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

\+ W.P.(C) 1412/2017

ATV PROJECTS (INDIA) LTD. ..... Petitioner

Through Mr.Amit Sibal, Sr. Adv.with Mr.Kuljeet Rawal, Mr.Saurab Malhotra & Mr.Anunaya Mehta, Advs.

versus

UNION OF INDIA & ORS ..... Respondents

Through Ms.Abha Malhotra, Mr.Sanjay Kumar Yadav & Mr.Tanuj Chopra, Advs. for R-1.
Mr.Sanjay Bhatta, Adv. for IDBI.
Ms.Sahiba & Ms.Rama Ahluwalia, Adv. for R-4.
Mr.Saurabh Chadda and Mr.Ishan Kashyap, Adv. for R-5 with Mr.Paramjeet Singh, SSO.

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

O R D E R
% 17.02.2017

CM No.6442/2017 (Exemption)

Exemption allowed, subject to just exceptions.

Application stands disposed of.

WP(C) No. 1412/2017

This writ petition is against an order dated 30th November, 2016 passed by the BIFR (Board for Industrial and Financial Reconstruction) failing to sanction a draft rehabilitation Scheme in relation to the petitioner company, which inter-alia envisaged reverse merger of Seftech Phosphate Private Limited (SPPL) with the petitioner.

The petitioner was constituted as a Public Limited Company under the Companies Act, 1956 on 26th February, 1987 and it took over as a running concern, the business of its predecessor in interest, which was a Private Limited Company.

The petitioner manufactures the industrial equipment for sugar and other industries and has two manufacturing plants. It is pleaded that the petitioner was highly profitable till the financial year 1994-95. However, later it suffered severe losses due to paucity of working capital.

The petitioner filed a reference to the BIFR under Section 16 of the Sick Industrial Companies (Special Provisions) Act on 21st April, 1999. The petitioner was declared sick by BIFR and IDBI was appointed as Operating Agency for the purpose of formulating a scheme. However, no scheme was finally sanctioned.

We need not to go into the history of the proceedings before BIFR. Suffice it to refer to two orders of this Court directing the BIFR to take expeditious decision.

It appears that while the proceedings before the BIFR were pending, an order dated 29th April, 2015 was passed by Division Bench of this Court in WP (C) 4226/2013, CM No.9854/2013, 5227/2014 & 1457/2015, directing the BIFR to consider the Draft Rehabilitation Scheme at its earliest convenience having regard to the fact that the matter had long been pending. The decision on the Draft Rehabilitation Scheme was directed to be rendered expeditiously, preferably by the end of October 2015. No decision on the Draft Rehabilitation Scheme was taken within the time stipulated in the order of the Division Bench.

Yet another writ petition being WP(C) 632/2016 was filed by the petitioner which was disposed of by an order dated 15th July, 2016, extracted herein below:

> 1. Writ petition was filed when on account of superannuation of members of BIFR as well as AIIFR statutory for as created under SICA, 1985, the Bench was not available.
> 2. Vacancies have been filled up. Accordingly, we dispose of the petition directing Registrar, BIFR to place before BIFR Reference No.324/1998 and along therewith miscellaneous application which petitioner would file positively within a week from today concerning the issue of tax exemption to the transferor company as sought to be enforced by the income-tax authorities.

Thereafter, the matter was taken up by the BIFR. Objections/suggestions to the Draft Rehabilitation Scheme were received from the Income Tax Department, Sales Tax Department of Government of Maharashtra and Employee State Insurance Corporation amongst others.

Mandatory hearing scheduled on 26th November, 2015 did not take place due to lack of coram. Following the reconstitution of the Bench and in view of the directions of this Court, the mandatory hearing scheduled on 26th November, 2015 was held on 30th November, 2016. The Draft Rehabilitation Scheme was however not sanctioned. In the meanwhile, Sick Industrial Companies (Special Provisions) Repeal Act 2003 was notified by Notification dated 25th November, 2016 and the same came into force w.e.f. 25th November, 2016 by the repeal of the SICA. By the Repeal Act of 2003, BIFR and AAIFR stand dissolved and pending schemes abate.

In this writ petition, the petitioner has prayed for an order setting aside the order dated 30th November, 2016 of the BIFR and also for appropriate order sanctioning the draft revival scheme of the petitioner in terms of the provisions of Section 18 (4) read with Section 19 (3) of SICA as the aforesaid provisions stood on 30th November, 2016.

Mr.Sibal appearing on behalf of the petitioner submitted that this Court has the power under Articles 226 and 227 of Constitution of India to sanction the scheme pending before BIFR.

The petitioner has referred to a judgment dated 4th December, 2915 of a Division Bench of this Court in WP (C) 9320/2015 (M/s Ganesh Benzoplast Ltd. v. Union of India & Ors., where the Division Bench took note of the fact that the BIFR was not functioning for want of coram, and accorded formal sanction to a scheme, observing that the consultant of the BIFR had approved the scheme.

Mr.Sibal also cited judgement of Comptroller and Auditor Gneral of India, Gian Prakash, New Delhi and Anr. v K.S. Jagannathan and Anr., (1986) 2 Supreme Court Cases 679. The Supreme Court held:

> "There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of *mandamus* or a writ in the nature of *mandamus* or to pass order and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statue or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of *mandamus* or a writ in the nature of *mandamus* or pass orders and give

> directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or given directions which the government or the public authority should have passed or given had it properly and lawfully exercised its directions".

Mr.Sibal argued that in view of repeated directions by this Court a decision ought to have been taken long ago. Mr.Sibal also argued that all objections to the Draft Rehabilitation Scheme had been resolved by 30th November, 2016. The scheme ought to have been sanctioned on that day.

It is however, doubtful whether we can assume the jurisdiction of BIFR after repeal of SICA and sanction a scheme which has abated by operation of law by reason of the provisions of the Sick Industrial Companies (Special Provisions) Repeal Act 2003. The decisions cited by Mr.Sibal are distinguishable. The scheme having abated and the BIFR and the AAIFR having been dissolved, no order as prayed in this petition can be passed. The writ petition is therefore not entertained. Needless to mention that the petitioner may approach the appropriate forum, if any, available to the petitioner in law.

INDIRA BANERJEE, J

ANIL KUMAR CHAWLA, J

FEBRUARY 17, 2017/vp