

ORDER SHEET

**APO 200 of 2019
WITH
WPO/1557/1998
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

THE SMALL TOOLS MANUFACTURING CO. OF INDIA LTD. & ANR
VS
APPELLATE AUTHORITY FOR INDUSTRIAL AND
FINANCIAL RECONSTRUCTION & ORS

BEFORE:

The Hon'ble CHIEF JUSTICE THOTTATHIL B.RADHAKRISHNAN
The Hon'ble JUSTICE ARIJIT BANERJEE
Date : 25TH FEBRUARY, 2021.

Appearance:

Mr.Mainak Bose, Advocate
Mr.A.N.Mukherjee,Advocate
Mr.D.N.Mukherjee,Advocate

Mr.Joharlal Roy,Advocate
Mr.Y.J.Dastoor,Ld.Addl.Solicitor General

Mr.Anupam Dasadhikary,Advocate
...for O/L.

Mr.S.C.Prasad,Advocate
...For PF authorities.

THE COURT: - By consent of the parties, the appeal and
the stay petition are taken up for final hearing.

By an order dated December 31, 1997 passed in BIFR Case No.88 of 1997, the Board for Industrial and Financial Reconstruction (BIFR) opined that the appellant company herein be wound up under Section 20(1) of the Sick Industrial Companies (Special Provisions) Act, 1985.

The said order was carried in appeal before the Appellate Authority (AAIFR), which was dismissed on June 22, 1998.

A writ petition being WP No. 1557 of 1998 was filed in this Court assailing the order of AAIFR. By an order dated November 28, 2019, the said writ petition was dismissed. It is this order that is under challenge in this appeal.

It appears that pursuant to the order passed in the writ petition, challenging the order of AAIFR, the Company court, by an order dated January 28, 2021 directed winding up of the appellant company.

Learned counsel for the appellant submits that although the order impugned herein records that it has been passed “on merits”, in fact, no submission was made touching the merits of the application nor were points touching the merits of the application considered.

We have heard learned counsel for the appearing parties and we have gone through the impugned order.

It is evident that the winding up order has been passed solely on the basis of dismissal of the writ petition thereby negating the challenge to the order of AAIFR. However, the writ petition was disposed of only in the presence of the petitioners. The other parties were not present. Further, from the order, we find that the points that were required to be considered, were not so considered.

In our considered view, ends of justice will be served if we set aside the order under appeal and direct listing of the writ petition for consideration on merits before the learned Single Judge as per roster.

Accordingly, the order under appeal is set aside.

The learned Judge before whom this matter will be listed as per roster, is requested to hear out the matter as expeditiously as the business of the court of the learned Judge may permit.

The appeal and the application are disposed of.

Since we have not called for affidavits, allegations contained in the stay petition are deemed not to have been admitted.

(THOTTATHIL B.RADHAKRISHNAN,CJ)

(ARIJIT BANERJEE,J.)