

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON: 11-07-2017

ORDERS PRONOUNCED ON : 17-07-2017

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.10701 of 2017

and

WMP No.11653 of 2017

- 1.Madras Labour Union,
Regd. No.722,
Rep. by its Vice-President,
No.176, Strahans Road,
Chennai-600 012.
- 2.B & C Mills Staff Union,
Regd. No.2399,
Rep. by its General Secretary,
No.60, Krishadoss Street,
Chennai-600 012. ... Petitioners

Vs.

- 1.The Board for Industrial and Financial
Reconstruction,
Rep. by its Secretary,
Jawahar Vyapar Bhavan,
No.1, Tolstoy Marg,
Janpath,
New Delhi-110 001.
- 2.National Company Law Tribunal,
Chennai Bench, Rep. by its Registrar,
No.29, Corporate Bhawan,
UTI Building, III Floor,
Rajaji Salai,
Chennai-600 001.
- 3.The Management of Binny Ltd.,
No.106, Armenian Street,
Chennai-600 001.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, seeking for the issuance of a Writ of Mandamus, directing the first respondent Board to transfer the petition dated 14.5.2014 in Case No.48 of 1993 and all connected

records to the second respondent Tribunal forthwith and to direct the said Tribunal to dispose of the above petition along with all other connected petitions after giving sufficient opportunity to the petitioners.

For Petitioners	: Mr.N.G.R.Prasad, Senior Counsel for M/s.Row and Reddy.
For Respondents	: Mr.P.S.Raman, Senior Counsel for Mr.Anand Gopalan for M/s.T.S.Gopalan & Co.

O R D E R

The writ petitioners are Madras Labour Union and B & C Mills Staff Union, filed this writ petition for a direction to the first respondent-Board for Industrial and Financial Reconstruction, to transfer the petition dated 14.5.2014 in Case No.48 of 1993 and all connected records to the second respondent-National Company Law Tribunal, Chennai Branch forthwith and direct the said Tribunal to dispose of the above petition with all connected petitions after giving sufficient opportunity to the petitioners within a time frame.

2. The factual matrix required to be considered with relevance to the prayer sought for in this writ petition is that the third respondent-Company became a sick company under the Sick Industrial Companies (Special Provisions) Act, 1985, in the year 1993. Consequently, the third respondent-Company was declared as a sick company under the said Act in Case No.48 of 1993. Sincere attempts were initiated by the first respondent-Board to rehabilitate the third respondent-Company and the entire efforts taken went in vain. A winding up notice was issued and at that point of time, the third respondent-Company filed WP No.14856 of 2003, challenging the order passed by the first respondent-Board and the Appellate Authority. The High Court by order dated 24.11.2003 framed a Scheme and directed the first respondent-Board to sanction the said Scheme under Section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as 'SICA Act').

3. The learned Senior Counsel, appearing for the writ petitioners, Mr.N.G.R.Prasad strenuously contended that the third respondent-Company was directed to establish a Textile Mill in Kancheepuram District, within a period of 18 months from the date of order as per the sanctioned Scheme and the same would provide employment to at least thousand workers who left without job. The Scheme was sanctioned by the first respondent-Board by an order dated 23.10.2003. However, the third

respondent-Company did not implement the statutory Scheme of establishing a new Textile Mill in Kancheepuram District. The learned Senior Counsel contended that the writ petitioners filed an application on 14.5.2014 for a direction to implement the Scheme and to monitor the same. M.A.No.325 of 2014 filed to expedite the hearing of the application dated 14.5.2014 was also dismissed for non-prosecution on 4.8.2014. Thereafter, the writ petitioners filed WP No.34923 of 2015 and this Court passed an order on 13.10.2015, directing the first respondent-Board to consider the application dated 14.5.2014 on merits within a period of eight weeks from the date of receipt of the copy of the order. Though number of petitions were filed in this regard, it is relevant to point out that the SICA Act was repealed by the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 (Act 1 of 2004).

4. The learned Senior Counsel, in support thereof, contended that consequent to the repealing of the Act, all the proceedings pending before the first respondent-Board would get abated and therefore, the petitions pending to be transferred and proceedings would be continued before the second respondent-National Company Law Tribunal, Chennai Branch, in view of the Rule 4 of the Companies (Transfer of Pending Proceedings) Rules, 2016.

5. In this regard, in paragraph 11 of the affidavit filed in support of the writ petition states that the writ petitioners are keen to pursue the case No.48 of 1993 and other connected proceedings thereof should also be continued before the second respondent-Tribunal. The writ petition filed by the third respondent-Company in WP No.29794 of 2016 was withdrawn by the third respondent.

6. At the outset, the learned Senior Counsel appearing for the writ petitioners restricts his argument mainly on the ground that all the grievances of the writ petitioners are not redressed and therefore, it is necessary to transfer all the applications along with the case No.48 of 1993 which was initially instituted consequent to the declaration of the third respondent as a sick company under the Act.

7. The learned Senior Counsel Mr.P.S.Raman, appearing for the third respondent-Company, opposed the arguments of the learned Senior Counsel for the petitioners by stating that the writ petition is not maintainable in view of the fact that the Case No.48 of 1993 was instituted pursuant to the declaration of the third respondent-Company as a sick company under the Act. Thereafter, the Scheme framed pursuant to the order of the High Court in WP No.14856 of 2003 was approved by the first respondent-Board in order dated 23.10.2003, which was already

implemented. Thereafter, the management and the writ petitioner-
Unions had entered into a Memorandum of Understanding on
28.5.2008.

8. On perusal of the said Memorandum of Understanding,
the writ petitioners herein are parties and the management is
also represented by the General Manager. The representing
Union/Workers/ Quarters Committee are hereunder:-

"1.Mr.S.K.Mahendran, MLA, Perambur Constituency

2.Mr.V.Murugaian, President

3.Mr.T.K.Krishnan, Vice-President

4.Mr.R.Audikesavalu, General Secretary

Representing Madras Labour Union

5.Mr.N.Sriramulu, General Secretary

6.Mr.D.Ramachandran, Joint Secretary

7.Mr.V.K.Vijayakumar, Treasurer

Representing B & C Mills Staff Union.

8.Mr.P.Kalyanasundaram, President

Representing B & C Mills Quarters Committee."

9. Further, in the said Memorandum of Understanding, it
is stated in the preamble portion as below:-

"It is also agreed that the applications,
petitions filed by the Unions before BIFR/
AAIFR/other Authorities in Case No.48 of 1993
deemed to be and are hereby stand withdrawn.
Union or workers have no interest in Case
No.48 of 1993 and further agreed that there is
no need to issue any notice to Unions by
BIFR/AAIFR. Further, both the Unions will not
raise their claim for rehabilitation of the
Mills in consideration of the benefits,
obligations and commitments made by the
Company under this Memorandum of
Understanding."

10. On conclusion of the negotiation, the terms of
settlements are arrived between the parties as below:-

"CONCLUSIONS OF THE NEGOTIATION:

1. Allotment of land:

A. Allotment of plot of 500 sq. ft. each at
the Carnatic Mill Village of the Company (which
is located in Govindan Street, Perambur with
boundaries north by railway line belongs to
Southern Railways, south by Coal yard belongs to
Mills, east by Govindan street and
Chaklipalayam, west by Coal yard belongs to
Mills) to 244 workers as listed in Annexure A,
B, C and G, who are as of date occupying
Barracks Land Village, Carnatic Mill Village,

Venkateswara Village and Belverde Village of the Company, free from any encumbrance and with a marketable title.

B. Allotment of two plots each of 500 sq. ft. for the purpose of community hall at Carnatic Mill Village of the Company.

C. A token sale consideration of Rs.1,000/- for each plot is payable by the concerned allottees covered by Clause A.

D. Stamp Duty and Registration charges for deed of conveyance in regard to plots covered by Clause A, are to be borne by the concerned allottees.

E. Sale of the plots covered by Clause A to the workers shall be effected upon discharge of the Company by BIFR/AAIFR and upon compliance by the workers/Unions/Quarters Committee as shown under Clause 1 of other terms of this Settlement.

F. The parties agree that the plan of the land to be allotted will be prepared by the management in consultation with the Unions and the 244 workers will be given the land by drawal of lots conducted in the presence of Union representatives. The land shall be allotted to the workers authorised by the Unions, within 30 days from the date of receipt of order from the AAIFR discharging the Company from the purview of BIFR. The land shall be registered within 60 days from the date of allotment upon handing over the vacant possession. Simultaneously the management has liberty to demolish respective quarters.

2. Gratuity and VRS compensation payable to workers shown in Annexures is with:

A. Interest on Gratuity at 10% upto 31.5.2008.

B. Interest on VRS Compensation (net of deductions) at 11.25% upto 31.3.2001 and @ 6% from 1.4.2001 to 31.5.2008.

3. Payment of Rs.80,000/- (Rupees Eighty Thousand only) to 299 workers as listed in Annexure F & G (who opted for VRS but not relieved by the management) is the amount negotiated as compensation provided however that the compensation amount together with the amount of wages paid for same shall not exceed Rs.1,25,000.

4. It is mutually agreed that the electricity dues relating to the period June 1996 to 2004 and arrears upto date, if any, are

to be paid by the workers and that each individual shall produce the receipts prior to signing of sale deed.

5. Sadasivam & others : 33 management staff, as listed in Annexure B & I, will be paid a total sum of Rs.3 lacs each after deducting the amount already paid.

6. 12 Management Staff (died/retired/dismissed/resigned) as listed in Annexure C, will be paid their dues with interest on gratuity.

7. The workers/staff, as shown in the annexure D & E, who have left and not received their settlement dues will be paid their dues with interest.

8. Trial-run period wages in terms of the Award will be paid in full to all the workers numbering 1,476 as listed in the Annexure H. At the request of Mr.S.K.Mahendran, M.L.A., Perambur Constituency, the management agrees to pay the a sum of Rs.25 lakhs as ex-gratia to be distributed to all the 1,476 workers equally, in addition to the amount payable in terms of the Award.

9. Co-operative Society dues of workmen recovered will be paid to the society at the time of settlement of dues to workers.

OTHER TERMS OF SETTLEMENT:

1. The workers covered under this MOU shall sign a settlement under Section 18(1) of ID Act, as per the draft attached, while settling their dues.

2. The individuals, whose names are mentioned in the Annexure A, B and C occupying the quarters either by themselves/their heirs shall be paid their amounts due to them by virtue of this MOU, by way of a cheque upon discharge of the Company by the BIFR/AAIFR.

3. The workers whose names are mentioned in Annexure-D & E and not residing in quarters, shall be paid their dues/claims within fifteen days of signing of the MOU.

4. The dues of the workers shown in Annexure F, G, H & I shall be paid upon discharge of the Company by BIFR/AAIFR and upon withdrawal of their respective court cases by both parties filling a compromise memo before concerned courts/authorities for disposal in terms of this MOU.

5. This Settlement makes it clear that all the workers in Annexure - A to I upon receipt of

payment their claims/benefits in full quit and have no claim whatsoever, monetary or otherwise, as against Binny Limited. Upon receipt of such payment those former employees/ workers/their heirs shall have no claim of any kind against the Management including recruitment, re-employment, reinstatement or any monetary claim against the Management of Binny Limited.

6. In the light of the settlement and of this MOU, the Union and the workers hereby agree to withdraw all pending issues/cases/representations/petitions which are negotiated and settled between the parties during negotiation as fully settled.

7. Upon such resumption of possession from the workers covered by Clause 1 by the Management of Binny Limited, the Management shall be at liberty to deal with the surrendered property as it deems fit.

8. The Management shall be at liberty to proceed further with evicting the unauthorised illegal occupants and demolishing of such quarters in Barracks Land Village, Venkateswara Village, Belvedre Village and Carnatic Mill Village.

9. Both the Unions and workers shall agree not to disrupt any steps/proposals which may be undertaken by the Management from time to time.

10. All the above benefits/payments shall be considered as a single and whole one-time package and shall not be treated as independent clauses unless the context requires.

11. Implementation of terms of this MOU will be done under the supervision of Mr.S.K.Mahendran, MLA, Perambur Constituency and Mr.R.Vedharethinam and Mr.G.Venkataraman representing the Company and Mr.R.Audikesavalu and Mr.N.Sriramulu representing the workers."

Both the management representative as well as the Union/Workers/Quarters Committee representatives, have signed the Memorandum of Understanding.

11. Let us now consider the two writ petitions filed in WP No.18117 of 2008 by the management of the Binny Limited and WP No.18304 of 2008 by the B & C Mill Staff Union and Madras Labour Union (writ petitioners herein). The Management of Binny Limited sought for a relief to quash the Appeal No.72 of 2008 on the file of the Appellate Authority in Industrial and Financial Reconstruction. The B & C Mill Staff Union and Madras Labour Union jointly filed WP No.18304 of 2008 for a prayer to direct the BIFR to pass orders in Case No.48 of 1993 - Binny Limited as

per the directions dated 5.6.2008 of the Hon'ble AAI FR, New Delhi in Appeal No.72 of 2008. This Court is able to appreciate that the spirit of respective parties, in both the writ petitions cited supra, for having negotiated and arrived a conclusion and filed a joint memo signed by the respective parties as well as the respective counsel, on 29.7.2008. The said joint memo was filed in the above two writ petitions and this Court passed an order on 30.7.2008 as extracted hereunder:-

"IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.07.2008

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.P.Nos.18117 and 18304 of 2008

and M.P.Nos.1 and 2 of 2008

W.P.No.18117 of 2008:

The Management of Binny Ltd.

Rep.by its Company Secretary .. Petitioner

vs.

1. The Appellate Authority for
Industrial & Finance Reconstruction
10th floor, Jeevan Prakash
25, Kasturba Gandhi Marg
New Delhi 110 001

2. The Board for Industrial
& Finance Reconstruction
Jawahar Vyapar Bhawan
No.1, Tolstoy Marg,
Janpath, New Delhi 110 001

3. Madras Labour Union
176, Strahans Road
Chennai 12

4. B&C Mills Staff Union
176, Krishnadoss road
Chennai 600 012. .. Respondents

W.P.No.18304 of 2008:

1. B&C Mills Staff Union
(Regd.No.2399) rep.by its
General Secretary
60, Krishnadoss road
Chennai 600 012.

2. Madras Labour Union
(Regd.No.722)by its
General Secretary
R.Audikesavalu
176, Strahans Road
Chennai 12

.. Petitioners

vs

1. Board for Industrial
& Finance Reconstruction
rep.by its Secretary
STC Building, Jawahar Vyapar Bhawan
No.1, Tolstoy Marg,
New Delhi 110 001.
2. M/s. Binny Limited
rep.by its General Manager -
Pers & HRD
106, Armenian Street
Chennai 600 001 .. Respondents

W.P.No.18117 of 2008:

Prayer: This writ petition is filed under Article 226 of Constitution of India, seeking a writ of certiorari, to call for the records connected with Appeal No.72 of 2008 on the file of the first respondent (ie) Appellate Authority for Industrial & Finance Reconstruction (AAIFR) New Delhi, quash the order dated 05.06.2008 in so far as it relates to the remand is concerned.

W.P.No.18304 of 2008:

Prayer: This writ petition is filed under Article 226 of Constitution of India, seeking a writ of Mandamus, to direct the first respondent to pass orders in Case No.48/1993-Binny Limited, as per the directions dated 5.6.2008 of the Hon'ble AAIFR, New Delhi in Appeal No.72 of 2008 within a time frame to be fixed by this Court.

For petitioners in
W.P.No.18117 of 2008 and
For R2 in W.P.No.18304 of 2008 :
Mr.N.G.R.Prasad

For respondents in
W.P.No.18117 of 2008 and
for petitioners in
W.P.No.18304 of 2008 :
Mr.Sanjai Mohan

O R D E R

Learned counsel for the petitioners as well as the respective contesting respondents filed joint memo signed by the parties as well as their counsel dated 29.0-7.2008. The terms of which read as follows:

"1. The management & the Unions hereby

undertake to implement the terms & conditions of the MOU dated 28.05.2008.

2. The company namely Binny Ltd, with effect from 30.09.2005 will cease to be a Sick Industrial Undertaking within the meaning of clause (o) of subsection (1) of section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985 since its net worth from that date is positive.

3. In view of the above, the order dated 05.06.2008 of AAIFR in Appeal No. 72 of 2008 is not necessary insofar as the remand back to BIFR for deregistration from its purview is concerned and the matter will stand disposed off by this memo and orders thereon.

4. All proceedings before BIFR (Case No. 48 of 1993) shall stand closed in view of this memo and orders there upon since the unions are not pressing their petitions before BIFR as agreed in the MOU dated 28.5.2008."

2. Learned counsel appearing for the parties submits that these writ petitions may be disposed of recording the above joint memo filed by the parties.

3. Recording the joint memo filed by the parties, these writ petitions are ordered as per the terms of the joint memo dated 29.07.2008. Further it is made clear that the petitioner company is ceased to be a Sick Industrial undertaking with effect from 30.9.2015. No costs. Consequently, connected M.Ps. are closed."

12. In view of the joint memo and the order passed in those writ petitions, the learned Senior Counsel for the third respondent-Company would urge this Court that the present writ petition is not maintainable since the matter was settled between the parties in respect of Case No. 48 of 1993 and all the grievances as per the Memorandum of Understanding dated 28.5.2008 had been redressed and any new grievances, if advanced by the writ petitioners, the same cannot be adjudicated in Case No. 48 of 1993.

13. This Court now has to consider whether the prayer, as such, sought for in this writ petition for a direction to the first respondent-Board to transfer the petition dated 14.5.2014 in Case No. 48 of 1993 can be granted or not?.

14. At the outset, the grievances advanced by the writ petitioners are that the third respondent-Company has not established the Unit in Kancheepuram District as per the sanctioned Scheme dated 23.10.2003. Therefore, their statutory

right conferred based on the approved Scheme by the first respondent-Board, cannot be taken away and still they can pursue the Scheme dated 23.10.2003 in the very same Case No.48 of 1993. This Court is curious to look into the petition dated 14.5.2014 filed in Case No.48 of 1993 and the copy of the same is enclosed in page No.45 to the typed set of papers filed along with this writ petition. The cause title and the petition filed is extracted hereunder:-

"BEFORE THE HON'BLE BOARD FOR INDUSTRIAL AND
FINANCIAL RECONSTRUCTION

Jawahar Vyapar Bhavan, No.1, Tolstoy Marg,
Janpath, New Delhi-110 001.

Case No.48 of 1993 - BINNY Ltd

1. The Madras Labour Union,
Rep. by its General Secretary,
R.Adikesavalu,
Perambur, Chennai-600 012.
2. The B & C Mills Staff Union,
Rep. by its General Secretary,
N.Sriramulu,
Perambur, Chennai-600 012... Petitioners

-Versus-

The Management of Binny Limited,
No.106, Armenian Street,
Chennai-600 001. ... Respondent

PETITION PRAYING TO CONTINUE THE BIFR
PROCEEDINGS IN CASE NO.48 OF 1993 - BINNY LTD AND
TO MONITOR THE IMPLEMENTATION OF THE SCHEME
SANCTIONED BY THE HON'BLE HIGH COURT OF MADRAS
DT.24.09.2003 IN W.P.NO.14856 OF 2003 AND THE BIFR
ORDER DT.23.10.2003."

And the relief sought for before the Board for Industrial and Financial Reconstruction is also extracted hereunder:-

"The Hon'ble Bench by considering the above facts and circumstances may be pleased to pass the following orders:

(i) To continue to monitor the implementation of the Sanctioned Scheme 2003 framed by the Hon'ble High Court, Madras in WP No.14856 of 2003 dt.24.9.2003 and the BIFR Order dt. 23.10.2003 and to provide employment to the workers as envisaged therein.

(ii) To secure the assets of the Company as on the date of sanctioning of the Scheme by the High Court, Madras and BIFR in the year 2003 in the public interest.

(iii) To investigate into the affairs of

the Company after deregistering from the purview of this Hon'ble Bench.

(iv) To direct the Company to settle all the pending issues of the workers before disposing of the assets of the Company.

(v) To direct the Company to refund the relief and concession availed from various financial Institutions, Central & State Governments and other authorities under various schemes framed by BIFR with interest at 18% per annum and thus render justice."

15. Let us now peruse the order dated 23.10.2003, passed by the first respondent-Board, in Case No.48 of 1993 IN RE: BINNY LTD (BL), the sanctioned Scheme was approved by the first respondent-Board. Chapter-I deals with 'introduction and background', Chapter-II provides 'Rehabilitation Scheme (RS)'. Paragraph 2.1 of the Scheme reads as follows:-

"2.1 The Rehabilitation Scheme (RS) for Binny Ltd., is based, inter alia, on settlement of dues of the secured creditors by raising funds through sale/development of real estate properties, de-merger of Binny Ltd., into two companies to be run independently by the promoters and co-promoters, shifting of the textile mills in Chennai to a new location etc."

16. The first respondent-Board, after the approval of the Scheme, passed an order on 4.8.2005 in BIFR Case No.48 of 1993-M/s.Binny Limited (BL). Paragraph 11 of the order states as below:-

"11. And, whereas, the Board, based on the directions issued by the HCM in its order dated 24.9.2003 sanctioned a revival scheme for rehabilitation of the sick company M/s.BL vide its order dated 22.10.2003 (SS-03). The SS-03 inter-alia envisages the followings:-

- (i)
- (ii)
- (iii)
- (iv)
- (v) M/s.BL would shift the textile mill at Chennai to a new location at Kancheepuram District and to commence its operation by March 2005, as per the direction of the Hon'ble HCM."

17. It is pertinent to note that after the sanctioning of the Scheme, more specifically, Rehabilitation Scheme, and thereafter, passing an order by the first respondent-Board, the

respective parties, namely, management and the writ petitioners-Union, entered into Memorandum of Understanding on 28.5.2008. In the said Memorandum of Understanding, there is no clause in relation to construction of a new Unit in Kancheepuram District as per the Rehabilitation Scheme.

18. This apart, the Rehabilitation Scheme was formulated as early as 2005 and thereafter the Memorandum of Understanding was signed between the parties. The writ petitioners-Union were not vigilant enough to pursue the Rehabilitation Scheme during this interregnum period and they were interested only in receiving the settlements. When the petitioners-Union were not interested in Rehabilitation Scheme in relation to the constitution of a new Unit in Kancheepuram District, after a lapse of many years, now they pursue this issue through this writ petition in spite of the fact that they have signed the Memorandum of Understanding and now expressed that the terms and conditions of the Memorandum of Understanding has been implemented.

19. More-so, the Memorandum of Understanding, its terms and conditions were referred to by this Hon'ble Court in WP Nos.18117 and 18304 of 2008 on 30.7.2008. Thus, the Memorandum of Understanding was consciously accepted by the respective parties and that was recorded by this Court in the two writ petitions filed by both the parties to this writ petition. Such being the factum of the case, there cannot be any scope for the writ petitioners to bring out the claim of constitution of a new Unit in Kancheepuram District and, the rights conferred, if waived, consciously by the parties, they cannot be allowed to re-open the same after a lapse of many years.

20. The entire Scheme was well within the knowledge of both the parties and they were aware of the implications. The writ petitioners-Union consciously dropped the Rehabilitation Scheme of constitution of a new Unit in Kancheepuram District and they have not insisted the same nor taken any steps to pursue the grievance for many years. Such being the attitude of the writ petitioners-Union, now after redressing of the grievance in accord to the terms and conditions of the Memorandum of Understanding, they cannot come out with the new proposal for constitution of a new Unit in Kancheepuram District. Thus, the stand taken by the writ petitioners in this writ petition deserves no consideration.

21. Therefore, this Court is able to come to the conclusion that all these grievances, now advanced, were existing even at the time of framing of the Scheme and at the time of parties entering into negotiations. In other words, in the negotiation table between the parties, the entire sanctioned Scheme was placed and they have arrived a conclusion by adopting

the policy of 'giving and taking' and accordingly signed the Memorandum of Understanding on 28.5.2008. Thereafter, by filing the said Memorandum of Understanding dated 28.5.2008, both the writ petitions filed by the management of the Binny Limited and the writ petitioners herein, were closed. Curiously all proceedings before BIFR in Case No.48 of 1993 also was closed in view of the Memorandum of Understanding dated 28.5.2008.

22. Now let us consider whether the petition filed on 14.5.2014 in Case No.48 of 1993 can be adjudicated by the second respondent-Tribunal, when the disputed issues between the respective parties were negotiated and settled by way of Memorandum of Understanding and accordingly Case No.48 of 1993 was also closed, certainly it is not open to either of the parties to reopen or file any applications in Case No.48 of 1993. Further, Case No.48 of 1993 was agreed to be closed in Memorandum of Understanding dated 28.5.2008 and, the same was also recorded by this Hon'ble Court in WP No.18117 of 2008 and WP No.18304 of 2008 on 30.7.2008. After a lapse of six years, the writ petitioners have filed application before the first respondent-Board in Case No.48 of 1993 - Binny Limited. The maintainability of such a petition is also an issue and further transferring of the application along with Case No.48 of 1993 is also to be considered. If at all any new grievances are to be redressed for the writ petitioners, they have to initiate afresh proceedings unconnected with the settlement arrived between the parties in Memorandum of Understanding dated 28.5.2008 and Case No.48 of 1993. The Case No.48 of 1993 already closed based on the Memorandum of Understanding, cannot be revived or restored by the parties.

23. The learned Senior Counsel Mr.N.G.R.Prasad, appearing for the writ petitioners, urged that when commissioning of a new Unit in Kancheepuram District is also a part of the Scheme, which is statutory in nature, the writ petitioners can file application in the same case for implementation of the same. This Court is of the same view even a statutory right, if it is waived by the writ petitioners, which was reduced in writing and accepted between the parties, it cannot be reopened. The legal principle in this regard is that the legal right waived by the parties consciously and the same was reduced in writing and submitted before this Court and the entire case was closed, thereafter, the parties cannot be allowed to reopen the same after a lapse of six years from the date of closure of the case.

24. In the case on hand, Case No.48 of 1993 was closed on 28.5.2008 and on 30.7.2008. Hence, it is not open to the parties to file any application in this regard. If any new grievances are to be redressed, it is left open to the writ petitioners to file necessary applications before the Competent

Authorities. Accordingly, the question of transferring this petition cannot be considered and the writ petition stands dismissed, however, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

Svn

To

1.The Secretary,
Board for Industrial and Financial Reconstruction,
Jawahar Vyapar Bhavan,
No.1, Tolstoy Marg,
Janpath,
New Delhi-110 001.

2.The Registrar,
National Company Law Tribunal,
Chennai Bench,
No.29, Corporate Bhawan,
UTI Building, III Floor,
Rajaji Salai,
Chennai-600 001.

+1cc to M/s.Row & Reddy,Advocate sr.49816

+1cc to M/s.T.S.Gopalan,Advocate sr.49931

WP No.10701 of 2017

rr(co)
ss((25/7/2017)

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