
(1995) 11 DEL CK 0037

In the Delhi High Court

Case No : Civil Writ Appeal No. 2708 of 1995

Marathwada Alloy Steels Co. Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 09-11-1995

Acts Referred:

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 16

Citation : (1995) 4 AD 1040 : (1998) 91 CompCas 419 : (1996) 61 DLT 548 :
(1995) 35 DRJ 507

Hon'ble Judges : M. Jagannadha Rao, C.J.;A.D. Singh, J

Bench : Division Bench

Advocate : G.L. Rawal and Kuljit Rawal, for the Appellant;

Judgement

M. Jagannadha Rao, C.J.

(1) This is a writ petition filed by the petitioner seeking to quash the order dated 9th May,1994 passed by the Board of Industrial and Financial Reconstruction (hereinafter called the BIFR) and the appellate order dated 9th February,1995 passed by the Appellate Authority for Industrial and Financial Reconstruction (hereinafter called the AAIFR). The Bifr under the impugned order held that inspire of ample opportunities given to the petitioner company for submission of a viable revival scheme, such scheme had not been submitted by the petitioner or its promoters to the satisfaction of the BIFR. On appeal by the company, this order was confirmed by the Aaifr by its order dated 2nd February,1995. These two orders have been challenged by the company in this appeal.

(2) The main point urged by the learned counsel for the petitioner company, which has directed to be wound up by the Bifr, is that the Bank of Maharashtra, the main creditor, was throughout cooperating with the petitioner and promoters in regard to the scheme for a long period but had suddenly changed its attitude just before the impugned order was passed by the Bifr and even went to the extent of raising a new dispute, namely, that the bank had no confidence in the present management of the company. The question is whether the Bank of

Maharashtra had not been consistently raising objections from the beginning and suddenly raised new objections and if so, whether it could? It is Therefore necessary to refer to the chronology of events.

(3) The petitioner company filed a reference u/s 15(1) of the Sick Industrial Companies "Special Provisions" Act, 1985 (hereinafter called the Act). By order dated 18th July,1990 the Bifr observed that they propose to make an inquiry u/s 16 of the Act. Accordingly in terms of Section 16(4) of the Act the Bifr appointed a Special Director of the company to look after its financial and other interests considering the material placed before them. The contention of the petitioner company was that the unit/company had been closed down for about 15 months due to labour trouble, power cuts and shortage of scrap. It is stated that now the unit has been opened and thereafter promoters have brought some money and the bank has also agreed to assist. The petitioner also stated that the accumulated losses suffered by the company amounted to Rs. 167.19 lakhs at the end of the financial year on 31.3.89 which had completely eroded the net worth of the company consisting of Rs. 36.25 lakhs with no free reserves. The company suffered cash loss of Rs. 159.62 lakhs during that year and a loss of Rs. 44.02 lakhs during the preceding year ended on 31.12.87. The company suffered further loss during the year ended on 31.3.90 when the accumulated losses have amounted to Rs. 249.17 lakhs according to the provisional accounts.

(4) On the basis of the above material the Bifr came to the prima facie conclusion that the company had become a sick industrial company in terms of rule 3(1)(o) of the Act.

(5) The Bifr thereafter called upon the petitioner to explain as to whether it was practicable for the company to make its net worth positive within a reasonable period on its own without the Board taking measures under the Act. The petitioner replied that it was so practicable in terms of the package already submitted by the petitioner company to the Bank of Maharashtra who would examine the same. Counsel for the Bank mentioned that the company owed to the bank about Rs. 400 lakhs for which no security was deposited. The company had submitted a rehabilitation proposal to the bank which is being examined. The U.T.I. representative stated that they had debentures to the tune of Rs. 175 lakhs on which interest of about Rs. 96.78 lakhs up to 31.3.90 was also due. The petitioner company also accepted that there were sundry dues to the tune of Rs. 87.88 lakhs as on 31.3.89. The Bifr Therefore directed the Bank of Maharashtra to finalise their views on the scheme proposed by the company and send the same to the Board by 31.8.90 with a copy to the company. This was the order passed on 18th July,1990.

(6) On 20th February,1991 the Bifr u/s 17(3) of the Act appointed Irbi as the Operating Agency(OA) to examine the viability and prepare a scheme for revival/rehabilitation of the petitioner company. The operating agency was to keep in view the provisions of Section 18 and 19 of the Act, in general, and in particular the various measures and guidelines mentioned in the order of the Bifr which

were set out in the various sub-headings from (a) to (f) and (a) to (p) respectively. The Board directed the petitioner company to give further proposal within 3 weeks which time was not to be extended by the operating agency. The operating agency was to submit their report to the Board within 90 days from the date of the order and send advance copies thereof to the company, banks, State Govt., Workers" Union etc.

(7) From the subsequent order of the Bifr dated 23.12.91 it is clear that the Irbi submitted that the scheme proposed by the operating agency entailed capital expenditure of Rs. 175 lakhs. It appeared that there was a joint meeting held in which Bank of Maharashtra had expressed reservations about the capabilities of the present promoters for the successful turn around of the company. The bank had insisted that the promoters should induct their contribution. Some of the objections raised by the bank are set out in the order. The Bifr Therefore in its order directed the operating agency to submit a viability study report. While doing so the current prevailing interest rate structure was also to be accounted. The operating agency was also to make efforts for locating and identifying a new promoter who may be willing to take over the company either by sale/lease, transfer of shares or merger etc.

(8) The above order dated 23.12.91 would show that to start with, the Bank of Maharashtra which had to get more than Rs. 400 lakhs was expressing its reservation to the proposed scheme and about the capability of the present promoters.

(9) It appears that Irbi conducted a meeting on 30th October,1992. It was a joint meeting of the various interested parties. It is necessary to mention the view of the Bank of Maharashtra in the said meeting. The representatives of Bank of Maharashtra (BOM) endorsed the views of Deputy General Manager of the Irbi regarding Arc furnace being uneconomical. According to Bank Of Maharashtra(in short BOM), Induction furnace route was to be utilised for higher grade allow steel products and forward integration. They submitted that Bom would support any "viable" scheme within Rbi parameters. The working capital term loan should be repaid within 5 years and term loan within 7 years. Fresh working capital might be provided under first method of lending with 25% margin. Inventory should be made of the existing security available for bank dues and any shortfall in security must be made good by collateral security to be offered by promoters and their associates. Shri Vinod Kumar should step down as Vice Chairman of the company and an independent Managing Director might be appointed with the approval of bank/financial institution. Similarly a Finance Director might be appointed with the approval of bank/financial institution. The promoters should bring in Rs. 150 lakhs pending recovery of overdue book debts of similar amount from Jhalani Tools Ltd. Along with further fund. The company should immediately complete the mortgage formalities with Bank. Further dues to Bom of Bd investments, an associate company, must be paid upfront. The information about all the units in the group Along with the name of their bankers and credit report

should be submitted.

(10) The above were the objections raised on behalf of the Bank at the meeting of 30th October,1992.

(11) Thereafter, the Bifr met on 18th November,1992 and heard the representatives of Irbi and the Bank of Maharashtra. After referring to the above objections raised on behalf of the Bank of Maharashtra, the Bifr mentioned that the dues to the Bank of Maharashtra was Rs. 371 lacs and unapplied interest amounted to Rs. 262.75 lacs as on 30.9.92. The representative of the Bank of Maharashtra concurred with the views of IRBI/operating agency that the operations of the working of the company were not viable. The Bifr then asked the petitioner company to explain and thereafter observed: @SUBPARA =

".....THE measures taken in relation to the company have not been successful. The viability study report prepared by Oa and discussed at the joint meeting has not been found to be support worthy by all concerned....."

(12) The above observations would show that the promoters had shown their inability to bring in the required financial inputs. The technical feasibility of the plant was beset with uncertainties as the Arc furnace route is uneconomical which fact had been submitted by the promoters. The alternative suggested for an integration with B.D. investments as proposed by company/promoters was not found to be acceptable to the bank financing. With all the above said observations, the Bifr come to the prima facie conclusion that the company has to be wound up in terms of the provisions of Section 20 of the Act. Accordingly it directed the issue of usual public notice for objections/suggestions or alternative proposals.

(13) The Bifr met again on 20th January,1993 and observed that the Irbi had submitted that a scheme by Jhalani Tools had been submitted which envisage their role as a co-promoter. They noted that Jhalani Tools was itself a sick company under Rehabilitation Scheme sanctioned by the BIFR. The proposal was having certain infirmities like contribution from Jhalani Tools had neither been specified nor quantified and similar was the position in regard to contribution from the existing promoters. The reliefs/concessions sought therein were beyond Rbi guidelines. The Irbi Therefore submitted that the scheme was only marginally viable. The Bifr observed that Jhalani Tools was owing substantial amount to Marathwada Alloys with a rehabilitation scheme of Jhalani Tools was sanctioned by Bifr only "recently" and that unless at least one year was afforded and the performance of Jhalani Tools was reviewed by Bifr, it would be premature on the part of the operating agency to infer that Jhalani Tools was doing well. The Bifr further recorded that the Bank of Maharashtra wanted to study the proposal of Jhalani Tools.

(14) In view of the disturbed conditions at Bombay at that time, the Bifr acceded to the requests made by the Bank of Maharashtra for granting some more time for processing the proposal and permitted them to submit a report.

(15) There was a joint meeting of all the concerned parties on 14th June,1993. In that meeting the Irbi observed the following deficiencies:

(A)RELIEFS/CONCESSIONS are beyond Rbi parameters. (b)There is no indication of regular inflow of orders from Jhalani Tools and/or their capabilities to pay. (c) The input of funds is to emanate from disposal of property, which would be a time consuming process.

(16) The Bifr observed that the proposal was not in line with the directions given by it earlier and the credibility of the promoters' claim for lining up the required financial inputs was poor. The Board then directed the operating agency to comply with the following:

"A.THEOA should hold a joint meeting of all concerned within fifteen days with a view to eliciting their firm commitment in regard to the reliefs/concessions asked for by the company in its 16.6.1993 proposal. This joint meeting should crystallize whether prima facie such a set of reliefs/concessions are acceptable to everyone. They should indicate in clear terms their reaction to the company's proposal. The Oa should submit its report on the conclusions of the joint meeting on this limited point latest by 7.7.1993." 16. From above it is clear that in spite of having ordered winding up on 8th November,1992, the Bifr recalled the said orders on 20th January,1993 directing the fresh proposals of the company to its new promoters to be examined. The Bifr gave fresh directions to the Rbi to consider various aspects.

(17) There was a meeting convened by the Rbi on 2nd July,1993. Here we find that the Bank of Maharashtra agreed to grant reliefs/concession only as per Rbi guidelines. However, since certain reliefs/concessions i.e. charging of simple interest @ 13% p.a. on the outstanding from 31.3.90 to 31.3.94 and converting the same into non-interest bearing loan etc were beyond Rbi guidelines and hence needed approval of the BIFR. The Bank Therefore requested time to communicate their final views. The bank also stated that the company had shown Rs. 70 lacs to be realised from sundry debtors (probably Jhalani Tools) and it must cross checked with them as to whether the same would be forthcoming in the first year. Secondly the company had taken Rs. 25 lakhs by way of sale proceeds of fixed assets charged to the bank. The representative from Uti also agreed to provide reliefs only as per Rbi guidelines. Since the Bank of Maharashtra and Uti asked for time for the purpose of obtaining necessary orders for going beyond Rbi guidelines, the matter was adjourned.

(18) The Bifr again met on 8th September,1993 when the Irbi submitted result of its meeting. The Bifr considered the objections of Bank of Maharashtra and issue further directions to the IRBI(OA) as follows:

"A.AFTERaccounting "A. AFTER accounting for the conditionalities laid down by the Bom, the Scheme and the cash flows etc., should be revised, to find out whether the viability is there. Based on the sanctioned scheme for Jhalani Tools the Oa may satisfy itself whether it is prudent to base the projections entirely

based on the demand of the company's products from this one source, particularly from the point of view of the capability of the Jhalani Tools to ensure timely payments of bills raised. Based on the conditionalities of Bom, the revised requirement of the promoters' contribution should be worked out. Considering the stand taken by Government of Maharashtra in regard to the electricity dues, the same may be considered as "O" rate debentures payable after a period of time. All the other reliefs sought from the State Government have to be within the approved policy package."

(19) The matter stood adjourned to enable the Irbi to submit their viability study report.

(20) The Bifr then met on 25th November, 1993. It studied the revised proposal of the IRBI. The Irbi pointed out that the Bank of Maharashtra and the Uti had agreed to go beyond Rbi parameters in giving the reliefs and concessions only subject to establishment of economic viability of the company. The Irbi also observed that in the event of non participation of Bank of Maharashtra in the rehabilitation scheme, the Operating Agency thought that there was no point in preparing the detailed study with regard to technical, economic/commercial viability of the operations of the company based on its revised proposals. Before the Board it is stated on 25th November, 1993 by the Bank of Maharashtra that the documents executed by the company were nearing expiry and as a precautionary measure the bank had gone for filing a civil suit against the company for recovery of its dues. He also stated that the bank was, however, not averse to considering the revival proposal of the company with reliefs and concessions beyond Rbi parameters but only subject to establishments of viability of the unit on a long term basis. To this extent, the bank wrote a letter to Rbi on 10th August, 1993. The bank insisted on payment of Rs. 170 lakhs receivable from Jhalani Tools Ltd. independent of the revival package. Considering the facts on record and submissions made at the hearing the Bifr observed that no credible revival plan was submitted so far by the company or its promoters. The company had not so far finalised the terms for one time settlement/grant of reliefs and concessions with Bank of Maharashtra and UTI. The Bifr observed further that the Irbi should have taken the proposal as the starting point and conducted technical and commercial feasibility study to test the credibility of the assumptions and projections contained in the proposal. The matter was adjourned to 31st December, 1993.

(21) In the meantime, the Bifr met on 25th November, 1993. Later there was a joint meeting convened by the Irbi on 21st April, 1994. This meeting is very crucial for the petitioner company. The Uti and the Bank of Maharashtra attended this meeting. In that meeting the Bank of Maharashtra took the stand that irrespective of the viability of the company, Bom would not like to associate itself with the rehabilitation of the company because of the following reasons:

(I) BANK of Maharashtra had no confidence in the existing management. (ii) No specific settlement had been arrived at in respect of their dues from Bda

investment - another group company. (iii)Details of the duties from Jhalani Tools were not furnished. (iv)Sources of funds to be brought in by the promoters were not specified. (v)In case of one time settlement of the dues of Uti for a sum of Rs. 150 lakhs by the company, Bank of Maharashtra would be left alone to share the future risks. (vi)The promoters were toying with various kind of permutation and combination to kill the time and not to arrive at any concrete proposals.

(22) The point for consideration Therefore is whether, the Bank of Maharashtra was throughout cooperative and willing and whether it had raised objections for the first time on 25th November,1993?

(23) The submission of the learned counsel for the petitioner that the Bank of Maharashtra suddenly changed its stance at the meeting on 21.4.1994 is, in our view, not correct. Firstly, even if, on a fresh consideration of the concessions to be granted to the company, or on the capability of the management, it came to some new conclusions, it will not be open to the Bifr to reject the same as wholly unwarranted. After all, when a nationalised bank is asked to give concessions in regard to payment of interest or principal, it has to consider whether public monies, - of which it is in the position of a trustee - can be frittered away for the purpose of rehabilitation of sick industries. If in addition to such a consideration, the sick company is insisting on a waiver of Reserve Bank of India (RBI) guidelines and requesting for going beyond those guidelines, it is indeed a serious matter for the nationalised bank, and also an important issue for the Bifr and the Rbi to consider whether such deviations or relaxations can be permitted.

(24) We are finding in a good number of cases that in the course of draft scheme or in cases of one-time settlement, suggestions are being made for giving relaxations in regard to interest etc beyond the Rbi guidelines. We would think that in such cases it would be more appropriate for the parties or the Bifr to obtain the further consent of the Rbi for going beyond the permissible parameters. It cannot be forgotten that several nationalised banks are in the red for various reasons. The Banks are in the custody of public funds, and they hold the monies in a fiduciary character for the investors. We do not think that it will be open to the parties or the Bifr to thrust conditions on the nationalised banks or the Uti for giving concessions beyond the guidelines issued by the Rbi unless of course, the Rbi gives further special permission in that regard.

(25) Bearing these aspects in mind, we do not think that at the meeting convened by the operating agency, namely, Irbi, on 21.4.1994, the attitude of the Bank of Maharashtra was either different from its earlier attitude or was arbitrary. In the last paragraph we have set out the objections raised by the Bank of Maharashtra at that meeting. The events mentioned earlier by us in this order including the events which took place at the meetings convened by the operating agency would show that the Bank of Maharashtra had throughout insisted on viable schemes even if it should go beyond Rbi parameters. The proposal on the part of the Bank of Maharashtra was always conditional and not unconditional. The amount due to the Bank of Maharashtra was stated to be Rs. 371 lakhs and

unapplied interest of Rs. 262.75 lakhs as on 30.9.1992. The Bank of Maharashtra was, therefore, having a vital stake in the acceptance of any scheme to revive this company.

(26) It has been contended before us that so far as the objection taken by the Bank of Maharashtra on 21.4.1994 that it had no confidence in the existing management is concerned, such an objection was not taken earlier. This is not correct. As set out in the order of the Bifr dated 23.12.1991 the Bank of Maharashtra had clearly expressed its reservations about the capability of the present promoters for the successful turn around of the company. The bank was insisting that the promoters induct their own contribution. Even assuming that it was a new objection raised by the Bank of Maharashtra, it is not for the Bifr or this Court to go into the question whether the lack of faith of the Bank of Maharashtra in the existing management is not based on any factual basis. After all, the Bank of Maharashtra was the principal banker of the company and it had enough experience about the manner in which the existing management had been dealing with the bank and it would not be for the Court to go into the satisfaction of the bank in that behalf.

(27) The learned counsel for the petitioner relied upon a decision of a Division Bench of this Court in U.I.C. Paper Mills Company Ltd. vs. Appellate Authority For Industrial & Financial Reconstruction & others 1994 [4] D L 209. That case was disposed of by this very Bench. It was shown, on the facts of that case, that the operating agency had not done its job at all and, therefore, it was permissible for the High Court to direct the Appellate Authority to consider the proposal u/s 17(3) read with Section 18 of the Act. In that context, it was observed that once an order u/s 17(3) was passed by the Bifr, it was incumbent upon the operating agency to prepare a scheme with respect to the company in the light of Section 18 of the Act. In our Judgment we clearly pointed out that it was not in dispute that the operating agency did not prepare the scheme. We also mentioned that the operating agency did not seriously consider the techno-economic feasibility of the project report of the petitioner in that case, and that it also failed to carry out certain directions issued by the Appellate Authority and as a consequence it did not give its report as envisaged by the order of the Appellate Authority. It was in that context this Court said that once an order was passed u/s 17(3) the operating agency had no option but to frame a scheme, and in case it was not possible to frame a scheme, the operating agency could have filed an application for review of the order passed by the Bifr u/s 17(3) of the Act. On the facts of that case, it was found that the only thing that had gone against the petitioner in that case was that the Irbi had taken a stand that unless the scheme of rehabilitation was prepared, they would not be in a position to make any financial commitment. We pointed out that when such a stand was taken by the Irbi, it was all the more necessary that a scheme should have been prepared by the operating agency so as to enable the Irbi to consider whether it was possible to grant a term loan. The scheme could provide for financial assistance and if after circulation to the IRBI or other persons, the consent as provided by Section

19(2) of the Act was not forthcoming within the specified time, the Bifr could adopt such measures including the winding up of the company. It was on those facts that the writ petition was allowed, the order of the Appellate Authority was set aside and a direction was issued to the Appellate Authority for Industrial & Financial Reconstruction to decide the matter afresh in the light of the observations made.

(28) We do not think that the above decision is of any assistance to the petitioner in this case. The crucial fact which distinguishes that case from the present one before us is that in that case the operating agency had totally failed to carry out its duties and also the directions of the Appellate Authority. In the present case before us, that is not the position. The operating agency had made every endeavor in several meetings to frame a scheme in the light of the proposal made by the petitioner company and the objections raised by the Bank of Maharashtra and other objectors.

(29) Learned counsel for the petitioner also relied upon certain general observations of the Supreme Court in Maharashtra Tubes Ltd. Vs. State Industrial and Investment Corporation of Maharashtra Ltd. and Another, . That case merely concerned itself with the scope of Section 22 of the Act and in that context, the general purposes of the beneficial provisions of the Act were set out. We do not think that those general observations made particularly in the context of Section 22 of the Act can render any help to the petitioner on the question whether the Bank of Maharashtra was or was not entitled to take various objections in the meetings convened by the operating agency.

(30) In the present case, the Bifr in its order dated 19.5.1994 and the Appellate Authority in its order dated 9.2.1995 have taken the same view on the same set of facts and arrived at the findings that the scheme submitted by the parties and their promoters could not enable the operating agency to project a viable scheme for revival of the company particularly in the light of the various liabilities to the secured creditors, nationalised banks, workmen and others. Bifr and the Appellate Authority have gone into the various aspects in the scheme proposed by the parties and the findings are more or less on facts based on adequate material, are findings of fact and cannot be interfered with lightly in the writ jurisdiction.

(31) As mentioned earlier, the Bifr had initially passed a winding up order and had to recall the same on 20.1.1993 and conducted several meetings, called all the parties and came to the conclusion that no further opportunities can be given to the petitioner. We are unable to find any error of law or fact.

(32) For the aforesaid reasons, this writ petition is dismissed, but in the circumstances of the case without costs.