

(2008) 09 DEL CK 0269

In the Delhi High Court

Case No : Writ Petition (C) No. 22163 of 2005

Industrial Cables India Ltd.

APPELLANT

Vs

A.A.I.F.R. and Others

RESPONDENT

Date of Decision : 18-09-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2008) 09 DEL CK 0269

Hon'ble Judges : Mukul Mudgal, J; Manmohan, J

Bench : Division Bench

Advocate : Manisha Dhir and Preeti Dalal, for the Appellant; Sangram Patnaik and S.K. Jha for R-3 and S.L. Gupta and Virender for R-4 and 5, for the Respondent

Judgement

Manmohan, J.—The present writ petition under Articles 226 and 227 of the Constitution of India has been filed for issuance of an appropriate writ, order or direction for setting aside the order dated 5th March, 2004 passed by the Board of Industrial and Financial Reconstruction (hereinafter to be referred as ?BIFR?) as well as the order dated 5th October, 2005 passed by the Appellate Authority for Industrial and Financial Reconstruction (hereinafter to be referred as ?AAIFR?). In this petition there is also a prayer for incorporating Clause 8.5(G) (ii) of the Draft Rehabilitation Scheme (hereinafter to be referred as ?DRS?) as deleted by BIFR on 5th March, 2004 in the sanctioned scheme.

2. Mrs. Manisha Dhir, learned Counsel appearing for the petitioner submits that AAIFR vide the impugned order dated 5th October, 2005 had dismissed the appellant's appeal on the short ground that the appellant had given its consent for deleting Clause 8.5(G)(ii) of the DRS and, therefore, was not competent to challenge the said deletion. She drew our attention to the relevant portion of the impugned order of AAIFR which reads as under:

We are, however, unable to accept the aforesaid submission before us since we find from the contents of para 20 of the impugned order it has been recorded as

follows:

On page 12 para (G) 'Working Capital Facilities' sub-para (ii) was directed to be deleted in view of the refusal to accept company's demand for changing interest at PLR. It was, therefore, directed at the request of Shri Alok Dhir, Advocate for the company, re-word this paragraph by adding the word 'at PLR as per RBI guidelines. All present agreed.'

Further, we are of the view that the aforesaid prayer can be granted by AAIFR in an appeal against the order impugned wherein the aforesaid statements have been recorded by the BIFR and no application was made on behalf of the company before the BIFR that the aforesaid request allegedly made by Shri Alok Dhir, Advocate was incorrectly recorded.

The appeal is, therefore, misconceived and has no merit and is dismissed.

3. Mrs. Manisha Dhir has also drawn our attention to the order of BIFR dated 5th March, 2004 wherein the appellant gave its consent actually for re-wording of sub-para (G) (iv) of the DRS. The relevant portion of BIFR's order wherein the appellant had given its consent is reproduced herein below:

On page 11, para (E) (i) 'Unit Trust of India', it was directed to add 'To Consider'. On page 13, para (g) 'Working Capital Facilities', sub-para (ii) was directed to be deleted in view of the bankers refusal to accept company's demand for charging interest at PLR. On sub-para(G) (iv), the representative of SBP submitted that they were not inclined to grant any more working capital to the company than their existing exposure. The Bench, however, did not accept SBP's submissions since it was mandatory on the part of the financing Bank to provide need based working capital to the company under rehabilitation scheme in accordance with the RBI guidelines. It was, therefore, directed, at the request of Shri Alok Dhir for the company, re-word this paragraph by adding the word 'at PLR as per RBI guidelines'. All present agreed.

4. In view of the aforesaid facts, we are of the view that the AAIFR has, in the impugned order, wrongly recorded the consent given by the appellant with regard to the variation of sub-para (G) (iv) of the DRS as a consent for deletion of Clause 8.5(G)(ii). Consequently, as the petitioner had not given its consent for deletion of Clause 8.5 (G) (ii) of the DRS, the impugned order dated 5th October, 2005 cannot be sustained and is set aside and the Appeal No. 126 of 2004 is remanded back to AAIFR for being heard and decided in accordance with law. The parties are directed to appear before AAIFR on 17th November, 2008.

5. The present writ petition is disposed of.