HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

FRIDAY, THE TWENTY NINTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SRI JUSTICE T. VINOD KUMAR

WRIT APPEAL NO: 391 OF 2008

Writ Appeal under clause 15 of the Letters Patent preferred against the order dated 08.02.2008 made in W.P.No.11173 of 2007. on the file of the High Court.

Between:

M/s. Rangareddy & Associates, Rep. by its Partner, 7-1-621/244, Sanjeevareddy Nagar, Hyderabad-500038.

...APPELLANT/RESPONDENT

AND

1. Dewan Bahadur Ramagopal Mills Limited, Represented by its Managing Director, S. Krishnam Raju S/o. Late Sri S.V. Vissam Raju, R/o. No. 839-U, Road No.41, Jubilee Hills, Hyderabad.

....RESPONDENT/PETITIONER

2. The Board of Industrial and Financial Reconstructions., rep. by its Registrar, New Delhi.
3. The Industrial Finance Corporation of India,, rep. by its Assitant General Manager, Bank of Baorda Buildings, 16, Sansad Marg, New Delhi.
4. A.P. Industrial Development Corporation,, rep. by its Vice Chaiman and Managing Director, Parishrama Bhavan, Basheerbagh, Hyderabad.
5. State Bank of Hyderabad,, Rep. by its Assistant General Manager, Credit Department, Head Office, Gunfoundry, Hyderabad.
6. The Punjab National Bank,, Rep. by its Manager, Head Office, Bhikaji Kama Place, New Delhi.
7. The Diwan Bahadur Ramgopal Mills Employees Union,, Rep. by its General Secretary, 6/D, LIGH, Barkatpura, Hyderabad.
8. The Industrial Investment Bank of India,, Rep. by Divisional General Manager, Hyderabad Branch Office, 7th Floor, United India Insurance Company Buildings, Basheerbagh, Hyderabad.
9. DBR Mills Staff Union,, rep. by its General Secretary, KVR Krishnamachary, S/o. Venkatachary, R/o. Maredpally, Secunderabad.

...RESPONDENTS/RESPONDENTS

I.A. NO: 1 OF 2008(WAMP. NO: 814 OF 2008)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay the operations of the order dated 08.02.2008 in W.P.No.11173 of 2007 passed by the Hon'ble Single Judge of this Hon'ble Court

I.A. NO: 2 OF 2008(WAMP. NO: 815 OF 2008)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the BIFR 2nd respondent herein not to act in pursuance of the impugned order and restrain BIFR from accepting the deposit of Rs.50.00 lakhs by the Respondent pending disposal of the above writ appeal

Counsel for the Appellant: SRI P. S. RAJASEKHAR, COUNSEL FOR SMT. SHIREEN SETHNA BARIA

Counsel for Respondent No. 1: SRI VEDULA SRINIVAS, SENIOR COUNSEL FOR SMT. VEDULA CHITRALEKHA

Counsel for Respondent No. 5: SRI K. V. SUBRAHMANYA NARUSU

Counsel for Respondent No. 6: SRI K. SURYANARAYANA

Counsel for Respondent No. 7: SRI S. SRI RAM

Counsel for Respondent No. 9: Ms. SAGARIKA KONERU

The Court made the following: ORDER

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SRI JUSTICE T. VINOD KUMAR

WRIT APPEAL No.391 OF 2008

JUDGMENT: *(Per the Hon'ble Sri Justice T Vinod Kumar)*

This Intra-court appeal under Clause 15 of the Letters Patent is filed challenging the order of the learned Single Judge dated 08.04.2008 in Writ Petition No.11173 of 2007 as being contrary to settled legal proposition that the High Court in writ jurisdiction under Article 226 of the Constitution of India should confine itself to the question of legality and cannot sit as a Court of Appeal by deciding issues involving disputed questions of facts.

2. The appellant herein is respondent No.4 in the Writ Petition being W.P. No.11173 of 2007.

3. The facts matrix of the case has been set out in detail in the order under challenge. Thus, shorn of unnecessary details it is sufficient to state that the respondent No. 1 herein (company) had filed the underlying petition aggrieved by the order dated 03.05.2007 passed by the Board for Industrial and Financial Reconstruction (for short 'BIFR'). The order passed by BIFR was challenged on the ground that the Draft Rehabilitation Scheme

(DRS) submitted by the appellant was sanctioned on 28.05.1997 with some modifications, without notice to the petitioner; that the DRS was not circulated; that equal opportunity should be provided to the company to make OTS settlements before seeking revival schemes from third parties; that the Appellate Authority constituted under Section 25 of the Sick Industrial Companies (Special Provisions) Act, 1985, (for short 'SICA') had set aside the draft scheme submitted by the appellant and sanctioned by the BIFR and remanded the matter back to BIFR for fresh consideration, after hearing the company and all the parties concerned noting therein that the consent of the company was erroneously recorded by BIFR; and thus the company was entitled to submit suggestions/objections in response to DRS and was also entitled to hearing before BIFR to protect their interest.

4. The learned Single Judge of this Court by the impugned order had set aside the order of BIFR dated 03.05.2007 by which the DRS submitted by the appellant was sanctioned and remitted the matter for fresh consideration, permitting the company to submit its suggestions/objections within 30 days from the date of order.

5. The learned Single Judge while setting aside the order passed by the BIFR sanctioning the DRS submitted by the appellant had held that the Draft Rehabilitation Scheme was not circulated to the company; that the company was not present when orders dated 12.08.1997 and 01.06.1998 were passed; that the company was not given opportunity to submit its objections/suggestions under Section 18(3) of SICA; and that since the company received the DRS only on 17.11.1998, it cannot be deprived of its right to file objections/suggestions as contemplated under Section 18(3)(a) and (b) of SICA.

6. The learned Single Judge further held that even at the stage of submitting objections/suggestions if the company brings up a better proposal and inspires the confidence of BIFR, its employees, etc. it is open for the BIFR to a take just, fair and reasonable decision.

7. The learned Single Judge further held that the BIFR is entitled to review any scheme and direct the Operating Agency (OA) to prepare fresh scheme under Section 18 of SICA; that even the scheme sanctioned is not final; that the Board can, for any compelling reasons, review the sanctioned scheme; and that the appellant cannot claim a vested interest thereby depriving the right of the company.

8. Assailing the said order of the learned single Judge, the present appeal is filed.

9. Heard Sri P.S. Rajasekhar, learned Counsel appearing for Mrs. Shireen Sethna Baria, learned Counsel for the appellant, Sri. Vedula Srinivas, learned Senior Counsel appearing for Mrs. Vedula Chitralekha, learned counsel for respondent No.1 and Ms. Sagarika Koneru, learned Counsel for respondent No.9 and perused the record.

10. The challenge in the present appeal to the order of the learned Single Judge is primarily threefold.

i. Firstly, that the Writ Petition challenging the order of BIFR ought not to have been entertained, since the aggrieved party has an alternate remedy of Appeal under Section 25 of SICA;

ii. Secondly, the finding of the learned Single Judge holding that the Company was entitled to submit fresh revival scheme as an objection/suggestion to the DRS runs contrary to the object of Section 18 of SICA; and

iii. Lastly, the finding that the Company did not have notice of the DRS till 17.11.1998 and thereby can be given another opportunity to submit its objections/suggestions is erroneous, since the approved DRS was published in daily newspapers and also because the Company had failed to submit its objections/suggestions even after the matter was remanded by the appellate authority.

11. Insofar as the challenge to the impugned order on the ground of existence of alternate remedy is concerned, it is to be noted that before the learned Single Judge, the parties to the Writ Petition including the appellant herein had consented for hearing the Writ Petition on merits. The learned Single Judge had noted the said consent of the appellant in para 15 of the impugned order as under:

> "15. The aforesaid order of the BIFR dated 03.05.2007 has been questioned in this Writ Petition. Though an appeal lies against the said order passed by the BIFR to the AAIFR under Section 25 of SICA, **the contesting respondent RRA consented to hear the Writ Petition on merits instead of relegating the petitioner to file an appeal before the appellate authority, as it would cause further delay in resolving the disputes among the parties.** In view of the aforesaid consent of the contesting respondent RRA, the Writ Petition has been heard on merits."

(emphasis supplied)

12. In view of the consent given by the appellant to proceed with the hearing of the Writ Petition, it is not open for the

appellant to now plead otherwise. Thus, the challenge in the present appeal on this ground has to fail.

13. Turning to the other ground of challenge in permitting the company to submit fresh revival scheme as an objection/suggestion to the DRS, it is to be noted that the purpose of the Act is to not just declare a company as sick industrial company with its net worth eroded, rather it is to promote ameliorative, remedial and other measures which need to be taken in respect of such companies in public interest.

14. Section 18 of SICA deals with Preparation and Sanction of Schemes. Sub-section (3) thereof mandates that the draft scheme approved by BIFR shall be sent to the sick industrial company and the OA. The provision further mandates that BIFR *shall* publish or direct the publication of the draft scheme in daily newspapers in order to enable the concerned parties to file their objections and suggestions for BIFR to consider. While so, sub-section (5) thereof, confers powers on the BIFR to review any sanctioned scheme and make modifications as it may deem fit, *including* the preparation of a fresh scheme. Thus, from a bare reading of sub-section (5), it can be understood that a scheme sanctioned under Section 18 of SICA is not unalterable

(See: Raheja Universal Limited Vs. NRC Limited and Ors[1]). Section 18(6) of SICA specifies that whenever such an exercise under Section 18(5) of SICA is undertaken, the provisions of sub-sections (3) and (4) of Section 18 shall apply in relation thereto.

15. It is pertinent to note that the exercise under Section 18(5) of SICA may be undertaken either on the recommendation of the OA or *otherwise*. The usage of the word *'otherwise'* demonstrates that BIFR has a discretionary power to direct the preparation of a fresh scheme for any other reason it deems necessary. At the cost of repetition, the purport of conferring such discretionary powers on BIFR is to ensure that the sanctioned scheme is of utmost viability. Since, the legislature has not limited the exercise of the powers conferred under Section 18(5) of SICA to only specific situations, this Court is of the view that if a proposal which is best suited in a given situation is made in the form of objection/suggestion to the DRS, the same cannot be rejected on the ground of it being a new proposal.

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[1] (2012) 4 SCC 148

16. So far as the contention of the appellant that the company ought not be given another opportunity after failing to submit objections/suggestions to the DRS when the matter was remanded by the appellate authority is concerned, firstly, it is to be seen that the appellate authority while remanding the matter to BIFR for fresh consideration after hearing the company *vide* order dated 06.01.2000 had recorded a categorical finding that the company was absent in the hearings held on 12.08.1997 and 01.06.1998, and that their consent was erroneously recorded by BIFR. Though the appellant herein had preferred W.P. No.7670 of 2000 aggrieved by the said findings, the said Writ Petition was dismissed by the learned Single Judge *vide* order dated 23.02.2000. Admittedly, no further appeal was preferred against the order dated 23.02.2000. Therefore, having accepted the order in W.P. No.7670 of 2000 dated 23.02.2000, the appellant herein cannot be permitted to raise the very same plea again. Secondly, in light of the foregoing discussion on the discretionary power of BIFR under Section 18(5) of SICA, the company could at any point bring out a fresh proposal for consideration of BIFR.

17. At this stage, it is relevant to note that an appeal to the Division Bench under Clause 15 of Letters Patent from an order

of a learned Single Judge is only provided for convenience to the parties. However, it is well settled that the powers of this Court under Clause 15 of Letters Patent can only be exercised when the order of the learned Single Judge is totally perverse ***(See: N. Seshaiah Vs. South Central Railway and Ors[2]).***

18. Further, in the light of the judgment of the Hon'ble Supreme Court in ***The Management of Narendra & Company Private Limited vs. the Workmen of Narendra & Company***[3], and ***Shyam Sel and Power Limited and Another vs. Shyam Steel Industries Limited***[4], the impugned order passed by the learned Single Judge does not fall under the term *'judgment'* of Clause 15 of the Letters Patent, as the said order does not give a finality to the right of the parties. Since the impugned order merely directs the BIFR to take a just, fair and reasonable decision after providing the company an opportunity to submit its suggestions/objections, this Court is of the view that no grave prejudice is caused to the appellant for the present Writ Appeal to be entertained by this Court.

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[2] 2019(6) ALT 84
[3] (2016) 3 SCC 340
[4] (2023) 1 SCC 634

19. Resultantly, this Court is of the view that the impugned order does not call for any interference in exercise of powers under Clause 15 of Letters Patent. Accordingly, the instant Writ Appeal is dismissed.

20. However, this Court is conscious of the fact that during the pendency of the instant appeal, the BIFR was dissolved on account of The Sick Industrial Companies (Special Provisions) Repeal Act, 2003 (for short 'Repealing Act of 2003'), notified on 25.11.2016 *vide* notification No.S.O. 3568(E), & 3569(E) and brought into force with effect from 01.12.2016. Further, since the matter could not be pursued by the parties on account of the operation of stay during the pendency of the instant appeal, this Court deems it appropriate to grant liberty to the company to take appropriate steps in accordance with the Repealing Act of 2003, the Companies (Transfer of Pending Proceedings) Rules, 2016 passed *vide* G.S.R. 1119(E), dated 09.12.2016 read with the Insolvency and Bankruptcy Code (Removal of Difficulties) Order, 2017 passed *vide* S.O. 1683(E), dated 24.05.2017.

21. Miscellaneous petitions pending if any shall stand closed in the light of this order.

SD/- T. SRINIVAS
DEPUTY REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. One CC to Smt. Shireen Sethna Baria Advocate [OPUC]
2. One CC to Smt. Vedula Chitralekha Advocate [OPUC]
3. One CC to Sri K V Subrahmanya Narusu Advocate [OPUC]
4. One CC to Sri K Suryanarayana Advocate [OPUC]
5. One CC to Sri S Sri Ram Advocate [OPUC]
6. One CC to Ms. Sagarika Koneru, Advocate(OPUC)
7. Two CD Copies

MBC
GJP

HIGH COURT

DATED: 29/12/2023

JUDGMENT

WA.No.391 of 2008

DISMISSING THE WRIT APPEAL

WITHOUT COSTS

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MA
1/2/24.