

(1999) 03 DEL CK 0103
In the Delhi High Court
Case No : C.W. No. 4534 of 1998

Associated Cement Companies Ltd.

APPELLANT

Vs

Appellate Authority for Industrial and Financial
Reconstruction and Others

RESPONDENT

Date of Decision : 01-03-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 79 DLT 496 : (1999) 49 DRJ 763

Hon'ble Judges : Kripa Shankar Gupta, J;Devinder Gupta, J

Bench : Division Bench

Advocate : A.N. Haksar, U.A. Rana, Rajiv Shakdhar and Sudhanshu Tripathi, for the Appellant; A.M. Singhvi, Senior Advocate and Sanjeev Saraswat, for Respondent No. 3, Dilip Singh and K.N. Tripathi for Respondent No. 4 and Sandeep Khurana, for the Respondent

Final Decision : Dismissed

Judgement

Devinder Gupta, J.—The facts in short are that Ashoka Cement Ltd. (A.C.L.) with financial participation of West Bengal Industrial Development Corporation (W.B.LD.C) floated Damodar Cement and Slag Limited (D.C.S.L.), which was incorporated under the Companies Act, 1956 in the year 1977. A.C.L. disinvested its entire share holding in favor of W.B.I.D.C. in May, 1991. In July, 1993 C.C.I., entered into joint venture agreement with W.B.LD.C. As a result thereof C.C.I. acquired 51% shareholding interest in D.C.S.L. By another agreement C.C.I. acquired 90% shareholding interest in W.B.LD.C. on 24.1.1992. As C.C.I. failed to pay the full purchase price, its shareholding interest was scaled down to 58.39% while the balance 41.61% was held by W.B.LD.C., and other share holders.

2. By order passed on 24.4.1994 the Board for Industrial and Financial Reconstruction (B.I.F.R.), was declared D.C.S.L. a sick industrial company. M/s. S.R. Batliboi and Co., the Chartered Accountants were appointed by B.I.F.R. to

carry out an enquiry into the financial health of D.C.S.L. Report was filed by the said Chartered Accountant on 8.12.1995, who valued the share of D.C.S.L. at Rs. 2.03 each against the original value of Rs. 10/-.

3. Associated Cement Co. of India (A.C.C), the petitioner herein submitted a proposal for rehabilitating D.C.S.L., pursuant to the offer, which was accepted by Industrial Development Bank of India (the Operating Agency). A direction was issued by B.I.F.R. for preparation of the draft rehabilitation scheme based upon the proposal of the petitioner company. During the proceedings, B.I.F.R. was moved by the Operating Agency that an offer for purchase of shares at the rate of Rs. 4.50 per share as contemplated in the draft scheme had been received from Swiss Company, known as Holderbank. On 31.5.1996 B.I.F.R. rejected the offer of Swiss Company on the ground that it had come at a very late stage. On 24.7.1996 when all the concerned parties were agreeable to certain modifications in the terms of the draft scheme an order was passed by B.I.F.R., sanctioning the scheme.

4. As per the order passed by B.I.F.R. while sanctioning the scheme, the petitioner was to pay Rs. 4.50 per share as share exchange value. The petitioner on its request was permitted to pay the amount of share in installments, namely, Rs. 1.50 per share before 1.9.1996 and the balance of Rs. 3/- per share in three installments of Re. 1/- each on or before 30.9.1997, 30.9.1998 and 30.9.1999. without any interest. C.C.A. was directed to transfer shares to A.C.C. before 1.9.1996 to ensure speedy revival/rehabilitation.

5. Pursuant to the aforementioned order of 24.7.1995 passed by B.I.F.R., the petitioner paid the first Installment towards share transfer price, at the rate of Rs. 1.50 per share on 1.9.1996 and consequently the petitioner took over the affairs of the management of D.C.S.L. on 10.9.1996. It is the petitioner's case that the petitioner of its own on 27.8.1997 informed the B.I.F.R. that it had engaged at its own cost the services of M/s. Price Waterhouse, Chartered Accountants, to investigate the affairs of D.C.S.L. On receipt of this due diligence review, it came to the notice of the petitioner that there was a substantial amount of undisclosed liabilities besides deterioration in the value of the current assets. Accordingly, the petitioner sought review by approaching B.I.F.R. with some suggestions that:

"(a) The share transfer price to frozen at Rs. 1.50 per share against Rs. 4.50 per share provided in the Sanctioned Scheme.

(b) Waiver dues amounting to Rs. 1.75 crores payable by DCSL to CCI towards supply of clinker.

(c) Payment of dues owned by CCI to DCSL,

(d) Waiver of tax liability to the tune of approximately Rs. 242 lakhs which is likely to wrote u/s 115JA of Income Tax Act, 1961 on account of notional profits of Rs. 30.24 crores which received in favor of DCSL on account relief and

concession under the rehabilitation Scheme."

6. Considering the petitioner's request, BIFR on 18.9.1997 rejected the same. The petitioner challenged this order on 3.11.1997 by preferring an appeal before A.A.I.F.R. Dismissing the petitioner's appeal by the impugned order a slight modification was made to the petitioner's advantage. The petitioner has now felt aggrieved against the said order of A.A.I.R.R. passed on 9.7.1998 with a prayer that the impugned order be quashed and the share price be declared as Rs. 1.50 per share and not Rs. 4.50 per share and a direction be issued to CCI to refund the balance amount.

7. We have heard learned Counsel for the parties and have been taken through the entire record. Having given our considered thought to the submissions made at the bar, we are of the view that it is not at all a case for interference with the orders, which were passed with consent.

8. Before the order of 24.7.1996 Sanctioning the Scheme was passed proceedings had taken place on 31.5.1996. On that date, while rejecting the offer of Swiss Company, the B.I.F.R. directed the A.C.C. to submit within two weeks its clear-cut stand on the points i.e. payment of Rs. 4.50 per share as share exchange value, to pay Rs. 1.75 crores as additional amount and retention of 30 members of clerical cadre. B.I.F.R. also directed CCI to furnish all relevant information/data required by A.C.C. The proceedings of that date record:

"The Bench directed the A.C.C. to submit their clear-cut stand on the points i.e. payment of Rs. 4.50 per share as share exchange value, to pay Rs. 1.75 crores as additional amount and retention of 30 members of clerical cadre within two weeks positively. The Bench also directed CCI to furnish all relevant information/data required by A.C.C. The Bench held the view that in case ACC backs out or does not convey its clear-cut stand on the aforesaid issues/points by 15.8.98 the Bench may consider the two proposals received by the O.A. The bench directed that CCI was free to negotiate with the promoters of Holder bank and Rungla Irrigation Ltd. in regard to any bank guarantee etc. to safeguard its interest in regard to consideration of their proposal."

The case was thereafter taken up on 24.7.1996. The B.I.F.R. in its order passed on that date in presence of the parties recorded:

"ACC should pay Rs. 4.50 per share as share exchange value, to which, Shri T.M.N. Nambiar, representing ACC, agreed provided the aforesaid amount was not required to be paid up-front, since it would involve substantive financial burden on ACC, and would adversely affect the revival efforts. After discussions, the Bench agreed to Shri Nambiar's request and directed that out of Rs. 4.50 per share, Rs. 1.50 per share to be paid before 1.9.96 and the balance of Rs. 3.00 per share to be paid in 3 installments of Re. 1.00 each on or before 30.9.97, 30.9.98 and 30.9.99 without any interest. The CCI would, however, transfer its shares to ACC before 1.9.1996 to ensure speedy revival/rehabilitation."

8. The aforementioned narration and reading of the two orders on the face of it would suggest that it was with consent that the order dated 24.7.1996 was passed by B.I.F.R. and this reason alone weighed with A.I.L.F.R. to reject the petitioner's submissions raised in its appeal. A.A.I.F.R. in its order dated 9.7.1998 recorded:

"As Shri T.M.M. Nambiar representing ACC consented to pay Rs. 4.5-0 per share as share exchange value and his request for payment of the same in installments has been accepted by the Board appellant cannot take an altogether different stand by filing review petitions. Moreover, the appellant has already effected the transfer of shares in its favor from Cement Corporation of India and WBIDC as per consent terms. A challenge to the agreed terms for share transfer is now not maintainable."

9. Before the order of 24.7.1996 had been passed by B.I.F.R. sufficient time had been allowed to enable the petitioner to seek any information in case it wanted any from C.C.I. Even report of the earlier Chartered Accountants appointed by B.I.F.R. (M/s. S.R. Batliboi & Co.) was available with the petitioner. The petitioner had about 7 1/2 months time with it to check the veracity of the same in case it so wanted. No information was sought by the petitioner from C.C.I. at any time prior to 8.12.1995 or after 31.5.1996. Neither Mr. Nambiar nor the other persons who were present on 24.7.1996 before B.I.F.R. placed on record their affidavit explaining the circumstances under which they in the proceedings, which were conducted by B.I.R.F. on 24.7.1996 had agreed to pay the price at Rs. 4.50 per share. Thus it is not a case for interference in exercise of powers of judicial review. Accordingly, the writ petition is dismissed.

10. By the order passed on 9.9.1998 the petitioner was directed to prepare a fixed deposit receipt for the third instalment, which was due and payable in September, 1998. The amount is lying in deposit in this Court. The said amount is payable to respondent No. 3. The Registrar will pay forthwith this amount to the third respondent namely, C.C.I, Along with interest, which has accrued thereupon. Interim order stands vacated.