

APOT/21/2022
WITH
WPO/1557/1998
IA NO: GA/1/2022
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

THE SMALL TOOLS MANUFACTURING CO. OF INDIA LIMITED AND ANR.
VERSUS
APPELLATE AUTHORITY OF INDUSTRIAL &
FINANCIAL RECONSTRUCTION AND ORS.

BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
DATE : 11TH MARCH, 2022

APPEARANCE:

Mr. Kishore Dutta, Senior Advocate
Mr. Dwaipayan Basu Mullick, Advocate
Mr. Dip Narayan Mukherjee, Advocate
Mr. Amiya Narayan Mukherjee, Advocate
.....for the appellants.

Mr. Subal Maitra, Advocate
..... for ESIC (respondent no.9).

Ms. Smita Das De, Advocate
..... for Official Liquidator.

Mr. Shiv Chandra Prasad, Advocate
Mr. Nikhil Kumar Gupta, Advocate
.....for P.F. Authority.

The Court:- This appeal is at the instance of the writ petitioners challenging the interlocutory order of the Learned Single Judge dated 22nd December 2021 passed in WPO No.1557 of 1998 holding that in view of the earlier Division Bench order dated 25th February, 2021, no scope is left to entertain the appellants' application being GA/11/2019 (Old GA No.1727/2019) and has accordingly dismissed the said GA.

Learned counsel for the appellants has pointed out that the BIFR had passed an order of winding up which was affirmed by the AAIFR and that proceedings are pending and the Division Bench by the order dated 30th April, 2021 had stayed the winding up proceedings. He has further submitted that the

petitioners have filed the present writ petition questioning the winding up order passed by the BIFR and that a scheme framed by the Special Officers has been accepted by the Court wherein two properties are to be sold, out of which one property has already been sold and in GA 11/2019, there is a prayer for selling another property i.e. the land at Krishnanagar. He submits that if the second property is also allowed to be sold, then all the dues of the creditors can be cleared and the company can be revived and without going into any other further aspect of the matter, the writ petition itself can be disposed of.

Learned counsel for the ESI as well as the PF authority have submitted that their dues are also payable by the company. Counsel for all the respondents present in the Court have submitted that they have no objection if the second property in terms of the scheme is also sold and the payment of their dues is made.

In the aforesaid circumstances and in view of the stand of the counsel for the parties before this Court, we are of the view that GA 11/2019 is now required to be considered by the learned Single Judge and in view of the stand of the parties before this Court, the earlier order of the Division Bench dated 25th February, 2021 will not come in the way in consideration of the said GA.

Hence, we dispose of this appeal with the hope that the learned Single Judge will duly consider and decide GA 11/2019 in accordance with law.

(PRAKASH SHRIVASTAVA, C.J.)

(RAJARSHI BHARADWAJ, J.)