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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : May 06, 2016

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W.P.(C) 6299/2015

M/S KRISHNA ENGINEERING WORKS LTD. Petitioner

Represented by: Ms.Purti Marwaha Gupta, Advocate
with Mr.Arvind Kumar Gupta and
Ms.Henna George, Advocates

versus

UNION OF INDIA & ORS

..... Respondents

Represented by: Mr.Balraj Dewan, Advocate for
applicant in CM No.9439/2016
Ms.Mrinalini Sen Gupta, Advocate
with Ms.Namisha Gupta, Advocate
for R-1
Ms.Gurmeet Bindra, Advocate for
R-2
Mr.D.Verma, Advocate for R-5

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

CM No.9439/2016

1. Allowed as prayed for.
2. The Employees Provident Fund Organization is permitted to intervene in the writ petition.

W.P.(C) No.6299/2015

1. It pains us to note, an attitude which we are repeatedly observing, that the members of the AAIFR take umbrage when inchoate orders written by the Appellate Board are set aside by this Court in exercise of powers under

Article 226 of the Constitution of India resulting in the appeals being disposed of on a second occasion with rancour and hence the issue arising not even being considered.

2. Admitting reference and declaring petitioner to be a sick industrial undertaking, attempts made by BIFR to frame a scheme for rehabilitation of the petitioner could not materialize resulting in Case No.144/1999 i.e. the reference, being dismissed.

3. Now, the mandate of sub-Section 1 of Section 20 of SICA, 1985 is to record that it is just and equitable that the company should be wound up and make a reference to the High Court. We reproduce sub-Section 1 of Section 20 of SICA, 1985. It reads:-

“20. Winding up of sick industrial company –

(1) Where the Board, after making inquiry under Section 16 and after consideration of all the relevant facts and circumstances and after giving an opportunity of being heard to all concerned parties, is of opinion that the sick industrial company is not likely to make its net worth exceed the accumulated losses within a reasonable time while meeting all its financial obligations and that the company as a result thereof is not likely to become viable in future and that it is just and equitable that the company should be wound up, it may record and forward its opinion to the concerned High Court.”

4. Learned counsel for the parties concede that BIFR could not have dismissed the reference. It had to record the reasons why it was just and equitable that the petitioner be wound up and then refer the matter to the High Court.

5. The order passed by BIFR on March 26, 2014 was challenged before AAIFR and unfortunately resulted in a cryptic order being passed as under:-

“After hearing the parties present, we find that the

appellant has failed to make any prima-facie case, which may require any interference in the impugned order by us. The appeal is dismissed accordingly.”

6. It is unfortunate that a specialized Appellate Tribunal overlooked that the dismissal of the reference sought by the petitioner left the petitioner midstream. Law contemplates that if BIFR opined that it was not reasonably viable to put the petitioner on the rail track, recording reasons as to why it was just and equitable to wind up the petitioner a reference had to be made to the High Court.

7. Challenge to the cryptic order passed by BIFR resulted in W.P.(C) No.8816/2014 being allowed noting that the choice before BIFR was either to frame a scheme for rehabilitation of the petitioner or order its winding up. The order dismissing the reference was ex-facie illegal.

8. The wrong found in the order passed by AAIFR was not to cure the defect in the order passed by BIFR. Which course of action had to be adopted had thus to be decided by AAIFR for the reason it is the duty of the Appellate Fora to correct a wrong committed by the Fora of Original Jurisdiction.

9. Setting aside the order dismissing the appeal, W.P.(C) No.8816/2014 was disposed of on January 22, 2015 directing AAIFR to pass a proper order.

10. At the remanded stage AAIFR has noted the past history and has formed an opinion that the petitioner could not be revived and has therefore directed it to be wound up.

11. But AAIFR has overlooked the fact that before a final decision was taken whether the petitioner could be wound up a public notice had to be issued inviting third parties to take over the petitioner and the reason thereof

is that stripped of its corporate identity, licenses and permissions obtained including electricity connection, water connection etc., a bare sale of the land and machinery of the petitioner would fetch a low price, for the reason licenses, permissions and sanctions also have a value. If nobody came forward to take over the petitioner the inevitable would be to kill the petitioner i.e. wind it up and sell its tangible assets and pay the dues to the creditors. Learned counsel for the respondents concede that if rather than selling the assets of the petitioner, a third party could take over the petitioner for a price, the said price would be more than the price of the land and machinery.

12. The impugned order has therefore to be set aside and matter remanded before BIFR with a direction that it should not consider the first option i.e. a scheme for revival of the petitioner for the reason we find that for 15 long years after the reference was admitted no viable scheme to revive the petitioner could be sanctioned but before ordering its winding up an attempt has to be made whether somebody was willing to pay a price to take over the petitioner as a corporate entity with all its assets. The possibility of that price being more than the price fetched by selling the land and building looms large in the realm of reality.

13. But before passing formal orders we note that the land and building of the petitioner, mortgaged to PSIDC, has been taken possession of by PSIDC which is willing to enter into a onetime settlement in sum of ₹10 crores, out of which ₹2 crores have to be paid by May 31, 2016 and the balance as per policy in instalments. The petitioner has already paid ₹50 lacs to PSIDC. The OTS has been accepted. The petitioner has to make further payment of ₹1.5 crores. If petitioner does so the possibility of a person willing to take over the management of the petitioner at a better price would be there; it

would also strategically open up the possibility of the existing management infusing capital by co-opting outsiders in the management thereby augmenting the funds available to pay the debtors.

14. Therefore we note that as of today possession of the land and building of the petitioner is with PSIDC but the possibility of an OTS succeeding is bright. Thus at the remanded stage BIFR would take into account this aspect and while issuing a public notice inviting offers to take over the management of the petitioner would indicate said fact.

15. The petition is disposed of setting aside the impugned order dated June 04, 2015. Appeal No.190/2014 is allowed. Order dated March 26, 2014 passed by BIFR is quashed.

16. Case No.144/1999 before BIFR is revived for orders to be passed by BIFR guided by the present decision.

17. No costs.

CM No.11469/2015

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

MAY 06, 2016
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