,654.30 lakhs from 01-4-2001 till date and the amount of Closure compensation claimed by the parties.

4. The State Govt. has to constitute a Committee for negotiation and settle the amount as directed by the Hon'ble High Court.

5. We have computed the interest at the rates adopting 12.50%,

17.50% and 22.50% considering simple, quarterly and annual compounding and the amount worked out is given below (Refer Annexure I, II and III)

Method of Calculation	**12.50%**	**17.50%**	**22.50%**
Simple Interest	**Rs. Lakhs**		
Claims due as on 31.03.2001	2654.30	2654.30	2654.30
Interest from 1.4.01 to 31.3.15	4645.03	6503.04	8361.05
Annual Compounding			
Claims due as on 31.03.2001	2654.30	2654.30	2654.30
Interest from 1.4.01 to 31.3.15	11152.27	22725.05	42829.39
Total	**13806.57**	**25379.36**	**45483.69**
Quarterly Compounding			
Claims due as on 31.03.2001	2654.30	2654.30	2654.30
Interest from 1.4.01 to 31.3.15	12216.43	26543.75	542.16.18
Total	**14870.73**	**29198.05**	**56870.48**

6. The Committee may negotiate keeping the above working in view and settle the amount at the earliest in order to comply with the Hon'ble High Court Orders."

49. The above opinion tendered by the Consultant is completely contrary to facts, as BIFR never passed an order upholding the claim of the petitioners. The claim, which was stale and hopelessly barred by limitation, can never be entertained by the Government at the cost of public interest.

50. Fortunately, the Government seems to have finally decided to reject the claim of the petitioners, as seen from a file circulated by the learned Government Pleader. Since the note put up by the Joint Secretary, Finance Department to Government on 13-07-2016 clinches all the issues raised by the petitioners and since it now forms part of the very same current file relied upon by the petitioners, we think it appropriate to extract the same as

follows:

".......1. As seen from the BIFR order dated 12.4.2006, there is no direction to pay the amounts to SSI units along with accrued interest as mentioned in sub-para 9 of 408 at page 162 ante. The petitioner wanted the Bench to stay the operation of the order for winding up of the company until the dues if the companies are paid. However, no such stay was apparently granted.

2. Since the sanction granted by BIFR through its order dated 4.4.1994 envisaging amalgamation/merger of M/s. Hyderabad Allwyn Limited (HAL) could not revive the sick company, the BIFR bench through its order dated 12.4.2006 had ordered winding up of the company. Therefore, the operation/implementation of earlier order of BIFR for revival of the company may not be mandatory at this stage.

3. As per the provisions of the Companies Act, the liability of the promoters in a limited liability company is limited only up to its subscription to the share capital. Government being a subscriber to the share capital of the company has its liability restricted only up to its share capital, hence Government cannot be made to take over the liability of a company which is wound up beyond its share capital. We advise the department to examine this issue in the light of the provisions of the Companies Act.

4. The Hon'ble Supreme Court while disposing off the petition directed that the State Government is bound to implement the direction issued by the BIFR. Since the latest BIFR order i.e. 12.4.2006 which has the effect of overriding its earlier order, did not give any direction to pay the dues to the SSI units, there appears no claim against the Government. We advise the department to examine the issue *de novo*.

5. The section 8 of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, puts the onus of payment on the buyer (in the instant case the company which went into liquidation) but not on the promoters of the company which brought the goods. Since the Government is only a promoter of the company, there may not be any liability on the part of the Government directly since it is not a buyer. Even as per the MSMED Act, 2006, there is no liability on the part of the promoter of the company.

6. The department in its note at sub-para 408 at page 163 ante stated that the Government in its affidavit dated 22.7.2011 filed

> before the High Court had admitted the liability. We advise the department to obtain a legal opinion on the authority/sustainability of the affidavit in view of bifurcation of the State and explore the possibility of filing a revised affidavit.
>
> 7. The Section 6 (2) of MSMED Act 2006 envisages approaching the Industry Facilitation Council by any of the party to the dispute i.e., buyer or seller. In the instant case the Government is neither a buyer nor a seller. It is only a promoter of a buyer company whose liability is limited as per the provisions of the Companies Act.
>
> 8. Company is a separate legal person/entity. Its liability cannot be forwarded to Government. It is for the liquidator/ company court to handle such claims."

51. In the light of the wisdom now dawned upon the Government, which is reflected in the noting made in the current file that is extracted above, the monetary claims made by the petitioners upon the erstwhile company (HAL) as well as the Government, are liable to be rejected and the last of the 3 writ petitions also liable to be dismissed. Accordingly, they are dismissed. It is made clear that no further writ petitions on the monetary claims of the petitioners either upon HAL or upon the Government can be entertained. All miscellaneous petitions including those seeking either interim directions or clarifications or for amendment of prayers, in all writ petitions shall stand dismissed. There will be no order as to costs.

V.RAMASUBRAMANIAN,J

A.SHANKAR NARAYANA,J

Date: 04-08-2016

Ak/Ksn