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

% *Date of Decision : July 15, 2016*

\+ **W.P.(C) 5716/2016**

KRYSTAL STONE EXPORTS LTD. ..... Petitioner
Represented by: Mr.Shashank Deosudhi, Advocate

versus

STRESSED ASSET STABILIZATION FUND & ORS. ...... Respondents
Represented by: Mr.Abhishek Anand, Advocate of R-1

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. The writ petitioner is aggrieved by an order dated January 18, 2016 passed by AAIFR dismissing Appeal No.176/2006.

2. Reference made by the petitioner was dismissed by BIFR on July 11, 2005 by a detailed speaking order. The petitioner did not appear before BIFR. The appellate order under challenge has been passed after hearing the writ petitioner and dealing with the various factual aspects of the matter which were highlighted by BIFR in its order dated July 11, 2005.

3. For record we note that in the order dated July 11, 2005, BIFR has noted that the petitioner was served with a notice to appear before the Board for July 11, 2005.

4. The grievance of the petitioner that AAIFR ought to have remanded the matter to BIFR because BIFR passed the order dated July 11, 2005 on merits without hearing the petitioner is noted and rejected by us at the

threshold for the reason AAIFR was fully competent to deal with the merits of the matter by looking into the original record and was not bound to simply remand the matter to BIFR and especially for the reason before AAIFR the petitioner prayed for and was granted opportunity to settle the dues with its creditors.

5. Concerning the merits of the matter, suffice to note that as per the pleadings in the writ petition the petitioner was incorporated on May 24, 1995 and commenced commercial production on June 01, 1999. It took a term loan from IDBI in Italian Lira equivalent to ₹325 lacs which was converted into US dollars by IDBI and with the rise in the price of the dollar over the period of years the term loan swelled to ₹720 lacs, and as per the petitioner its net worth became negative in the financial year April 01, 2001 – March 31, 2002 and therefore it made a reference to BIFR under Section 15 SICA which was heard and dismissed on July 11, 2005.

6. The prolix writ petition spanning 76 pages is thereafter full of verbosity, but the distillate would be, as has to be, to question the findings of fact returned by AAIFR in the impugned order dated January 18, 2016.

7. We crystallize the findings returned.

8. The first finding is that ample opportunities were given by AAIFR to the petitioner to clarify its financial status and whether it had engaged 50 or more than 50 employees and was currently in manufacturing business or the unit was lying closed with no employees.

9. AAIFR has noted that 3 opportunities were given to file explanatory affidavits and 3 affidavits were filed on October 18, 2014, February 25, 2015 and October 17, 2015. As per the impugned order the affidavits were wishy-washy and failed to explain the grey areas. The impugned order records that balance sheets filed before the Registrar of Companies showed

different figures vis-a-vis what was supplied to the financial institutions. AAIFR has noted that the response to this aspect i.e. of filing two different balance sheets showing different figures of turn over etc. was explained by the petitioner in its affidavit as follows:-

> *"The allegation of the respondent company that the company has indulged into manipulation of accounts, and say that there is no reason of manipulation of accounts of the company, as stated above that the company being 100% (Export Oriented Unit) EOU, is exempted from payment of direct or indirect taxes. Hence, there remains no reason for the appellant company to manipulate accounts or/and prepare two balance sheets, as alleged by the respondents."*

10. AAIFR has highlighted, and in our opinion rightly, that the explanation was wishy-washy and does not explain as to how come balance sheets supplied to the financial institution did not match with what was filed with the Registrar of Companies. We only add that it is no argument that the petitioner is a 100% export oriented unit and is exempt from payment of direct or indirect taxes and thus there could be no motive because there was no benefit to manipulate the accounts. Well, the promoters of an export oriented unit can simply siphon away the funds and this could be a reason to falsify the record pertaining to accounts and this is motivation enough to falsify the accounts and it is irrelevant that the export oriented unit had to pay no taxes.

11. The second point noted by AAIFR is that as per the order passed by IDBI, the manufacturing unit of the petitioner was lying closed since the year 2003 and the electricity connection at the manufacturing unit at RICCO Industrial Area, Jaipur-Rajasthan had been disconnected. AAIFR has noted that required to clarify on affidavit, the petitioner filed the affidavit on October 18, 2014 disclosing as under:-

"Manufacturing goods in the year 2001-02 = 110.21 lacs ..... The company thereafter continued manufacturing since 2009 till date."

12. The conclusion drawn by AAIFR is that even as per the affidavit, it would be apparent that the manufacturing unit was closed since the year 2002. AAIFR has further noted that in Form-A filed by the petitioner before BIFR, in column No.28 nothing had been stated with regard to cost of production and from said fact has inferred of there being no manufacturing activities since the year 2002, an inference with which any logical person would agree.

13. AAIFR has thereafter noted Section 3(1)(e)(f)(o) of SICA and 3(c) of IDR Act, 1951, which requires the company to be engaged in manufacturing activities with minimum 50 workers on the rolls on any day during the financial year when the reference had been filed.

14. AAIFR has noted that in Form-A filed along with the reference to BIFR, the petitioner showed having employed 59 workers as on the date of the reference but failed to give any proof, and required to produce ESI certificates the petitioner failed to do so inasmuch as the documents filed showed employment after August 01, 2015. AAIFR has further noted that for the year 2001-02 in Form-A filed with the reference before BIFR, showing 59 workers engaged, total salary shown paid was ₹7,53,538.50, during which period, as per Minimum Wages Act daily minimum wage per worker was ₹45/- and so calculated, the figures shown were incorrect.

15. AAIFR has noted that to get over the assertion of IDBI that the manufacturing unit was closed the petitioner had filed certain electricity bills, but with reference thereto has opined that so meagre is the electricity consumption that continued manufacturing activity is ruled out.

16. AAIFR has then noted that the allegation of IDBI that directors of the

petitioner and its promoters had gone abroad was refuted vaguely by the petitioner.

17. AAIFR has thereafter noted that filed in the year 2003, till AAIFR decided the matter, the petitioner had made no serious effort to settle the dues with any creditor in spite of AAIFR having granted opportunities during pendency of the appeal.

18. AAIFR has lastly noted the grievance of the Union of India that directions issued by the Excise Department requiring petitioner to furnish information remained uncomplied with on the pretext that the petitioner was a 100% export oriented unit, which response overlooked that it could either be a ruse to not supply documents to a department or perhaps even some kind of a manufacturing activity which resulted in local sales and hence evasion of tax. But on the facts of the instant case highly suggestive of there being no manufacturing activity at all.

19. Suffice it to state that each and every finding returned by AAIFR is one of fact and is supported by evidence. The prolix writ petition relies upon data generated by the petitioner and projected in the shape of its sales and receipts and we find no serious attempt made in the pleadings to refer to any particular document and with reference thereto even make an attempt to urge that the same was a material document overlooked by AAIFR.

20. It is useless for the petitioner to keep on referring to its balance sheets for the reason there is evidence that the petitioner is preparing different balance sheets, one for the purpose of the financial institution and the others filed with Registrar of Companies.

21. The petitioner has not produced any record of the Employees Provident Fund Commissioner or ESIC, with which the petitioner has to be registered if it claims to be continuing with its manufacturing activity and

having employed more than 50 workmen. This would be the best evidence to show continued employment and wages paid to the employees. It is trite that where a party suppresses best evidence a presumption can be raised against the party that if the same was produced it would be against the claim of the party.

22. AAIFR has rightly opined that the shown salary figures in the accounts for the year 2001-02 was ex-facie false because claim of having employed 59 workmen, wages calculated even at the minimum wage would result in the annual salary bill being more.

23. It is trite that a Writ Court would not re-appreciate findings of facts returned by specialized Foras unless shown to be ex-facie perverse and unreasonable.

24. None could be shown to us at the preliminary hearing held on July 11, 2016 when we heard arguments on the question whether the writ petition needs to be admitted.

25. The writ petition is accordingly dismissed in limine but without any orders as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

JULY 15, 2016
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