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

+ W.P.(C) 1394/2016

M/S CANTRONICS OFFICE EQUIPMENT

PVT. LTD.

..... Petitioner

Represented by: Ms.Ami Jain, Advocate with
Ms.Priya, Advocate

versus

UNION OF INDIA & ORS

..... Respondents

Represented by: Mr.Rajesh Kumar, Advocate with
Mr.Piyush Kumar Gaur, Advocate for
R-1
Ms.Adwaita Sharma, Advocate for
R-2 and R-3
Mr.Manish Mohan, Advocate for
BIFR
Mr.R.L.Chawla, Advocate with
Mr.Madhur Sachdeva, Advocate for
R-6
Mr.Kamal Mehta, Advocate for R-11

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **19.02.2016**

CM No.6120/2016

Allowed subject to just exceptions.

W.P.(C) No.1394/2016

1. Learned counsel for the parties state that the writ petition could be disposed of on the existing pleadings.

2. Yesterday, disposing of W.P.(C) No.1127/2016 Bengal Waterproof Ltd. Vs. UOI & Anr. we had noted a minutes of a meeting dated April 28, 2009 drawn up by the Board of Industrial and Financial Reconstruction, which read as under:-

“Minutes of the meeting of Board for Industrial &
Financial Reconstruction held on 28.3.2009

A meeting of the Board was held on the 28th of April 09 in the room of HM (KCV) when the following were present:

- | | | | |
|------|-----------------------|---|-------------|
| i) | Smt.Binoo Sen | - | Chairperson |
| ii) | Sh.K.Cherien Varghese | - | Member |
| iii) | Sh.Pavan Raina | - | Member |
| iv) | Sh.Nirmal Singh | - | Member |

2. It was resolved that the –

a) Listing procedure attached with the minutes be issued, put up on BIFR Website as well as the Notice Boards immediately.

b) The Cause List of the cases fixed for hearing should also indicate the name of the Counsels/Consultants/CAs or any other authorized representative appearing for the Company.

c) The Cause List for hearing shall continue to be drawn according to the date of their registration provided that precedence will be given to the directions of the superior courts, appellate authority, as well as Bench directions, determination of sickness, mandatory hearings.

d) The cause lists both for miscellaneous petitions/applications, interlocutory applications and other matter, and for original cases will be drawn by the Registrar with the approval of the concerned Bench.

e) On the 4th of March 09, a format had been circulated for submission of applications/misc. petitions to the Bench. This is not being used. Registrar will henceforth in accordance with the listing procedure submit to the Bench, in this format which is again enclosed.

f) Guidelines for Assets Sale Committee be put on the Website.

g) Similarly, guidelines for preparation of Rehabilitation Schemes be put on the Website. The guidelines should also be applicable to preparation of MDRS.

h) While registering a reference, the following will invariably be part of the order-

“The reference as filed by the company as registered. The company is, however, restrained from disposing of or alienating in any manner any fixed assets of the company without the consent of the Board.”

3. Immediate compliance may be ensured of the above procedure and brought into effect from 11th of May, 2009.

Sd/
(Bino Sen)
Chairperson

Sd/
(K.Churian Varghese)
Member

Sd/
(Pavan Raina)
Member

Sd/
(Nirmal Singh)
Member”

3. We had expressed our surprise at the fact that in an administrative meeting of members of BIFR, while resolving issues concerning listing,

cause list, format in which applications have to be filed, guidelines for assets sales committee etc. a decision was taken that whenever a reference is registered for a company or an undertaking to be declared sick the Registrar would inform that the company cannot alienate any fixed asset without the consent of BIFR.

4. We had noted Section 22A of SICA, which 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 -

(a) during the period of preparation or consideration of the scheme under Section 18; and

(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."

5. We had recorded that a perusal thereof shows that the Board has to form an opinion keeping in view public interest or the interest of the sick industrial company or its creditors or shareholders that the sick company should not dispose of its assets without the permission of the Board. The decision being statutory would require BIFR to consider all the relevant facts and pass an order bringing out the public interest or the interest of the sick industrial company or its creditors or shareholders which needs to be protected by restraining the sick industrial company from selling its fixed

assets. This decision cannot be in the nature of a general administrative decision flowing through a practice direction issued in a meeting of BIFR which is an administrative meeting and not a meeting of BIFR discharging quasi judicial functions or statutory functions of BIFR.

6. The grievance of the petitioner is similar to that of writ petitioner of W.P.(C) No.1127/2016, except with the difference that in the instant case BIFR had put the embargo upon the petitioner to sell its fixed assets but without recording the reason for the opinion as to why it was so doing. The AAIFR has agreed with the submission made by the petitioner but has taken away with one hand, what was given by the other by directing that the petitioner can deal with its assets and can dispose of or alienate the same but after filing a proper application before AAIFR and with the permission of AAIFR.

7. The impugned orders passed by BIFR and AAIFR are quashed. If any person has a grievance concerning petitioner selling any fixed asset the application could be filed before BIFR or AAIFR; and noting that as of today both FORAS are not functioning due to members retiring a writ petition could be filed in this Court.

8. No costs.

CM No.6119/2016

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

FEBRUARY 19, 2016

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