$~18 & 23

5

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

\+ W.P.(C) 1345/2016 & CM 5853-5854/2016,6883-6886/2016,20668/2016

M/S J K JUTE MILLS CO. LTD ...... Petitioner

Through: Ms Purti Marwaha, Adv. with Mr C.S. Chauhan, Adv.

versus

UNION OF INDIA & ORS ..... Respondents

Through: Mr Dev P. Bhardwaj, CGSC for R-1.

\+ W.P.(C) 3465/2016 & CM 14840/2016,22091/2016,22097-22098/2016

LIBRA RETAILERS PVT LTD & ANR ...... Petitioners

Through: Mr Rakesh Tiku, Sr. Adv. with Ms Hetu Arora Sethi, Mr Shravan Sahney, Advs.
Mr Amit S. Chaddha, Sr. Adv. with Mr Atanu Mukherjee, Adv. for the applicant.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Ms Purti Marwaha, Adv. for J.K. Jute Mills. Co. Ltd.
Mr Bhagvan Swarup Shukla, Adv. for UOI.

CORAM:
HON'BLE MR. JUSTICE BADAR DURREZ AHMED
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

% **02.06.2016**

These petitions have been filed with virtually identical prayers. One of the prayers is that an appropriate order be issued for setting aside the order dated 11.01.2016 passed by the AAIFR pertaining to the consideration of the SIA report in respect of J.K.Jute Mills Co. Ltd. The other prayer that has been made in both these petitions is that a direction be issued to BIFR to consider the net worth position of the said company based on the latest balance sheet only. Insofar as the second prayer with regard to consideration of the latest balance sheet only is concerned, we note that the said order was a consent order as noted in the impugned order dated 11.01.2016. Consequently that prayer cannot stand.

With regard to the issuance of a direction concerning the consideration of the SIA report by BIFR, we may point out that in ***Ghanshyam Sarda v. Shiv Shankar Trading Company*** : **(2015) 1 Supreme Court Cases 298**, which was a case concerning the very same company which is before us, the Supreme Court had clearly observed in paragraph 37 as under:-

> "**37.** In the circumstances, we allow the present appeals and set aside the order dated 6-1-2014 passed by the High Court of Gauhati in *Ghanshyam Sarda* v. *Shiv Shankar Trading Co.* It is held that Title Suit No. 166 of 2013 pending on the file of the learned Civil Court at Kamroop, Gauhati is not maintainable insofar as it seeks declaration that the Company was no longer a sick company within the meaning of the Act and that BIFR ceased to have jurisdiction over the Company and that all the proceedings in BIFR after filing of the positive balance sheet were without jurisdiction. Consequently the order of injunction passed by the civil court is set aside. Insofar as the said suit pertains to the claim for recovery of money from the Company, the suit could lie and be proceeded with only after express consent of BIFR is received by the plaintiff. We direct that the Company i.e. J.K. Jute Mills Co. Ltd. having its registered office at Kanpur, U.P. continues to be under the jurisdiction of BIFR. We leave it to BIFR to satisfy itself and determine the issues whether the net worth of the Company has turned positive or not. If BIFR is so satisfied, it shall deregister the Company and upon such declaration the Company will be out of the supervisory jurisdiction of BIFR under the Act. Needless to say that if BIFR is not satisfied that the net worth of the Company has turned positive, it shall go ahead and consider the scheme for revival of the Company. We direct BIFR to complete this exercise within two months from the date of receipt of this order. We have refrained from dealing with the matter concerning the merits or demerits of the claim that the net worth has turned positive nor have we dealt with the report made by State Bank of India in its special investigative audit. We leave these issues to be considered by BIFR at an appropriate stage. We have also not dealt with the submissions alleging bias as the matters in that behalf are still pending consideration before the authorities and we leave these issues to be dealt with at an appropriate stage."

(underlining added)

It is clear from the above extract that the Supreme Court had categorically observed that they had not gone into the merits or demerits of the claim that the net worth of the said company had turned positive, the Supreme Court had also not dealt with the report made by the State Bank of India in its special investigative audit and had left these issues to be considered by BIFR at the appropriate stage. The AAIFR by virtue of its impugned order has also only directed that the BIFR, if it decides to take into consideration the said SIA report, it should provide a reasonable opportunity to the parties for making their respective submissions with respect thereto as required under the proviso to clause 40 of the Industrial and Financial Reconstruction Regulation, 1987. We are of the view that no further directions are necessary but in order to bring clarity on the issue of the SIA report, we are directing that it is for the BIFR to decide as to whether it would take the SIA report into consideration or not. The parties can present their respective arguments on this aspect of the matter. It is also clear that in case, after hearing arguments of the parties, BIFR decides to take the said SIA report into consideration it would again give opportunity to the parties to making respective submissions with respect to the said report.

The matter shall now be listed before the BIFR, in the first instance, on 08.06.2016.

The interim order stands vacated. The writ petitions stand disposed of.

Dasti under the signature of the Court Master.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

JUNE 02, 2016
kb