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

\+ W.P.(C) 983/2016

PEGASUS ASSETS RECONSTRUCTION ..... Petitioner

Represented by: Mr.Rajesh Kumar Gautam, Advocate

versus

M/S PARASRAMPURIA SYNTHETICS LTD. & ORS ..... Respondents

Represented by: Mr.Manish Mohan, Advocate with Mr.Shivam Chanana, Advocate for R-3

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

O R D E R

% 11.02.2016

1. Having heard learned counsel for the petitioner we find no merit in the petition for the reason only contention urged in the petition is that in view of the law declared by this Court in the decision reported as (2012) 5 ILR Delhi 411 *Alcatel-Lucent India Ltd. Vs. Usha India Ltd.*, a company cannot make a repeated reference to BIFR for it to be declared a sick undertaking.

2. The decision relied upon does not hold so as an absolute principle of law. The decision would be an authority on the point that with reference to the same set of primary facts repeated references cannot be sought by a company before BIFR for it to be registered as a sick undertaking.

3. In the instant case the relevant facts would be that the fourth attempt by the respondent succeeded for being registered as a sick undertaking before BIFR.

4. At the first reference, BIFR accepted respondent being sick, which order was set aside in appeal filed by a secured creditor because while registering the respondent as a sick undertaking, BIFR overlooked that the company was making profits. Additionally a fault was found by the AAIFR with the computation done by BIFR to come to the conclusion that net worth of the respondent was negative. A second reference was filed and resulted in BIFR declaring that the reference stood abated because one unit of the respondent had been completely taken over by a secured creditor under SARFAESI. Third reference made was held not to be maintainable because the respondent did not correct its balance sheet. The asset which had been taken over by the secured creditor had to be removed with its value from the balance sheet as an asset and corresponding liability had to be decreased with reference to the price realized by the secured creditor by sale on the asset.

5. The impugned order shows that while admitting the reference BIFR has taken note of the earlier three references made and has considered the position of the respondent with reference to the audited balance sheet as of March 31, 2013. We note that the petition filed by the respondent for being declared a sick company has only been registered and BIFR has yet to apply its mind to determine whether the respondent has a negative net worth.

6. The writ petition is accordingly dismissed.

7. No costs.

CM No.4306/2016

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

FEBRUARY 11, 2016
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