**(1993) 07 DEL CK 0009**

**In the Delhi High Court**

**Case No :** Civil Writ Petition No. 464 of 1993

Lavino Kapur Cottons (P.) Ltd. and another APPELLANT

Vs

B.I.F.R. and another RESPONDENT

**Date of Decision :** 28-07-1993

**Acts Referred:**

**Citation :** (1994) 79 CompCas 713

**Hon'ble Judges :** V.B. Bansal, J

**Bench :** Single Bench

**Advocate :** Arun Jaitley, for the Appellant; Madan Lokur, for the Respondent

# Judgement

V.B. Bansal, J.—The petitioners have filed this writ petition with a prayer for a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ or direction, calling for the records of the present case and after going into the question of the legality and validity thereof to strike down and quash the proceedings before the Board for Industrial and Financial Reconstruction (BIFR) in Case No. 64 of 1987, and also restrain the respondents from passing any order in the said proceedings.

2. Petitioner No. 1, a 100 per cent. export-oriented unit, is a private limited company and petitioner No. 2 is a shareholder and its managing director. This company has installed capacity to manufacture 2,400 tonnes of absorbent cotton per annum with a license to double its capacity to 4,800 tonnes per annum.

3. The Board for Industrial and Financial Reconstruction, respondent No. 1, has been constituted u/s 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "the Act"). Respondent No. 2 is the Union of India.

4. The petitioner-company was having financial assistance from the Central Bank of India, the State Industrial and Investment Corporation of Maharashtra Limited (SICOM) and also from the Maharashtra State Financial Corporation (MSFC). It continued its business but had financial difficulties and even disputes arose

between the petitioner-company as also the financial institutions, which led to the filing of a suit against the petitioner-company by the Central Bank of India. There was a strike by the employees of the petitioner-company which has seventy persons in its employment. The bank held the petitioner-company to be a non-viable unit and asked for the payment of the amount.

5. The petitioner-company became a sick industrial company as provided u/s 3(1)(o) of the Act and so, it filed an application before the BIFR with a request to finalise a package, as had been agreed to by the financial institutions, viz., the Central Bank of India, SICOM, MSFC and the Reserve Bank of India in a meeting held on March 2, 1987. An order dated October 6, 1987, was passed by the BIFR, exercising the powers under sub-section (3) of section 17 of the Act and the Industrial Credit and Investment Corporation of India was appointed as the operating agency for preparing a scheme for rehabilitation of this company, if possible, and a direction was given as to what aspects were to be kept in view while formulating the rehabilitation scheme. Proceedings are continuing before the BIFR.

6. It has been pleaded by the petitioners that this company has entered into settlements with the Central Bank of India, SICOM and MSFC and that it has been earning profits during the last two years and no assistance has so far been obtained from the BIFR. It has also been pleaded that the petitioner-company is not a sick industrial company and is not in need of any assistance from the BIFR. Further averments made in the petition have been that the BIFR proceedings are not being dropped, thereby causing loss to the petitioner and that there is no justification for keeping the proceedings alive and, this petition.

7. No counter-affidavit has been filed by the respondents. Respondent No. 1 is the BIFR, constituted u/s 4 of the Act, and is performing quasi-judicial functions. Respondent No. 2, the Union of India, has also not filed any counter-affidavit in spite of the fact that rule nisi was issued in the petition on March 19, 1993, and, thus, opportunity was available to respondent No. 2 to file the counter-affidavit.

8. I have heard Shri Arun Jaitley, learned counsel for the petitioners and Shri Madan Lokur, learned counsel for respondent No. 2.

9. Learned counsel for the petitioner has submitted that a scheme has been formulated by the petitioner-company with the financial institutions and that the petitioner-company is not a sick industrial company, as provided u/s 3(1)(o) of the Act. He has further submitted that there are no grounds for the BIFR to continue with the proceedings when no assistance is required by the petitioner and no scheme so far has been formulated for its rehabilitation. He has, thus, submitted that the proceedings ought to have been dropped by respondent No. 1, as has been done in a number of cases. He has also submitted that the petitioner-company is prepared to move an application in this regard before respondent No. 1 and that a direction may be issued to respondent No. 1 to dispose of the same expeditiously.

 

10. Mr. Madan Lokur submits that there can possibly be no objection to the petitioner approaching respondent No. 1 for dropping the proceedings and the Board being asked to dispose of the application expeditiously. He has also pointed out that from a decision of the BIFR an appeal lies before the appellate authority constituted u/s 12 and as provided u/s 25 of the Act.

11. Considering all these facts, I am clearly of the view that it would be appropriate that a request is made by the petitioner to the Board for dropping the proceedings so that the same is disposed of in accordance with law.

12. As a result, the petitioner is permitted to move an appropriate application before respondent No. 1 within a week and the same would be disposed of by the BIFR expeditiously, preferably within four weeks of its presentation. The petitioner would be free to take such steps as deemed to be necessary under law after the disposal of the application by the BIFR. The writ petition stands disposed of accordingly. No order as to costs.

 