

(2009) 11 DEL CK 0423

In the Delhi High Court

Case No : Writ Petition (C) 12965 of 2009

Krimpex Synthetics Ltd.

APPELLANT

Vs

International Asset Reconstruction Company Ltd. and Others

RESPONDENT

Date of Decision : 06-11-2009

Acts Referred:

Industries (Development and Regulation) Act, 1951 — Section 3, 3(1)

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15(1), 17(3), 20(1)

Citation : (2009) 11 DEL CK 0423

Hon'ble Judges : Veena Birbal, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Maneesha Dhir and Preeti Dalal, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—This writ petition is directed against the order passed by the Appellate Authority for Industrial & Financial Reconstruction (AAIFR) passed on 19.03.2009. The said order was passed in an appeal, which arose out of an order passed by the Board for Industrial and Financial Reconstruction (BIFR) on 14.11.2008. The BIFR, by virtue of its order dated 14.11.2008, clarified that there is no reference of the appellant company pending before it.

2. The grievance of the learned Counsel appearing for the petitioner is that the said order was passed without notice to them and, that too, on an application on the part of the International Asset Reconstruction Company (Pvt.) Ltd, which according to the learned Counsel for the petitioner, had no locus in the matter. The learned Counsel for the petitioner submitted that point of controversy is with regard to the order dated 12.07.2000 passed by the AAIFR in appeal No. 7/99. According to her, by virtue of the said order dated 12.07.2000, the matter, which was an appeal against the BIFR order, was remanded to the BIFR for reconsideration and that the reference was pending. This is the very point which was taken by the learned Counsel before the AAIFR. The procedural facts as

recorded in the impugned order are set out as under:

2. Arguing on the admission of the appeal, the Id. Counsel for the appellant company pleaded that this Authority by its order dated 12.7.07 in Appeal No. 7/99, while disposing of the appeal had expressed an opinion that this is a fit case for recommending the winding up of the appellant company u/s 20 of Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). Since the BIFR has not taken any action either for winding up of the company or rejection of the reference, the BIFR erroneously held that there is no reference of the company pending before the BIFR.

3. The BIFR by its order dated 13.12.96 had dismissed the reference of the appellant company holding that the net worth of the appellant company had not totally eroded as on 31.03.1993. The appellant preferred and appeal against this order before this Authority and this Authority vide its order dated 6.3.98 allowed the appeal on the ground that the BIFR will have to take a view on merits as to whether the appellant company fulfils all other criteria of being a sick industrial company. This Authority remanded the case to BIFR for proceeding further according to law. Thereafter, the BIFR in its hearing held on 11.12.1998 declared the company sick and appointed IFCI as the Operating Agency (OA) u/s 17(3) of SICA to formulate a rehabilitation scheme. ICICI challenged the order of the BIFR dated 11.12.98 before this Authority and this Authority vide its order dated 12.7.2000 allowed the appeal and set aside the impugned order of the BIFR dated 11.12.1998.

4. The IARCPL filed an application dated 30.10.08 seeking leave for filing application for dismissal of the reference which is pending before the BIFR on the ground that the suits filed by the secured creditors against the appellant company have been adjourned sine-die in O.A. No. 20/05 by an order of the DRT-I, Mumbai dated 3.5.07 on the ground that the reference is pending before the BIFR. Bank of Maharashtra also made a similar request requesting to inform them of the current status of the reference of the appellant company. The BIFR by its impugned order clarified that no reference of the appellant company is pending before it. Hence, the appeal.

3. The AAIFR, after considering all the facts and the submissions made by the learned Counsel for the petitioner, was of the view that by virtue of the order dated 12.07.2000, it had given a categorical finding that the petitioner company had failed to prove that 50 or more workers were working in its plant on any day during the period 15.01.1990 to 14.01.1991. Consequently, the AAIFR had, by virtue of its order dated 12.07.2000, set aside the impugned order of the BIFR dated 11.12.1998 declaring the company sick and thereby allowed the appeal No. 7/1999 preferred by ICICI. The AAIFR, in the impugned order, has given a categorical finding that by virtue of the order dated 12.07.2000, the case was not remanded to the BIFR. The exact words used by the AAIFR in the impugned order are as under:

It is clear from the above that this Authority categorically gave a finding that the appellant company has failed to prove that 50 or more workers were working in its plant on any day during the period 15.1.90 to 14.1.91. This Authority, therefore, set aside the impugned order of the BIFR dated 11.12.98 declaring the company sick and allowed the appeal. The case was not remanded to the BIFR. The obvious implication of this Appellate Authority's decision is that the appellant company is not a sick industrial company u/s 3(1)(o) read with Sections 3(1)(e), (f) and Section 3 (c) of the Industries (Development and Regulations) Act, 1951 (IDR Act). It is obvious that since the appellant company as per the above orders of this Authority cited supra, is not even an industrial company in terms of Section 3(1)(e) and (f) of SICA read with Section 3(c) of IDR Act, the question of its reference subsisting with the BIFR after the order of the Appellate Authority dated 12.7.2000 in appeal No. 7/99 was passed, does not arise. There is no remand order made by this Appellate Authority and no such order could have been passed. The observation of the Appellate Authority in the aforesaid order to the effect that this is a fit case for recommending winding up of such a company is qualified by the statement even if it were to be held that 50 or more workers were working in its plant during any day during the period 15.1.90 to 14.1.91. This is an obiter dicta. The observation of this Authority regarding winding up is only hypothetical.

4. We may also note that the petitioner herein, being aggrieved by the earlier order of the AAIFR dated 12.07.2000 passed in appeal No. 7/1999, filed a writ petition before this Court being CWP 4174/2000. The same was disposed of by an order dated 17.09.2002. A Division Bench of this Court held that there was no error in the findings of the Appellate Tribunal. While coming to the conclusion, the Division Bench of this Court clearly observed:

As such the AAIFR came to the conclusion that a reference u/s 15(1) would not lie as the petitioner company was not an industrial company.

5. In our view, this conclusion puts an end to the controversy as to whether the matter was remanded by the AAIFR by virtue of its order dated 12.07.2000 for further consideration of the BIFR or not? In the wake of this finding of the Division Bench of this Court, there cannot be any doubt that the reference itself did not lie and, therefore, there is no question of a reference being pending before the BIFR. This is exactly what the BIFR held in the order dated 14.11.2008 which has been confirmed by the AAIFR in the impugned order dated 19.03.2009. We see no infirmity in the said order.

6. The learned Counsel for the petitioner drew our attention to annexure P-11, which is at page 115 of the paperbook. The said annexure is a copy of the status of the case No. 158/1994 as appearing in the website of BIFR. The said printout indicates the status as on 31.10.2008. As per the said annexure, the status of the case is shown as remanded by AAIFR. It is on the basis of this status report also that the petitioner claims that the order dated 12.07.2000 passed by the AAIFR was a remand order and was not a dismissal of the reference. The status

report given on the website of the BIFR cannot take precedence over the orders passed by the BIFR or the AAIFR. The websites of Tribunals and Courts usually contain and, if they do not, they ought to contain a disclaimer that the parties shall be guided by the certified copies of the orders and not by what is indicated on the website. In any event, we are of the view that this Court in the earlier writ petition had clearly stated that the reference would not lie. That order was passed as far back as on 17.09.2002 and has become final. The status of the case appearing in the website of BIFR as on 31.10.2008 cannot but be an error. In any event, once the High Court order dated 17.09.2002 was accepted by the petitioner, the mistake in the website of the BIFR cannot be taken as an opportunity by the petitioner to re-agitate issues which had attained finality.

7. In view of the aforesaid reasons, the present writ petition cannot be entertained.

The writ petition is dismissed.