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

+ W.P.(C) 3489/2016

M/S JENSON & NICHOLSON (INDIA) LTD Petitioner
Represented by: Mr.Amit Anand Tiwari, Advocate
with Mr.Abhinav Raghuvanshi and
Mr.Girish Kumar, Advocates

versus

UNION OF INDIA AND ANR Respondents
Represented by: Mr.Dev P.Bhardwaj, Advocate for
R-1
Mr.Satish Kumar, Advocate for
Customs and Central Excise

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **27.04.2016**

CM No.14950-51/2016

Allowed.

W.P.(C) No.3489/2016

1. On February 18, 2016 W.P.(C) No.1127/2016 was disposed of by passing the order as under:-

1. In response to the directions contained in the order dated February 10, 2016, the Registrar BIFR has produced through his counsel 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.Churian 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/
(Binoo Sen)
Chairperson*

*Sd/
(K.Cherian Varghese)
Member*

*Sd/
(Pavan Raina)
Member*

*Sd/
(Nirmal Singh)
Member”*

2. Learned counsel for Registrar BIFR states that reference in the impugned communication dated January

29, 2016 by the Registrar BIFR is the result of the aforementioned decision taken by Members of BIFR on April 28, 2009.

3. The communication dated January 29, 2016 addressed to the petitioner by Secretary BIFR informs that reference made by the petitioner under Section 15 of SICA, 1985 has been registered as Case No.21/2016 and therefore the petitioner company is restrained from disposing of or alienating the fixed assets of the petitioner without the prior consent of BIFR.

4. Whilst it may be a starting point of a decision that a sick company in respect whereof reference has been admitted should not dispose of its fixed assets pending consideration whether a scheme of rehabilitation, but a judicial decision has to be taken on that aspect of the matter in view of Section 22A of SICA, 1985 which requires BIFR to form an opinion that in public interest a sick industrial company should be restrained from disposing of its fixed assets pending consideration of a scheme for revival.

5. It is settled law that where a statute vests a power and prescribes a manner of exercise thereof, the power has to be exercised in the manner prescribed and in no other way.

6. Section 22A of SICA 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."

7. 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.

8. The writ petition is accordingly disposed of quashing the direction in the letter dated January 29, 2016 addressed by Registrar BIFR to the petitioner that it would not dispose of or alienate its fixed assets for the reason the Registrar BIFR has communicated said facts in terms of the administrative decision taken in the year 2009 by BIFR. The administrative decision taken on March 28, 2009 being an administrative decision is quashed with a direction that said decision would be removed from the practice directions of BIFR.

9. No costs."

2. In view of the order above noted, learned counsel for the respondents state that the writ petition could be disposed of today itself because no counter affidavit is needed.

3. Suffice it to state that reference made by the petitioner to BIFR has been admitted and no order has been passed by BIFR prohibiting petitioner from selling, transferring or alienating its assets without the permission of BIFR. The Registrar of BIFR has, while communicating the reference being admitted, informed the petitioner that it cannot sell its assets. Said letter being challenged before AAIFR has resulted in the order being passed by AAIFR on December 03, 2015 that no appeal lies against a letter addressed by the Registrar of BIFR.

4. We dispose of the petition quashing para 2 of the letter dated March 20, 2015 addressed by the Registrar BIFR to the petitioner because there is no order passed by BIFR which has resulted in para 2 being communicated by the Registrar of BIFR to the petitioner.

5. No costs.

CM No.14949/2016

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

APRIL 27, 2016

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