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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 9904/2016, CM No. 39410/2016**

JAYESH PRAKESH AND ORS Petitioners
Through: Mr.Aniruddha Deshmukh, Adv.

versus

**THE LD REGISTRAR BOARD FOR INDUSTRIAL AND
FINANCIAL RECONSTRUCTION** Respondent
Through:

CORAM:
HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER
% **24.10.2016**

1. No one appeared to oppose the writ petition. The short question involved in this writ petition is whether the Registrar of the Board for Industrial and Financial Reconstruction constituted under The Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as 'SICA') could have refused to list the application no.4604 (MA) of the petitioner on the ground that the reference of M/s C&M Farmings Ltd. case no.94/2006 had already abated pursuant to an order of the Third Bench of the BIFR passed on 13th June, 2016.

2. In the context of the issues raised in the writ petition, it would be

pertinent to very briefly enumerate the facts that have given rise to the order of the learned Registrar impugned in this writ petition.

3. The company M/s C&M Farmings Ltd. was referred to BIFR under the provisions of Section 15 of the SICA.

4. It is the case of the petitioners, who are unsecured creditors, that the company had sold its industrial undertaking in contravention of orders of BIFR to the detriment of its creditors and then made an application to the BIFR stating that it had ceased to be an industrial undertaking and was hence not within the purview of SICA. Accordingly, an order was passed on 13th June, 2016 dismissing the reference case no.94/2016.

5. The petitioner made the application referred to above under Section 33 of the SICA. The learned Registrar as observed above, has declined to even list the application on the ground that a reference has already been disposed of by the order of dismissal referred to above.

6. Section 33 of the SICA provides as follows:-

33. Penalty for certain offences —

(1) Whoever violates the provisions of this Act or any scheme, or any order of the Board, or the Appellate Authority and whoever makes a false statement or gives false evidence to the Board or the Appellate Authority, shall be punishable with simple imprisonment for a term which may extend to three years and shall also be liable to fine.

[(2) No court shall take cognizance of any offence under sub-section (1) except on a complaint in writing of the Secretary or any such other officer of the Board or the Appellate Authority or any such officer of an operating agency as may be authorised in this behalf by the Board or the Appellate Authority.]

7. On perusal of the said section, it is clear that cognizance of complaint of an offence can only be taken pursuant to an order of the BIFR under Section 33. An application under Section 33 would necessarily have to be decided by the BIFR, and no other Court.

8. The learned Registrar in our view had no power, authority and jurisdiction to decline to list the application. Whether the application was not maintainable by reason of the proceedings having abated and/or the proceedings having been disposed of, was a matter which required to be decided by a Bench of BIFR after opportunity of hearing to the respective parties.

9. The application has been returned to the petitioner. It will be open to the petitioner to re-file the application which has been returned to the BIFR. If and when the application is filed, the same shall be given a number listed before a Bench of BIFR.

10. The writ petition is thus, disposed of by directing the registry of the BIFR to list the application before a Bench of BIFR, as soon the same is refilled. The BIFR shall decide the application in accordance with law.

Dasti under the signatures of the Court Master.

INDIRA BANERJEE, J

ASHUTOSH KUMAR, J

OCTOBER 24, 2016
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