

(1994) 06 CAL CK 0001

In the Calcutta High Court

Case No : Appeal No. 236 of 1993 and Matter No. 3686 of 1992

Balaram Chowdhury and Others

APPELLANT

Vs

New Era Fabrics Ltd. and Others

RESPONDENT

Date of Decision : 28-06-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 19(2), 25

Citation : (1994) 2 CALLT 200 : 99 CWN 114

Hon'ble Judges : Nikhil Nath Bhattacharjee, J; Bhagabati Prasad Banerjee, J

Bench : Division Bench

Judgement

Bhagabati Prasad Banerjee, J.—The matter appeared before us for passing final order in the appeal in terms of the order passed by Their Lordships Ajit Kumar Sengupta (As His Lordship then was) and Nure Alam Chowdhury on 8.10.93. The appeal was against an order passed by the learned trial Judge. The writ application was filed by New Era Fabrics Limited and others inter alia, for a direction upon the Board of Industrial and Financial Reconstruction to consider the sanction of the scheme for rehabilitation submitted by the said parties for revival of Dunbar Mills Ltd. and the copy of the scheme submitted by the writ petitioners was approved by the learned trial Judge and further directed handing over of the management and possession of the Dunbar Mills Ltd. to the petitioners therein. The Division Bench by the order dated 8.10.1993 set aside the order passed by the learned trial Judge and directed the Board of Industrial and Financial Reconstruction (referred to as BIFR) to the following effect :

"In our view, they would necessarily hear the authors of the scheme and their reasons and calculation and weigh them against economic realities. The interactions amongst the contesting and contending parties will necessarily bring the ins and outs of the problem and the BIFR with its expertise will be able to examine inside out of the matter and come to the right conclusion and to mould the scheme accordingly. The entire exercise which the parties including BIFR should undertake is to be genuinely exploratory in nature so that the unit is

again put on the rails. Of course, the situation cannot be helped if it has reached a point of no return. But it has to be borne in mind that it is in the best of public interest to have the company revived unless it is found terminally sick.

In our view, therefore, the matter should be remained to the BIFR who shall call all the parties including the writ petitioners in this case and examine whether the schemes submitted before this Court by any of the person including the writ petitioners is proper and feasible for revival of the Dunbar Mills. BIFR will be at liberty to examine any other scheme if submitted before them. Accordingly, we dispose of the application by the following order :

BIFR shall dispose of the matter as expeditiously as possible preferably within two months from date after giving reasonable opportunity of hearing to all the concerned parties who have submitted schemes before the Court including the workmen. BIFR shall submit their report upon consideration of the schemes regarding their viability and with the recommendation what should be the appropriate scheme, according to them, for revival of the Dunbar Mills Ltd. BIFR shall take expeditious decision in the matter as the workmen are without any job since 1987 and the promoters have brought some ray of hope to them.

The winding up proceeding, if any, will remain stayed, until further order.

Let the matter appear in the list on 15th December, 1993 when the decision of the BIFR shall be placed before his Court for disposal of the appeals."

2. It appears that the BIFR did not forward any decision before the Court on or before the date fixed in this matter. From time to time, order was passed giving reminder to BIFR for expediting the matter particularly in view of the fact that about 2000 (two thousand) employees of that Mills remained unemployed for several years and because of the order passed by the learned trial Judge and the earlier Division Bench, a ray of hope was reflected in their mind for their survival. On 5th May, 1994 an order was passed by this Court directing the BIFR to submit a report by 19th May, 1994, which was not complied with. Again on 19th May, 1994, we passed an order giving the last opportunity to BIFR to submit a report by 2nd June, 1994 and the report, if any, was directed to be submitted before this court in a sealed cover on that date by some of the representatives of the BIFR which was also not complied with. On 24th May, 1994 The Asst. Registrar, O.S. of this Court received a communication from the Registrar, BIFR with a telex message whereby this Court was informed that the matter was under consideration of the BIFR and that after the processing of the matter, they would decide which was the best offer that could be accepted. On 2nd June, 1994 also the BIFR had not forwarded its recommendation and/or proposal in the matter. The learned counsel appearing on behalf of some of the parties produced before us a copy of the order passed by the BIFR to the effect that the BIFR found that the offer of M/s. Khater (Holdings) Ltd. to be better and acceptable to them and accordingly, decided to publish a draft scheme in order to establish financial capacity in accordance with the provision of Section 18 of the Sick Industrial

Companies (Special Provisions) Act, 1985. Learned Counsel appearing on behalf the New Era Fabrics Ltd. and Mr. Somnath Chatterjee, learned counsel appearing on behalf of some of the workmen of the said Mills stated that they were not aware of any such order and that unless they get a copy of the same, they cannot make any comment in the matter and accordingly, this Court directed supplies of the copies of the order passed by the BIFR dated 27.5.94 passed in case Nos. 77/87 In Re : Dunbar Mills Ltd. Learned Counsel, Mr. J.K. Mitra, appearing on behalf of M/s. New Era Ltd. stated that from time to time the party submitted revised proposal before the BIFR for its consideration but the proposal and/or scheme submitted by M/s. New Era Fabrics Ltd., even though better than M/s. Khater (Holdings) Ltd., the same was rejected by the BIFR on erroneous basis and submitted that M/s. New Era Fabrics Ltd. entered into an agreement with the workmen and submitted a better proposal which was rejected without giving them the opportunity of being heard which, according to Mr. Mitra, was in violation of the order passed by the Division Bench of this Court passed on 8th October, 1993 wherein the Division Bench categorically held that the BIFR should dispose of the matter after giving reasonable opportunities of hearing to all the concerned parties who have submitted the schemes before this court including the workmen. The recommendation on the basis of which the BIFR had taken decision is not before this Court. The BIFR had published a draft scheme as required u/s 19(2) of the said Act. After the scheme is prepared and published, the parties have right to file objection and they were entitled to be heard and on hearing the same, the BIFR either may sanction or refuse to sanction the scheme. But in the instant case, the scope of hearing is limited to disapprove of the scheme submitted by M/s. Khater (Holdings) Ltd. We heard the learned Counsel at length but it is not necessary for us to go into the allegations and counter-allegations in details inasmuch as when the proposal submitted by one of the parties, it has been approved and objections were invited under the law and when the parties have a right of being heard before the acceptance or rejection of the scheme, the parties' right to support or to oppose of the scheme is there and that there is a provision for appeal provided under the Act u/s 25 against any decision taken by the BIFR. As it appears to us that before rejecting the proposal submitted by M/s. New Era Fabrics Ltd., M/s. New Era Fabrics Ltd. had not been heard and accordingly, we place it on record that M/s. New Era Fabrics Ltd. will be at liberty to agitate all points and grounds available to them challenging the viability of the scheme submitted by M/s. Khater (Holdings) Ltd. and the BIFR shall hear the parties so that they are heard in respect of their all points and that we have no doubt that the BIFR should consider the matter dispassionately for the purpose of revival of the Mills concerned keeping in view the fate or lot of about two thousand unemployed workers who remained unemployed for several years and have been passing their days of agony in starvation and it is reported that some of the workers by now breathed their last in starvation. The aspect of social and economic justice should not be lost sight of by BIFR. It is not the duty of the court or the BIFR to see whether a party's offer is accepted or not. It is the duty of all concerned to see that the Mills revive

on the basis of a scheme which is economically viable and by a party who is otherwise able and competent financially or otherwise to fulfil the commitment and can not only revive but continue with the production after giving employments to its workmen. We also make it clear that the New Era Fabrics Ltd. would be at liberty to agitate all points before the BIFR in respect of the scheme in question without prejudice to the rights and contentions of the parties in any other proceedings and without waiving their rights, if any. We are of the view that any interference in the matter will delay the hope of revival of the Industry. Before we part with the matter we are constrained to place it on record that the BIFR should have disposed of the matter expeditiously in terms of the order passed by the Court after compliance with the statutory requirements but there was some delay. But let there be no further delay in concluding the matter in accordance with the provisions of the law. Delay would be fatal to all concerned particularly, to the workers concerned. We also (make it clear that we have not adjudicated any of the points available including the right of appeal against any of the order of the BIFR passed in the past or in the future as this Court does not intend to interfere with the proceedings already initiated.

Appeal is, accordingly, disposed of.

No order as to costs.

Let a copy of the order be sent to the BIFR through Registrar, O.S. of this Court.

All parties to act on a signed xerox copy of the Judgment on the usual undertaking.

Nikhil Nath Bhattacharjee, J.

3. I agree.