
(2006) 12 DEL CK 0014
In the Delhi High Court
Case No : LPA No. 1947 of 2006

Haryana Steel and Alloys Ltd.

APPELLANT

Vs

IFCI Ltd. and Another

RESPONDENT

Date of Decision : 05-12-2006

Acts Referred:

Citation : AIR 2007 Delhi 65 : (2007) 136 CompCas 584 : (2007) 137 DLT 554 : (2007) 78 SCL 154

Hon'ble Judges : Dr. M.K. Sharma, C.J.;Hima Kohli, J

Bench : Division Bench

Advocate : Parag P. Tripathi, Sumit Attri and Maneesha Dhir, for the Appellant; Rajiv Shakdhar and Atul Sharma and Neeraj K. Kaul and B.L. Wali, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.—The present appeal has arisen from the judgment dated 21st September, 2006 passed in WP(C) No. 14915/2006 preferred by the appellant against respondent No. 1 praying, inter alia, for setting aside the bid/auction process initiated by respondent No. 1 to sell/assign its debts to a third party and direct respondent No. 1 to consider One Time Settlement (in short 'OTS') as proposed by the appellant which is at par with the successful bidder. The learned Single Judge dismissed the writ petition preferred by the appellant by holding that respondent No. 1 is entitled to sell its Non Performing Assets (in short 'NPAs') to any other banking institutions or financial institutions under the guidelines issued by the Reserve Bank of India vide circular No. RBI/2005- 06/54 DBOD No. BP. BC 16/21.04.048/2005-2006 dated 13th July, 2005 and also holding that respondent No. 1 cannot be directed to consider the offer of appellant to have another OTS for Rs. 520 lacs.

2. Brief facts of the case that are necessary to decide this appeal are that the appellant is a company incorporated under the Companies Act in the year 1970. Initially, the same was promoted by the Goyal family. However, in the year

1998-99, the management of the company was transferred to the Rawat group. In the year 1999, as a consequence of the appellant having sustained huge financial losses, its net worth got completely eroded and it filed a reference u/s 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as `SICA") before the Board for Industrial and Financial Reconstruction (in short `BIFR"). Vide order dated 11th June, 2002, BIFR rejected the reference of the appellant as being not maintainable. Against the said order, the appellant filed an appeal before the Appellate Authority for Industrial and Financial Reconstruction (in short `AAIFR"). Vide order dated 28th December, 2005, the said appeal preferred by the appellant was allowed by AAIFR and the matter was remanded back to BIFR. In the meantime, the appellant filed two more references before the BIFR which were also remanded by AAIFR vide order dated 1st December, 2005 directing BIFR to consider afresh, the sickness of the appellant under SICA in respect of first reference Along with subsequent two references. BIFR, vide order dated 19th April, 2006, declared the appellant as a sick industrial company.

3. On 17th February, 2006, for the first time, the appellant made a proposal to respondent No. 1 for OTS by offering to pay Rs. 275 lacs which was equivalent to 85% of the principal amount. Respondent No. 1 replied to the appellant vide letter dated 10th March, 2006 whereunder, it offered to settle the dispute inter se the parties upon receipt of the principal amount of Rs. 326 lacs or upon assignment of respondent No. 1's loan, to an asset reconstruction company, by 31st March, 2006. Admittedly, the appellant under cover of a letter dated 30th March, 2006 forwarded an amount of Rs. 10 lacs to respondent No. 1 with a request to reconsider the sanctioned period. However, subsequently it did not pay the amount of Rs. 326 lacs as demanded by respondent No. 1 to settle the matter by way of OTS.

4. On 19th April, 2006, when the appellant was declared a sick company by BIFR, an Operating Agency was also appointed to take necessary measures to revive the appellant. Thereafter, on 11th May, 2006, respondent No. 1 issued a general advertisement in the newspaper for sale of 13 non- performing assets accounts (NPA accounts) including that of the appellant. In the month of May, 2006 itself, in view of the failure on the part of the appellant to pay OTS amount on or before 31st March, 2006, respondent No. 1 also revoked its counter offer made by way of the aforesaid letter dated 10th March, 2006. On 14th September, 2006, respondent No. 1 opened the bids received by various parties for sale of 13 NPAs owned by it including that of the appellant and consequently sold 4 out of 13 NPAs, including that of the appellant. Respondent No. 2 being the highest bidder, in respect of the account of the appellant, at Rs. 501 lacs, was declared successful bidder. Pursuant thereto, respondent No. 2 also deposited 25% of the bid amount, i.e. Rs. 1.5 crores with respondent No. 1.

5. On the very next date i.e. on 15th September, 2006, the appellant informed respondent No. 1 that it had a strategic investor who was willing to pay Rs. 520

lacs towards full and final settlement of the dues of the appellant. In the said letter, the appellant stated that respondent No. 2 was said to have offered an amount of Rs. 520 lacs to acquire the "financial assets" of the appellant and that such an offer had been made at the behest of some business rival to destabilize the management of the company or to take over the land for development in view of rising real estate prices in the region thereby causing great prejudice to the promoters of the company. Within few days thereafter, the appellant preferred a writ petition in this Court against the respondent No. 1, which has been dismissed by the learned Single Judge by way of the impugned judgment dated 21st September, 2006.

6. We have heard the counsel for the appellant as well for the respondents No. 1 and 2. We have been taken through the impugned judgment dated 21st September, 2006 and the counsels have addressed us on merits of the case and have also cited various judgments in support of their respective stands.

7. The appellant has mainly raised two grounds, firstly, that no notice or opportunity was given to the appellant before disposing of its financial assets qua the debt availed of from respondent No. 1. Secondly, it is submitted that the offer of Rs. 520 lacs made by the appellant in its letter dated 15th September, 2006 was higher than the offer of the selected bidder, i.e. respondent No. 2, which is Rs. 501 lacs and hence the offer of the appellant ought to have been directed to be accepted by respondent No. 1. At this stage, it may be observed that while the highest bidder, namely, respondent No. 2/Kotak Mahindra Bank Ltd. was not made a party by the appellant before the learned Single Judge, in the present appeal the appellant has imp ledged the said highest bidder as respondent No. 2. The appellant has also relied upon the following judgments in support of its case:

(i) Common Cause, A Registered Society Vs. Union of India and Others, .

(ii) Maria Plasto Pack (P) Ltd. Vs. Managing Director, U.P. Financial Corporation and Others, .

8. Respondent No. 1 has defended its stand and submitted that it had at no stage dealt with the "financial assets" of the appellant for the reason that the financial assets i.e. NPA accounts were debts owned by respondent No. 1 and not the appellant. It is submitted that the Reserve Bank of India Guidelines dated 13th July, 2005 which are binding upon respondent No. 1 u/s 35A of the Banking Regulation Act governs the sale of such NPAs and mandates that the same can be sold only to another bank or financial institutions or NBFCs and thus the appellant could not be considered for purchasing the said financial assets. It is further submitted that there is no requirement in law which obliges respondent No. 1 to invite the appellant with respect to the transaction entered upon by respondent No. 1 and respondent No. 2, much less an obligation of prior notice to the appellant for the sale/assignment of such financial assets. It is lastly submitted that the appellant could not invoke the powers of judicial review of

this Court under Article 226 of the Constitution of India as no mandamus can be issued to seek enforcement of that which is legally not enforceable. In the present case, the respondent states that the appellant is seeking enforcement of rights emanating from a contract, for which a writ petition is not maintainable.

9. Respondent No. 2 also supported the stand of respondent No. 1 and submitted that pursuant to the acceptance of the bid made by respondent No. 2 duly accepted by respondent No. 1, the sanctity of the bid had to be respected and failure to do so will have a detrimental effect on the entire process of auction and commercial transaction as finality of auction must be recognized to be in the interest of the exchequer ; that respondent No. 2 was not impleaded by the appellant in the writ petition and thus the appeal preferred against respondent No. 2 is not maintainable as no leave has been sought for by the appellant for impleading respondent No. 2; that the appellant has not challenged the RBI Guidelines and thus is not entitled to any relief in this Court. It is also argued by learned Counsel for respondent No. 2 that it is only that bank or financial institution who has granted the loan who is entitled to reschedule the same or fix OTS or grant Installments and that the court ought not to interfere in such matters which are contractual in nature and for which writ petition is not a proper remedy. In support of their contention, the respondents have relied upon the following judgments:

- (i) Excise Commissioner of U.P. and Others Vs. Manminder Singh and Others, .
- (ii) Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and another, .
- (iii) State of Punjab Vs. Yoginder Sharma Onkar Rai and Co. and Others, .
- (iv) Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, .
- (v) Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc., .
- (vi) Unique Engineering Works v. Union of India and Ors. II (2004) BC 241 (DB).
- (vii) Tamilnadu Industrial Investment Corporation Ltd. v. Millennium Business Solutions Pvt. Limited and Anr. II (2005) BC 79 (DB).

10. We have perused the relevant extract of the RBI Guidelines. We do not find any force in the arguments of the appellant that the said Guidelines are not binding in nature and do not have any statutory force under law. Reliance placed by the appellant on the judgment of M/s Maria Plasto Pack (supra) is misplaced for the reason that in the aforesaid judgment, while discussing the RBI Guidelines, the court held that no writ lies for enforcement of purely administrative orders and the same do not confer any right on the appellant as they are not statutory orders. In the present case, it is not the respondent No. 1 who has approached the court seeking enforcement of the said Guidelines but the appellant who has challenged the same. It is also pertinent to note here that

in the writ petition, the appellant has not sought any relief for quashing of the aforesaid Guidelines. In fact, all the reliefs prayed for by the appellant hinge on directions sought to be issued to the respondents for considering and accepting the OTS proposed by the appellant. The appellant cannot be permitted to enlarge the scope of the present appeal by agitating issues on which no relief was sought in the writ petition.

11. In any case, after examining the RBI Guidelines, the learned Single Judge rightly held that the appellant was not entitled in law for any notice in advance from the respondent No. 1 who was only selling its NPAs in compliance with the Guidelines of the RBI and furthermore, a bare perusal of the Guidelines makes it manifest that no individual or other company could purchase the NPAs of another banking company or financial institution and hence the appellant cannot make a grievance of its exclusion from the auction bid.

12. The issue of binding nature of RBI Guidelines has also been dealt with by the Supreme Court in the following two judgments:

(i) B.O.I. Finance Ltd. Vs. Custodian and Others, .

(ii) Central Bank of India Vs. Ravindra and Others, .

13. While examining the Securities Contracts (Regulation) Act and the Banking Regulation Act in B.O.I. Finance Ltd.(supra), the Supreme Court specifically dealt with the provisions of Section 36(1)(a) which empowers the RBI to auction or prohibit the banking companies generally or any banking company in particular against entering into any particular transaction and generally to give advice to any banking companies, and held that a circular issued by the RBI which stated that the banks were advised to follow the Guidelines given there under, the word 'advised' cannot be read in isolation and the said document was meant to be binding on the banking companies.

14. In the case of Central Bank of India (supra) , the Supreme Court observed that the RBI is a prime banking institution of the country entrusted with a supervisory role over banking and conferred with the authority of issuing binding directions, having statutory force, in the interest of public in general and preventing banking affairs from deterioration and prejudice as also to secure the proper management of any banking company generally. It was further observed as below:

RBI has been issuing directions/circulars from time to time which, inter alia, deal with rate of interest which can be charged and the periods at the end of which rests can be struck down, interest calculated thereon and charged and capitalised. It should continue to issue such directives. Its circulars shall bind those who fall within the net of such directives. For such transaction which are not squarely governed by such circulars, the RBI directives may be treated as standards for the purpose of deciding whether the interest charged is excessive, usurious or opposed to public policy.

15. The conclusion, Therefore, is inevitable that the RBI Guidelines in question have a binding force on the respondent No. 1 who is under an obligation to comply with the same.

16. The argument of the appellant to the effect that RBI Guidelines do not stipulate that NPAs cannot be sold to entities other than Banks/FIs/NBFCs is demolished on a bare perusal of the same as it clearly states that the said Guidelines on sale/purchase of NPAs have been formulated to increase the options available to banks for resolving their NPAs and to develop a healthy secondary market for NPAs, where securitisation companies and reconstruction companies are not involved, and that the Guidelines have been issued to banks on purchase/sale of NPAs which are required to be complied with by all entities so that the process of resolving NPAs by sale and purchase of proceeds on smooth and sound lines. Clause 6.1 of the said Guidelines lays down its scope and provides that the same shall be applicable to banks, financial institutions and NBFCs purchasing/selling NPAs from/to other banks/FIs/NBFCs (excluding the securitisation companies/reconstruction companies). Hence there is no merit in the claim of the appellant that the Guidelines relied upon by the respondent No. 1 nowhere mentions that the financial institutions cannot sell the assets to entities other than banks/FIs/NBFCs.

17. In this view of the matter, we are of the opinion that the respondent No. 1 did not commit any illegality by not issuing prior notice to the appellant before disposing off its NPAs. The claim of the appellant that the said NPA is its financial asset is also without any merit for the reason that NPA is nothing but a debt owed by the appellant to respondent No. 1. As the said debt is owned by respondent No. 1, it is very well entitled to deal with the same as an asset for the purposes of resolving its NPA. It is fallacious on the part of the appellant to claim that the said NPA can be termed a financial asset of the company.

18. While dealing with the connotation of the words "Non-performing assets", in the Non-performing Asset Act, 2002, a Division Bench of the Uttranchal High Court in the case of Unique Engineering Works (supra), speaking through S.H. Kapadia, J. (as his Lordship then was) held that the object of the NPA Act is to enable Banks and financial institutions to realize long term assets, management of liquidity, asset liability mismatches and reduction of non-performing assets by adopting measures for recovery/reconstruction. It was further held that just as any immovable property can become a subject matter of security interest, so also an Account Receivable can be transferred, assigned or sold as the same constitutes an asset of a bank/financial institution and the said Act contemplates assignment of the Account Receivable when it becomes NPA. It is apparent that intention of the RBI by issuing the Guidelines is to ensure that large amount of public money which is blocked in NPA, can be resolved while at the same time helping in developing a healthy secondary market for sale and purchase of the same.

19. In our opinion, the appellant has also failed to show as to how it stands to

lose by the said NPA being sold by respondent No. 1 in favor of respondent No. 2 except for making an innocuous statement that the same would result in depressing the net worth of the appellant. In any event, as far as the appellant is concerned, the sale of NPA by respondent No. 1 to respondent No. 2 will only result in respondent No. 2 stepping into the shoes of respondent No. 1. The extent of NPA shall remain the same even upon transfer thereof, at an agreed price inters respondent No. 1 and respondent No. 2.

20. Dealing with the second limb of the argument of the appellant that its offer was higher than that of respondent No. 2 and hence the same should have been accepted, in our opinion, the said argument is misconceived. In the first instance, the court cannot direct any party to enter into an OTS. For arriving at such an OTS, all the concerned parties have to be ad idem. No direction can be issued to respondent No. 1 or respondent No. 2 to enter into OTS with the appellant as the appellant cannot claim a vested right in this regard. As observed by the Allahabad High Court in the cases of Swarup Packaging and Sanitizers (India) Pvt. Ltd. v. State Bank of India reported as 2004 (17) AIC 631 and M/s Maria Plasto Pack (supra) , no one has a right to get OTS or rehabilitation as the same is really rescheduling of the loan and this can only be done by the bank or financial institution which granted the loan in its discretion. It was observed that granting OTS or rehabilitation or fixing Installments is really varying the contract between the parties which cannot be done by the court.

21. While referring to a number of judgments of the Supreme Court on the scope of exercising powers by the High Court under Article 226 of the Constitution of India, a Division Bench of the Madras High Court in Tamil Nadu Industrial Investment Corporation (supra) has also held that writ petition is not a proper remedy in contractual matters and such a petition cannot be entertained for enforcing OTS upon a party unless a violation of law has been pointed out.

22. In so far as extent of judicial scrutiny/judicial review is concerned, the powers of the High Court under Article 226 of the Constitution of India are extremely wide and it has been stated time and again that the said powers are unfettered when required to be exercised to undo any injustice wherever and whenever noticed. In a recent judgment, a Division Bench of this Court in the case of Indian Oil Corporation Ltd. v. Dharam Chand Gupta reported as 132 (2006) DLT 74 has held as below:

The powers of the High Court under Article 226 of the Constitution of India are very wide and the same are to be exercised to effectuate the regime of law and not to abrogate it. The Article 226 is couched in an comprehensive phraseology and it ex facie confers a very wide power on the High Court to reach injustice wherever it is found.

23. In the case of The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, , while dealing with the locus of the appellant to file a petition under Article 226 of the Constitution, the Supreme Court held as under:

Para 5: The first question that falls to be considered is whether the appellant has locus standi to file the petition under Art. 226 of the Constitution. The argument of learned Counsel for the respondents is that the appellant was only managing the industry and it had no proprietary right therein and, Therefore, it could not maintain the application. Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. It is, Therefore, clear that persons other than those claiming fundamental rights can also approach the Court seeking a relief there under. The Article in terms does not describe the classes of persons entitled to apply there under; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right....

24. At the same time, it is settled law that in commercial matters, the courts should not risk their judgments for the judgments of the bodies to whom the task is assigned. While exercising its powers under Article 226 of the Constitution of India, the High Court does not sit as an appellate authority over the acts and deeds of the statutory corporations taking administrative actions.

25. Without elucidating further, we may usefully advert to the following judgments to press home the point that ordinarily, writ of mandamus should not be issued in contractual matters:

- (i) Orissa State Financial Corporation Vs. Narsingh Ch. Nayak and Others, .
- (ii) National Highway Authority of India Vs. Ganga Enterprises and Another, .
- (iii) ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, .
- (iv) Master Marine Services Pvt. Ltd. Vs. Metcalfe and Hodgkinson Pvt. Ltd. and Another, .
- (v) Binny Ltd. and Another Vs. V. Sadasivan and Others, .
- (vi) The Managing Director, Orix Auto Finance (India) Ltd. Vs. Shri Jagminder Singh and Another, .
- (vii) Data Access India Ltd. Vs. Mahanagar Telephone Nigam Ltd. and Others, .

26. In the case of The State Financial Corporation (supra), the Supreme Court held as under:

Para 10: The obligation to act fairly on the part of the administrative authorities was evolved to ensure the rule of law and to prevent failure of justice. This doctrine is complimentary to the principles of natural justice which the quasi judicial authorities are bound to observe. It is true that the distinction between a quasi judicial and the administrative action has become thin, as pointed out by this Court as far back as 1970 in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, . Even so the extent of judicial scrutiny /judicial review in the

case of administrative action cannot be larger than in the case of quasi judicial action. If the High Court cannot sit as an appellate authority over the decisions and orders of quasi judicial authorities, it follows equally that it cannot do so in the case of administrative authorities. In the matter of administrative action, it is well known, more than one choice is available to the administrative authorities; they have a certain amount of discretion available to them....

27. We may also quote the following passage from the recent judgment rendered by the Supreme Court in *Binny Ltd.*(supra):

Para 11: Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. However, under our Constitution, Article 226 is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and the decision sought to be corrected or enforced must be in discharge of a public function. The role of the State has expanded enormously and attempts have been made to create various agencies to perform the governmental functions. Several corporations and companies have also been formed by the Government to run industries and to carry on trading activities. These have come to be known as public sector undertakings. However, in the interpretation given to Article 12 of the Constitution, this Court took the view that many of these companies and corporations could come within the sweep of Article 12 of the Constitution. At the same time, there are private bodies also which may be discharging public functions. It is difficult to draw a line between public functions and private functions when they are being discharged by a purely private authority. A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies Therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest....

28. The appellant has failed to demonstrate the nature of public duty being discharged by the respondent No. 1 in this matter which calls for enforcement by way of issuance of a writ of mandamus to it under Article 226 of the Constitution of India.

29. To our mind, interfering in the decision of respondent No. 1 to auction the NPA in favor of the highest bidder could amount to disabling the respondent No. 1 from recovering what is admittedly due to it. A decision taken by respondent No. 1 so long as it is not tainted with mala fide and arbitrariness ought not to be interfered with under Article 226 as these are the commercial decisions which are taken on the basis of the records available with the corporation, as per its own calculations and advise received and on the basis of prudence and commercial calculations. By substituting the said decision by its own judgment, this Court may stray into territories which should best be kept away from. Undoubtedly a writ will lie where there is a violation of law or where the respondent is found to act unfairly and unreasonably, but no writ lies merely for directing OTS or

rescheduling of loan or fixing Installments in connection with the loan, as is the case here.

30. In our opinion, the learned Single Judge did not commit any error when he refused to interfere with the process of auction initiated by respondent No. 1 to dispose off its NPA in favor of respondent No. 2, the successful bidder. If the appellant did not avail of the offer made by respondent No. 1 vide its letter dated 10th March, 2006, it cannot seek to put the blame on respondent No. 1 and make a grievance that it was not acting fairly qua the appellant or that respondent No. 1 was unfair to the appellant by not accepting its OTS. The appellant cannot be permitted to treat the OTS as a bonanza in reserve, which it may unilaterally encash at any point of time. Merely because the amount offered subsequently by the appellant was little higher than that which was offered by respondent No. 2 and accepted by respondent No. 1 also cannot be the basis for this Court to substitute its own judgment for the commercial decision taken by the respondent No. 1 in its wisdom and insist that respondent No. 1 should accept the OTS offered by the appellant, and none else.

31. In the light of the aforementioned discussion, we are of the considered view that there is no scope for interfering with the judgment rendered by the learned Single Judge. We are in agreement with the observations of the learned Single Judge that considering the fact that at an earlier point of time the appellant had not honoured the OTS offered by it to respondent No. 1, the latter is justified in not considering another OTS proposed by the appellant. Having failed to act upon the OTS offer made by respondent No. 1 and give effect to the same by making the payment within the time schedule, the appellant lost an opportunity for which it has itself alone to blame.

32. As we find no infirmity in the judgment rendered by the learned Single Judge, the present appeal is dismissed as being devoid of merits, leaving the parties to bear their own costs.