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

+ **W.P.(C) 8404/2016**

FORECH INDIA PVT LTD

..... Petitioner

Through: Ms. Purti Marwaha and Ms. Henna
George, Advs.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Manish Mohan, CGSC for R1 and
R5.

CORAM:

HON'BLE MS. JUSTICE INDIRA BANERJEE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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23.09.2016

CM. NOs. 34760/2016 and 34761/2016 (for exemptions)

Exemptions allowed subject to all just exceptions.

Application disposed of.

W.P.(C) 8404/2016

1. The petitioner is a creditor of the respondent no.2, M/s. Tecpro Systems Limited (hereinafter referred to as Tecpro), which has been referred to the BIFR. It is the case of the petitioner that Tecpro is admittedly indebted to the petitioner to the extent of Rs.1.35 Crores (principal) as found by the learned Company Court in proceedings for winding up of Tecpro.

2. According to the petitioner, an application to the Board for Industrial and Financial Reconstruction (BIFR) under the provisions of Sick Industrial Companies (Special Provisions) Act, 1986 has deliberately been made by Tecpro to take advantage of Section 22 of the said Act. It is the case of the petitioner that the accounts of Tecpro have been manipulated in order to get the benefit of Section 22 (1) of Sick Industrial Companies Act.

3. In this writ petition, the petitioner has sought orders of this Court for de-registration of the reference of Tecpro under the provisions of SICA, withdrawal of protection to Techpro under Section 21 (1) of SICA and other related reliefs.

4. The prayers in this writ petition cannot be granted, by this Court in proceedings under Article 226 of the Constitution of India. This Court exercising its writ jurisdiction cannot determine whether the accounts of Tecpro have been manipulated.

5. It is the case of the petitioner that the BIFR is non-functional for want of members and for want of a Chairman. The writ Court cannot exercise the functions of the BIFR just because the BIFR is not functional. In any case,

it appears that in an application being CM No.9905 of 2016 in a Public Interest Litigation, ***Henna George v. Union of India*** and Ors. (W.P.(C) No. 8693 of 2014), the Division Bench of this Court presided over by the Hon'ble the Chief Justice passed an order, the operative part whereof is set out herein below for convenience:

“ 15. We, therefore, direct that immediate steps be taken by the respondents to assign additional charge to not less than six eligible Government Officers to act as Members of BIFR and AAIFR in addition to those who are already working and they shall hold proceedings on all working days not later than 3:00 p.m. The necessary orders to that effect shall be issued by the respondents within four weeks from today.

16. We also direct that in case the entrustment of cases of BIFR and AAIFR to NCLT and NCLAT is likely to be delayed further, the directions of this Court dated 27.11.2015 in W.P.(C) 8693/2014 shall be given effect to within three months from today without fail.”

6. It is expected that the order of the Division Bench presided over by the Hon'ble the Chief Justice shall be carried out with utmost expedition. We are informed that a member has assumed charge yesterday. Other appointments are also in process and another member is expected to assume charge within a week or so. Learned counsel appearing on behalf of the petitioner submitted that BIFR cannot possibly function without a Chairman

and at present there is no Chairman. However, Section 6 (5) of SICA provides that in the event of any vacancy in the Office of the Chairman for whatever reason, any one of the members, as the Central Government may by notification authorize in this behalf, might act as the Chairman till the date on which a new Chairman is appointed in accordance with the provisions of SICA.

7. In order to give effect to the order of the Division Bench in its true spirit, a Chairman shall also be expeditiously be appointed and pending such appointment, notification will be issued by the Central Government authorizing one of the members to function as Chairman so that the BIFR is completely functional.

8. As observed above, the prayers sought cannot be granted by this Court. We dispose of the petition with a direction on the BIFR to consider the prayer of the petitioner for expeditious adjudication of the reference of Tecpro, taking into account, the objections of the petitioner and other creditors, if any, as expeditiously as possible, preferably within 8 weeks from the date of constitution of the Bench.

9. Needless to mention that the application of the petitioner being M.A.

385/2015 shall also be disposed of within the above timeframe.

CM. NO. 34762/2016 (for directions)

Dismissed as infructuous.

INDIRA BANERJEE, J

V. KAMESWAR RAO, J

SEPTEMBER 23, 2016/jg