

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.18721 of 2012

ORDER:

The cause of action in the present writ petition arises under the "Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter called 'the Act').

2. This writ petition challenges the order dated 09.02.2011 passed by the Board for Industrial and Financial Reconstruction, New Delhi (BIFR) in M.A.No.664 of 2010 as confirmed by the appellate authority for Industrial and Financial Reconstruction, New Delhi/first respondent herein vide order dated 02.04.2012 passed in appeal No.134/2011.

3. The third respondent herein approached the BIFR vide BIFR Case No.44 of 1997, seeking registration as a Sick Industrial Company and with a request for appropriate measures to revive the company. By way of proceedings dated 08.05.1997, BIFR declared the third respondent as a sick industry and appointed IDBI/respondent No.4 as "Operating Agency" under Section 17 (3) of the Act to examine the viability of the third respondent for formulating the rehabilitation package for revival of the third respondent. On 14.08.2008, One Time Settlement was arrived at between the petitioner and the third respondent for a sum of Rs.275 lakhs. Pending proceedings, BIFR passed an order on 15.12.2009 and issued the following directions:

- i) Bank of India (BOI) and IIBI shall consider extension of OTS for six months beyond 31.12.2009 enabling the company to remit the OTS amount along with the interest accrued thereon by the company after sale of land. The decision in this regard shall be conveyed to the company and the OA (IDBI Bank) within two weeks.

- ii) BOI shall not revoke the OTS sanctioned to the company before the next date of hearing i.e., 18.01.2010.
- iii) IDBI Bank (OA) shall hold a joint meeting of all stakeholders and the representatives from BOI and IIBI shall attend the hearing with clear mandates from their respective Banks.
- iv) The Bench fixed the next hearing on 18.1.2010.”

4. On 18.01.2010, BIFR directed the fourth respondent/Operating Agency to constitute an Asset Sale Committee and the said Committee conducted the sale on 26.06.2010 wherein APIIC emerged successful for a sum of Rs.12 crores. The third respondent filed M.A.No.548/2000. Thereafter, OTS amount of Rs.275 lakhs along with interest was paid to the petitioner by IDBI. Petitioner filed M.A.No.664/2010, claiming a sum of Rs.138.00 lakhs on the basis of a letter dated 02.02.2010. On 09.02.2010, the same was dismissed and against which petitioner filed Appeal No.134/2011 and the first respondent appellate authority dismissed the said appeal on 02.04.2012. The said orders of the BIFR and the first respondent appellate authority are under challenge in this writ petition.

5. Heard Smt. T.Vidya Rani, learned counsel for the petitioner and Sri C.Gunaranjan for the third respondent apart from perusing the material available before the Court.

6. In the present writ petition the following issues emerge for consideration:

- 1) Whether the letter ZO:ARD:DVR:302, dated 02.02.2010 obligates the third respondent to pay the amount despite the sanctioned scheme framed by the BIFR?
- 2) Whether the petitioner herein is entitled for any relief from this Court under Article 226 of the Constitution of India?

7. The contention of the learned counsel for the petitioner principally is that in view of Clause VI of OTS letter dated 02.02.2010 the third respondent is obligated to pay the amount. On the other hand, the stand of the third respondent, as contended by the learned counsel for the third respondent, is that the third respondent never accepted the said Clause nor there is any evidence to show that the third respondent agreed for the same. It is also the submission of the learned counsel for the third respondent that in view of the provisions of Section 18 of the Act petitioner herein is not entitled for any relief from this Court.

8. In fact, after receipt of the above said letter dated 02.02.2010 the third respondent sent a reply on 15.02.2010 stating that he had the liability to pay interest @12% per annum from 01.01.2010 till the date of payment. As stated by the learned counsel for the third respondent, there is no material on record made available by the petitioner which demonstrates that the third respondent accepted Clause 6 of the letter dated 02.02.2010 and agreed for the same.

9. On the other hand, it is an admitted fact that in the auction conducted by the Asset Sale Committee (ASE) constituted by the Operating Agency i.e., IDBI, the APIIC emerged as the successful bidder and the said sale fetched a sum of Rs.12 crores. Subsequently, the third respondent filed M.A.No.548/2010 before the BIFR for the following reliefs:

“5 (a) Direct OA (IDBI) to make payments of outstanding OTS amount of IIBI (Rs.220) lakhs along with interest @ 12.5% p.a. basis w.e.f.5.1.09 till the actual date of payment) and BOI (Rs.275 lakhs along with interest @ 12% p.a. basis w.e.f. 1.1.2010 till the actual date of payment), out of the sale proceeds deposited with them at the earliest.

b) Direct OA (IDBI) to release balance amount of sale proceeds, after making payments to IIBI and BOI, in favour of SSL so as to enable it to clear its statutory other dues and to utilize the residual amount for incurring capital/other expenditures and towards meeting working capital requirements of the company.”

10. In the said M.A.No.548/2010, BIFR on 29.09.2010, issued the following directions:

“7.1. The Bench observed that ASC has confirmed the sale to APIIC which is a State Govt institution. It was also stated that the ASC had followed all the ASC guidelines before confirming the sale to the highest bidder. Therefore, the Bench approved the recommendation of ASC with the observation that the permission of the Bench should have been sought before confirmation of sale in compliance of Board's directions dated 10.1.2010 & such lapses now to be avoided.

8. After considering the material on record and submissions made in the hearing, the Bench issued the following directions:

i) IDBI (OA) is directed to make payments of outstanding OTS amount of IIBI (Rs.220 lakhs along with interest @ 12.5% p.a basis w.ef.5.1.2009 till the actual date of payment and Rs.275 lakhs to BOI along with interest @ 12% p.a. basis w.e.f. 1.1.2010 till the actual date of payment, out of the sale proceeds deposited with the Bank.

ii) The balance amount realized and to be realized from the sale proceeds shall be kept in interest bearing NLA with OA and will be utilized as per directions of the Board.

iii) Company and OA shall file the revised projections to be incorporated in the DRS which is under examination with the Board within 15 days.

11. It is also an undisputed fact that the BIFR framed a draft rehabilitation scheme on 27.05.2011 under Section 18 (2) of the Act and it is also not in controversy that the petitioner herein never raised any

objection for the said Draft Rehabilitation Scheme. Eventually the BIFR framed the sanctioned scheme on 29.08.2011. In the meanwhile, on 12.11.2010, petitioner herein filed MA.No.664 of 2010, claiming an additional amount of Rs.138.00 lakhs. The BIFR by way of an order dated 09.02.2011 rejected MA.No.664 of 2010. Against the said order, petitioner herein filed Appeal No.134/2011 and the first respondent appellate authority dismissed the said appeal by way of an order dated 02.04.2012.

12. In this context, it may be appropriate to refer to the provisions of Section 18 of the Act, which deals with the preparation and sanction of scheme. Sub-Section (8) of Section 18, which is germane for the issue in the present writ petition, reads as under:

“(8) On and from the date of the coming into operation of the sanctioned scheme or any provision thereof, the scheme or such provision shall be binding on the sick industrial company and the transferee company or, as the case may be, the other company and also on the shareholders, creditors and guarantors and employees of the said companies.”

13. It is very much evident from a reading of the above provision of law that there is a statutory mandate that the sanctioned scheme shall be binding not only on the Sick Industrial Company and Transferee company but also on the share-holders, creditors, guarantors and employees of the companies. In the instant case, admittedly, the sanctioned scheme framed by the BIFR on 29.08.2011 attained finality as the petitioner herein never challenged the same. Clause 15.1.2 of the Sanctioned Scheme reads as under:

“15.1.2. Bank of India (BoI): No further relief proposed. SSL has already paid Rs.300.77; lakh towards outstanding OTS amount of Rs.275 lakh and interest of Rs.25.77 lakh @ 12% p.a. in full and final settlement of its dues to BOI on October 12, 2010 as per BIFR order dated September 29, 2010. No further relief is proposed.”

14. The payment of the amount in accordance with the above said Clause of the sanctioned scheme by the fourth respondent on 12.10.2010 and acknowledgment of the same by the petitioner without any protest are not in dispute. In fact, after considering all the above aspects in a meticulous and extensive manner, both the BIFR and the first respondent appellate authority passed the impugned orders, turning down the request of the petitioner. Petitioner herein is praying for a Writ in the nature of Writ of Certiorari. In this connection, it would be apposite to refer to the judgment of the Hon'ble Apex Court in *SYED YAKOOB V. K.S. RADHAKRISHNAN AND ORS.*¹ and paragraph 7 of the judgment reads as under:

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or Tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was

¹ AIR 1964 SC 477

insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmed Ishaque MANU/SC/0095/1954 : [1955]1SCR1104), Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam MANU/SC/0101/1958 : [1958]1SCR1240 , and Kaushalya Devi v. Bachittar Singh MANU/SC/0219/1959 : AIR1960SC1168 .”

15. It is very much evident from the principles laid down in the above referred judgment that a Writ in the nature of Certiorari can be issued only in the cases where there is jurisdictional error, violation of the principles of natural justice and perversity in the impugned action. In the instant case, such contingencies are conspicuously absent.

16. Having regard to the cogent and convincing reasons assigned by the BIFR and the appellate authority in the impugned orders, this Court is not inclined to meddle with the said well articulated orders. Hence, both the issues are answered against the petitioner.

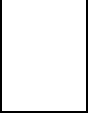
17. Accordingly, the writ petition is dismissed. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date:28.11.2017

Note:

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THE HON'BLE SRI JUSTICE A.V.SESHA SAI



W.P.No.18721 of 2012

Dated 28.11.2017

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