$~C-60

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

% **Delivered on: 04th September, 2017**

\+ **<u>CO.PET. 509/2010</u>**

M/S SWET CHEM ANTIBIOTICS LTD

..... Petitioner

Through : Mr.Abhayraj Verma and Ms.Priyanka Ghosh, Advs.

versus

..

..... Respondent

Through : Mr.Arun Bhardwa, AAG for State of Haryana for R-1, 6 to 8

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

<u>YOGESH KHANNA, J.</u>

1. It is submitted by learned counsel for the company refers to an order dated 22.09.2010 of the BIFR :

> *"2.7.4 Having regard to the submissions made in the hearing today, and the background of the case as per the information on file, the Bench confirmed its earlier opinion that despite allowing adequate time and opportunity to the company/promoters and exploring other possible avenues also, it had not been possible to work out any acceptable revival scheme which could enable the company to run its networth positive within a reasonable time frame while discharging all its due financial obligations. Accordingly, the Bench observed that under the circumstances and merits of the case, there was no other option but to confirm its prima-facie opinion that it would be just, equitable and in*

public interest if the sick company – M/s Swet Chem Antibiotics ltd. is wound up in terms of Section 20(1) of SICA. Let this opinion be forwarded to the concerned High Court along with copies of all the orders passed by the Bench in the case from time to time, for further necessary action in accordance with law."

2. Thereafter, the company made efforts to revive itself and cleared of its debts, even of the two secured creditors. Now only the liability qua the Sales Tax Dept. is pending. The learned counsel for the Sales Tax Department on instructions submit that the securities given by the respondent company to pay the taxes are sufficient. In view of the above it is submitted that the order dated 22.09.2010 of BIFR needs to be modified.

3. The affidavit of compliance has been filed by the respondent company and it reveals that the net worth of the company has now turned positive. In *Seth Industries Ltd. V. AAIFR* 2007 SCC online Del 381 the BIFR recommended winding up of the petitioner company but since its net worth had turned positive so pending a dispute with one of its creditors, the company was ordered to be revived and the order of BIFR was ordered to be set aside. Para 8 of the judgment is relevant and it reads as under :

"8. We are of the view that since all the municipal Taxes have been paid and the company has also paid income tax amounting to Rs. 79 lacs on its profits the company has thus shown its positive net worth, as per its latest audited balance-sheet, to the tune of Rs. 6.27 crores and all the secured creditors have been paid except those agitating through Woolen Kamgar Sanghatana, the appropriate order

in the interest of justice of the company as well as the workmen sought to be represented by Woolen Kamgar Sanghatana, would be to take the company out of the purview of *<u>Sick Industrial Companies Act</u>* *and secure adequate finances for satisfying the claim of the workmen in the Bombay High Court put forth by Woolen Kamgar Sanghatana. Having taken into account the aforesaid averments we are of the view that since the averments made in the application remained uncontroverter except the plea of the Woolen Kamgar Union said to be representing the workmen, the proceedings before the BIFR cannot now survive as the net worth of the company has become positive and accordingly, the orders impugned deserve to be set aside. If the creditors have been paid and further arrangements have been made to secure the interest of the workmen by the deposit of Rs. 8.41 crores and the disbursement of Rs. 3.5 crores as well as the fact that the order dated 1st March, 2007 contemplated an additional bank guarantee to be furnished in the sum of Rs. 1.5 crores, we are of the view that this would adequately protect the interest of the workmen though the claim now sought to be raised is said to be larger. However, taking into account the existing pleadings of the parties even in the Bombay High Court, we are of the view that the sums already deposited in Bombay High Court (Rs. 8.5 crores), disbursed (Rs. 3.5 crores) and ordered to be secured by way of bank guarantee (Rs. 1.5 crores) by today's order would adequately protect the interest of the workmen and no further orders are called for. Even if we take the figure of Rs. 5 crores to be less than the actual claim, as contended by Ms. Singh, the sum enhanced by Rs. 1.5 crores, in addition to the deposit of Rs. 8.36 crores in our view, would sufficiently protect the interest of the workmen. Accordingly, we direct that the Cowtown Land Developers shall furnish a bank guarantee of Rs. 1.5 crores before the Prothonotary and Senior Master of the Bombay High Court in LPA No. 51/2005 with an advance copy to the learned Counsel appearing for the Woolen Kamgar Sanghtana."*

4. Considering the submissions made and since now there is no objection from any of the secured creditors except a tax liability of the Sales Tax Department which also is secured by the company till the time the appeals inter se qua such liability are not disposed of, hence in view of the above, the order dated 22.09.2010 of BIFR is set aside and the order dated 08.12.2010 to the following effect : *"…….Swet Chem Antibiotics will not part with, encumber, sell or dispose of any of their assets including moveable assets till the next date of hearing."*, also stands vacated.

5. The petition is disposed of.

YOGESH KHANNA, J

SEPTEMBER 04, 2017
VLD