(1999) 07 CAL CK 0001

In the Calcutta High Court

Case No : A.P.O.T. No. 320 of 1999, G.A. No. 1626 of 1999 and W.P. No. 2655 of 1997 with T.No. 739 of 1999

Caledonian Jute Industries Ltd. and Others — APPELLANT

Vs

Board for Industrial and Financial Reconstruction
 State Bank of India Vs Bengal Chatkal Mazdoor Union and Others — RESPONDENT

Date of Decision : 27-07-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 105 CompCas 965

Hon'ble Judges : Satya Brata Sinha, Acting C.J.;M.H.S. Ansari, J

Bench : Division Bench

Advocate : Kapoor and Hirak Mitra, for the Appellant; Samarditya Pal, for the Respondent

Judgement

1. The instant two appeals are filed assailing the order of the learned single judge dated April 16, 1999, passed in a bunch of applications in Writ Petition No. 2655 of 1997. Both the appeals, have therefore, been taken up, heard analogously and are being disposed of by their common judgment.

2. Appeal No. 320 of 1999 is filed by the writ petitioner, Caledonian Jute and Industrial Ltd. (for short the company).

3. Appeal No. T-739 of 1999 is filed by the State Bank of India, respondent No. 3 in the said Writ Petition No. 2655 of 1997 (for short SBI).

4. The appellant-company filed the Writ Petition No. 2655 of 1997, claiming, inter alia,

(i) questioning the order dated November 20, 1997, passed by the Board for Industrial and Financial Reconstruction (for short BIFR) ;

(ii) direction upon the officer-in-charge, Maheshtala Police Station to render necessary protection to the writ petitioner for opening and operating the mill ;

and

(iii) direction upon the Additional Labour Commissioner, Calcutta, to frame a reasonable time for settlement between the petitioner-company and workers.

5. By an interim order dated December 10, 1997, upon the writ application being moved before this court, the operation of the order dated November 20, 1997, passed by the BIFR was stayed and directions for filing affidavit-in-opposition were also issued.

6. The workers union representing 4,300 workers who are employees of the writ petitioner''s company made an application for :

(i) vacating the aforesaid interim order ;

(ii) for appointment of a special officer for making an inventory of the plant and machinery, finished goods, materials etc. lying in the premises of the mill of the petitioner-company ;

(iii) to open the jute mill and allow the normal operation of the mill with the assistance of the committee of management to be appointed by the court with the representatives of the workers as also of one M/s Delta Industrial Ltd.

7. Another application being G. A. No. 1193 of 1999 was filed by certain shareholders of the petitioner-company who claimed themselves to be the holders of about 40 per cent, of the paid-up capital if the said company and in the said application a prayer was made for impleading them as party respondent.

8. M/s. Ceekay International Pvt. Ltd. moved an application being T/612/ 99 and a similar application was moved by M/s. Gold Crust Jute and Fibres Ltd. for intervening in the matter.

9. By the order under appeal the learned judge dismissed the application of the shareholders on the ground that they have no locus standi.

10. The two companies who prayed for intervening in the matter and their applications were dismissed on the ground that the same are misconceived and they are neither necessary nor proper parties.

11. We are not concerned in the instant appeal with those orders dismissing the application for intervening.

12. As regards the application filed on behalf of the workers by their registered unions, the learned single judge observed that on the one hand the present management is unable to run the mill or submit a proper scheme acceptable to the BIFR for revival of the company by obtaining stay and on the other hand the management failed to operate the mill affecting the livelihood of 4,300 workers and their families and even at the hearing of the application of the workers'' unions for running of the mill in the manner as proposed by the unions no suggestion was forthcoming" from the management or the State Bank of India and in such a situation the proposal for running the mill, it was observed, cannot

be ignored. The learned single judge, thereupon directed M/s. Delta International Ltd. be impleaded although it may neither be necessary nor a proper party but in the interest of all the parties so that M/s. Delta International Ltd. will be amenable to all directions and orders that may be passed by the court for safeguarding the interest of the company, the financial institutions and other parties.

13. The application of the workers unions was thus disposed of by passing'' the following" orders and directions :

"(a) An interim order dated December 10, 1997, passed in Matter No. 2655 of 1997 is vacated.

(b) Delta International (P.) Ltd. is added as a respondent in the writ petition.

(c) Mr. Sovanlal Hazra, a member of the Bar and senior advocate of this court, who was also appointed as special officer in the case of Angus and Co. and Kelvin Jute Mill and appears to have acquired experience in such matter is appointed the special officer. He shall forthwith take possession of the mill and make an inventory of the plant, machinery, finished goods and raw materials etc. and other assets of the company in the premises of the mill after giving notice to the petitioner-company, the State Bank of India and the workers.

(d) The special officer after taking such possession and making'' such inventory shall take immediate steps to open the mill and allow the normal operation thereof and for the aforesaid purpose the special officer will take assistance from the committee of management to be formed by him with the representatives of the workers, State Bank of India, the petitioner-company and the aforesaid Delta International (P.) Ltd.

(e) It is made clear that it is under the supervision of the said special officer the mill shall be operated with the assistance of the said committee of management. The said committee or management shall be constituted with three representatives from the workers ; one representative from the State Bank of India, one representative from the petitioner-company and another representative from the said Delta International (P.) Ltd. Such committee or management shall also include a representative of the State Government from the Department of Commerce and Industries. On being communicated with the order passed by this court by the special officer, the Secretary, Commerce and Industries Department , Government of West Bengal, shall forthwith nominate the representative of the said Department of the Government to be included in the said committee of management and shall intimate the special officer about the same. It is however made clear that in the matter of operation of the mill, the decision of the special officer shall be final and in the case of difference of opinion amongst the members of the committee of management, the decision of special officer shall prevail.

(f) For the purpose of running of the aforesaid mill the special officer shall be at liberty to receive payments from the said Delta International (P.) Ltd. but such receipts or expenditures are to be properly accounted for and to be audited.

(g) All the parties in the writ proceedings and in the present application are directed to render full assistance to the special officer for running of the aforesaid mill,

(h) All parties including the workers are restrained by an order of injunction from transferring and/or alienating encumbering the assets and the plants and machineries of the company in any manner whatsoever.

(i) Such injunction will, however, not prevent the selling of finished materials and goods. But the special officer must ensure that such products or finished goods are sold at a proper price and detailed accounts thereof are maintained.

(j) It is made clear that the aforesaid Delta International (P.) Ltd. because of the investment to be made by it for the running of the aforesaid mill shall neither be entitled to any equity nor shall it claim the same in any manner whatsoever.

(k) It is further made clear that the arrangement which has been made for the running of the said mill will ultimately be subject to the final decision of the BIFR to be taken by the BIFR for revival of the company.

(l) The workers will be at liberty to submit a scheme for revival of the company with the help of Delta International (P.) Ltd. or by forming a worker''s co-operative or otherwise before the BIFR for its consideration.

(m) The special officer and all parties will be at liberty to apply for further directions with notice to the other side if necessary.

(n) The remuneration of the special officer if fixed at 300 Gold Mohurs per month for the present to be paid by the said Delta International (P.) Ltd."

14. The company and State Bank of India respondent No. 3 in the writ petition feeling aggrieved against the said order have filed the respective two appeals.

15. It must be stated here that on November 20, 1997, one M/s. Shalimar Industries Ltd. along with 39 others filed an application under Article 226 of the Constitution of India before this High Court claiming themselves to be the jute suppliers to the petitioner-company and praying for writ of mandamus against the BIFR and Union of India to ensure that the management of the petitioner-company be not allowed to change hands and the status quo of the company prevailing on the date of filing of the Reference Case No. 13 of 1995, before the BIFR was maintained and an interim injunction dated November 20, 1997, was passed by a learned single judge restraining the company and its management from changing its hands till the disposal of Case No. 13 of 1995.

16. Another writ application was filed by the Bengal Chatkal Mazdoor Union praying for direction upon C. E. S. E. to restore electricity supply to the jute mill of the petitioner-company and by an order dated November 24, 1997, the

learned single judge directed reconnection of supply upon payment of Rs. 20,00,000 and reconnection charges by November 25, 1997.

17. By another order dated November 28, 1997, the learned judge, in writ petition filed by Shalimar Industries directed Loomtex Engineering Pvt. Ltd. respondent No. 5 therein to pay the electricity dues which was directed to be paid by November 25, 1997, till December 1, 1997.

18. It was also clarified in the said order that the injunction order passed on November 20, 1997, would not prevent the said Loomtex Engineering Pvt. Ltd. to run the business. They were, however, injuncted and restrained from encumbering, mortgaging or disposing of the property and assets of the petitioner-company without leave of the court.

19. It is stated that Loomtex Engineering are no longer on the scene though the writ application filed by Shalimar Industries is still pending adjudication.

20. It must also be stated here that State Bank of India on August 20, 1998 received consent of the BIFR for taking recovery proceedings against the company and in pursuance thereof on August 28, 1998, State Bank of India filed an application u/s 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, for recovery of Rs. 2.32 crores with further interest, etc.

21. Electricity has been disconnected to the mill in question for non-payment of the electricity dues which are claimed to be in the region of Rs. 1,44,63,985.89.

22. By an order dated April 23, 1999, this court, in the instant writ appeal allowed the making of the inventory, as directed by the orders under appeal and directed the special officer to place his own lock on the mill gate after completion of such inventory.

23. Mr. Kapoor learned senior counsel appearing for the appellant/petitioner-company in two appeals assailed the order under appeal on the ground that the same was beyond the jurisdiction of a writ court in that it amounted to usurpation of the power vested in the BIFR besides being beyond the scope of the very writ petition.

24. Mr. Hirak Mitra, learned senior counsel appearing for the State Bank of India, submitted that the learned judge having vacated the interim order ought not to have issued directions as he did for the running of the mill by the special officer of the court in consultation with a committee of management as that would seriously prejudice the interest of the bank and that the manner in which the mill is directed to be run, cannot be in the interest of the workers or creditors of the company.

25. Mr. Samarditya Pal, learned senior counsel appearing on behalf of the respondent unions, representing the workers, submitted that the interim order passed by the single judge does not in any manner affect the jurisdiction of the BIFR for passing such orders for revival of the company as to it it may seem

appropriate in accordance with law. There is no provision under the Sick Industrial Companies (Special Provisions) Act, 1985 (for short SICA), for passing of any orders of interim nature during the pendency of proceeding before the BIFR and therefore, the writ court is not powerless to issue appropriate directions while the matter is pending before the BIFR. The interest of 4,300 workers also their very livelihood is at stake. The writ court has stated the reasons in the order under appeal and on the basis of similar orders as has been passed in the cases of Angus and Co., Kelvin Jute Mill and as also by the Supreme Court in Workmen of Rohtas Industries v. Rohtas Industries [1996] 86 Comp Cas 1. Learned single judge was justified in passing orders under appeal, it was submitted.

26. Mr. Pal, learned senior counsel, further, submitted that the order under appeal cannot be said to be beyond the scope of the writ petition inasmuch as the writ petitioner-company itself had prayed for directions for the running of the mill and having abandoned the mill and the workers to their own fate cannot be permitted to raise the question of the same being" beyond the scope of the writ petition.

27. Before considering the rival contentions it may be appropriate to refer to the order of BIFR, dated November 20, 1997, in Case No. 13 of 1995, which was the subject matter of challenge in Writ Petition No. 2655 of 1997. The learned judge in the order under appeal has referred to the said order as also the various orders passed by the BIFR and the AAIFR from time to time and therefore, it may not be necessary to refer to those proceedings in any great detail.

28. In the impugned order of the BIFR, dated November 20, 1997 it has been observed that the scheme formulated by the operating agency (0. A.) envisaged the total cost of Rs. 405.13 lakhs to be entirely met by the promoters by way of equity. Directions were issued to the promoters for entering into fresh MoIl with the co-promoter and long-term agreement with workers failing which it was directed that the BIFR would pass appropriate orders including directing the O. A. to issue an advertisement for change of the management of the company. The company filed an Appeal No. ATA/97, and the AAIFR disposed of the appeal by granting time to the company up to October 31, 1997, for complying with the directions contained in the said order and if the same were not complied with by the company within the time framed therein it would be open to the BIFR to proceed further according to their best judgment. A report submitted by the operating agency disclosed that nothing was heard from the company with regard to the compliance of the directions given by the appellate authority. The BIFR thereupon extended time for compliance till November 15, 1997, and directed the O. A. to submit a report by December 15, 1997. It was, further, directed that if no comprehensive and updated rehabilitation proposal as per directions given by the AAIFR is submitted by the company to the O. A. even by November 15, 1997, the O. A. was directed to issue an advertisement for change of management by December 5, 1997, inviting offers for takeover/leasing,

amalgamation, merger for rehabilitation with or without one time settlement of dues of the FIS/banks allowing three weeks time for submissions of offers i.e., up to December 26, 1997, the promoters of the petitioner-company were also permitted to submit their proposal in response to the advertisement along with the co-promoters.

29. As noticed hereinbefore, the above orders were stayed when the writ application was moved by the petitioner-company.

30. The learned single judge by the order under appeal has vacated the said interim order and in our opinion very rightly so.

31. The short question, therefore, for consideration is as to whether the further directions issued by the learned single judge for the running of the mill during the pendency of the matter before the BIFR can be sustained.

32. The order under appeal is sought to be sustained on the ground that similar directions have been issued by the apex court and also by this High Court in certain matters of similar nature on the applications filed by the workers'' union for revival of sick industries. It would therefore, be appropriate to have a brief look at some of the decisions on this aspect of the matter.

33. The landmark judgment is that of the Supreme Court in Navnit R. Kamani and Others Vs. R.R. Kamani, . The Supreme Court in that case for the first time gave its seal of approval to the scheme presented by workers to run the sick units. However, prior to giving its seal of approval to the scheme submitted by the workers, the apex court directed the BIFR to file a report with respect to the claim presented by the workers and also directed the BIFR to hear the workers as well as different parties before making its recommendations. Pursuant to the direction of the apex court, the BIFR afforded the hearing to all the concerned parties including banks, State Government and Central Government and thereafter prepared a draft scheme for revival of the company which was circulated to all the parties concerned and particulars whereof were also published in newspapers for the information of the shareholders, creditors, employees and in general the parties were given due notice for making suggestion/objections with respect to the scheme. On receipt of various suggestions/objections, the BIFR considered the same after hearing the parties and after having examined all the written/oral submissions made, the BIFR sanctioned the scheme which was placed before the Supreme Court for further orders. The Supreme Court compared and analysed the rival schemes (1) that was approved by the BIFR and (2) scheme that was presented by one of the shareholders but had not been placed before the BIFR and on the merits of the scheme sanctioned by the BIFR, the Supreme Court held that it does not suffer from any infirmity and that the same has been considered to be feasible and economically viable by experts and thereby agreed with the decision rendered by the BIFR, the Supreme Court gave it seal of approval to the said scheme.

34. In the instant case no such scheme has been considered by experts nor any

such recommendation of the BIFR was called for. Instead an adhoc arrangement is envisaged by the order under appeal pending consideration of the scheme to be submitted for consideration of BIFR.

35. In Workers of M/s. Rohtas Industries Ltd. Vs. M/s. Rohtas Industries Ltd., , during the pendency of proceeding for winding up of the company pending before the Patna High Court wherein a provisional liquidator had been appointed when the provisions of Sick Industrial Companies (Special Provisions) Act, 1985, came into force. The workmen moved the Supreme Court by filing a writ petition under Article 32 of the Constitution of India whereupon an order was passed whereby the Central Government was directed to make a reference to the BIFR for obtaining the scheme as contemplated u/s 18 of the Act for revival of the company. The BIFR submitted a report and keeping in view the statements filed on behalf of the State of Bihar and the Union of India and the memorandum prepared by the learned Attorney General, the Supreme Court passed an order whereby the State of Bihar was directed to appoint an authorised officer in the commissioning of certain units of the company and for taking steps to explore the viability of certain other units. Thereafter, the proposal was submitted by the workers co-operative society limited to purchase the industrial undertaking with its allied and sister concern and to run the same on the moratorium basis for three years only through the workers co-operative society with postulated grant of certain exemptions, reliefs and concession. The State of Bihar also placed before the court the statement indicating the line of action for revival of the industries in question. The Supreme Court on a consideration of the matter opined that the best course would be to revive the reference which was made to the Board by the Central Government in pursuance of the order of the court "because the Board which is an expert body would be in a better position to examine the matter in its various aspects and form an opinion about the viability of the various units of the industrial undertaking and the possibility of their revival, and if the Board comes to the conclusion that the units are viable and can be revived it can frame a scheme in accordance with the provisions of the Act". The court, thereafter, proceeded to direct the BIFR to submit a report to the court in relation to the matter enumerated in the order.

36. In Maharashtra Tubes Ltd. Vs. State Industrial and Investment Corporation of Maharashtra Ltd. and Another, , it was held that the Sick Industrial Companies (Special Provisions) Act, 1985, is a special statute and that emphasis was made under the said Act for preventing sickness and in the case of sick undertakings to prepare a scheme for rehabilitation by providing official assistance by way of loan, advance or guarantee or by providing relief, concession or sacrifices by the Central Government or State Government, scheduled banks etc. The basic idea, it was held, is to revive sick units, if necessary, by extending further financial assistance and after a thorough examination by experts and only when the unit is found to be incapable of, rehabilitation the option of winding up may be resorted to.

37. Under the scheme of the SICA, the BIFR is constituted by qualified persons and against the order of the Board (BIFR) appeal lies to the appellate authority and against the order of the appellate authority, judicial review is available to any party aggrieved by such order by filing application under Article 226 of the Constitution.

38. In Bengal Lamp Ltd. and Another Vs. State of West Bengal and Others, one of us (S.B. Sinha J.) held :

"It is not for this court to consider the respective merit or demerit of any scheme furnished by the petitioners or by any other promoters including the intervener. Such consideration lies within the exclusive jurisdiction of the BIFR which is a statutory body. The BIFR as a statutory body is entitled to perform its statutory function and this court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot usurp the same nor can it give any direction to it as to how and in what manner it will discharge the same. In this view of the matter and for the said reasons it is not desirable that this court should deal with the allegations made by the respondents against the petitioners as regards their alleged act of bad faith and misconduct etc. Suffice, however, it to say that in terms of the provision of the said Act which is a beneficent statute. It is the solemn duty of the BIFR to find out ways and means for speedy determination by it of the preventive ameliorative, remedial and other measures required to be taken with respect to sick companies and the expeditious enforcement of the measures so determined as would be evident from the preamble of the said Act. Expeditious disposal of such case, thus is a statutory compulsion. It is also beyond any cavil of doubt that while accepting a scheme the interest of workmen has also to be borne in mind. It has also to be borne in mind that speedy determination of a matter before the Board is absolutely essential as during pendency of such proceedings all other proceedings and suits against the sick company remain stayed. Even the enforcement of contract etc. can be directed to be stayed."

39. In an unreported decision of the Division Bench presided over by one of us (S.B. Sinha J.) in Allahabad Bank v. Rishra Steel Ltd. ; A. R. C. Hold-ma Ltd. v. Rishra Steel Ltd. (Liquidation)., the two appeals, in that case, arose out of an order of the learned single judge on an application filed in a company petition. By reason of the orders under challenge in the said appeals the official liquidator was directed to hand over possession of the movable and immovable assets of the company upon the intending purchasers/directors. It was held that assuming that the court could entertain applications for revival of the company filed before it by the workmen the same can be considered only within the four corners of the Companies Act.

40. It would thus be seen that a statutory forum exists for consideration of the scheme for revival of sick industries. Elaborate procedure is prescribed under the SICA and appeal is provided before an Appellate Authority to any party aggrieved by the order of the BIFR. The BIFR is the statutory authority vested with the

power as also the expertise to examine the claims. We are, therefore, of the opinion that it was not appropriate for the writ court to have issued the interim directions as it did when a more satisfactory solution is available under the SICA.

41. The reliance placed upon the Division Bench judgment in the Angus Company, Bengal Chatkal Mazdoor Union, dated June 15, 1995, in our opinion, is misplaced. In that case the writ application was filed for quashing the order passed by the Appellate Authority (AAIFR) confirming the recommendation of the BIFR for winding up the company. In the instant case the matter for revival of the company in question is still under consideration of the BIFR. The Division Bench in that case disposed of the matter by directing the AAIFR to reconsider the question for revival of the company on the basis of the scheme submitted by one of the applicants and such other schemes as may be submitted by other parties. No doubt, in that case the interim arrangement for running the mills by a special officer was permitted to continue till the decision of the AAIFR. In the instant case the interim orders having been vacated, the scheme/proposal submitted by the workmen union along with M/s. Delta was not considered by the learned single judge nor approved by him, instead a special officer was appointed to operate the mill with the assistance of the committee of management. The learned judge granted liberty to the workmen to submit the scheme for revival of the company with the help of M/s. Delta or by forming a workers co-operative or otherwise before the BIFR for consideration. The learned judge however, misdirected himself in issuing direction for running the mill by a special officer in the interregnum.

42. As the affairs of the company and proposals for its rehabilitation are pending before the BIFR the interim stay having been vacated by the court and none of the parties before us being aggrieved thereby, at least no appeal having been filed by any party against that part of the order, we are of the considered opinion that the best course to be adopted in the facts and circumstances of the case would be as indicated in the order of the Supreme Court in Shri Ambica Mills Ltd. v. Oil and Natural Gas Commission, (1992) 2 Supp SCC 144 namely to direct all parties including the workers and M/s. Delta to appear before the BIFR and submit their proposals in accordance with law and we have no doubt that the BIFR shall consider all such representations and proposals expeditiously and pass appropriate orders thereon in accordance with law. It is accordingly so directed, however, with the request that the BIFR shall endeavour to dispose of the matter as expeditiously as may be possible.

43. For the reasons aforestated, the order under appeal to the extent directions were issued for running of the mill cannot be sustained and are accordingly set aside. The appeals to that extent are accordingly allowed.

44. No useful purpose will be served by keeping Writ Petition No. 2655 of 1997 pending on the file of the court. The same is accordingly disposed of with the observations as above.

45. All applications accordingly shall stand disposed of in the light of the observations as above.

46. There shall be no order as to costs.

