

(1999) 03 BOM CK 0044

In the Bombay High Court

Case No : Company Petition No. 405 of 1994 in B.I.F.R. Case No. 28 of 1988

**M/s. B.R. Steel Products Ltd. Board for Industrial and Financial
Reconstruction**

Date of Decision : 19-03-1999

Acts Referred:

Companies Act, 1956 — Section 446

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15

Citation : (1999) 3 ALLMR 98 : (1999) 3 BomCR 385 : (1999) 2 BOMLR 472 :
(2001) 103 CompCas 133 : (1999) 2 MhLj 635

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : S.A. Tawate, S.C. Gupta, for the Appellant;

Judgement

S.S. Nijjar, J.—The respondent company became a sick company within the meaning of Sick Industrial Companies (Special Provisions) Act, 1985, hereinafter referred to as "the Act", on 31st March, 1987. The matter was referred to B.I.F.R. u/s 15(i) of the said Act and the Reference was numbered Case No. 28 of 88. The B.I.F.R. conducted enquiry and appointed ICICI as the operating agency on 13th July, 1989, directing them to submit their report on 13th October, 1989. The B.I.F.R. on 5th February, 1991 passed an order giving an opinion that it is just and equitable that the respondent company be wound up. In 1991 the respondent company preferred an Appeal Nos. 38/91 and 77/90 before the Appellate Authority. On 15th March, 1994 the Appellate Authority dismissed the appeal of the respondent company mainly on the ground of not settling the workers dues. A perusal of the order of B.I.F.R. shows that after careful consideration the Board was of the opinion that the company was not in a position to make its network positive. Very substantial outlay of funds was involved which could not be financed as the banks had lost confidence in the management nor the promoters were capable of lining up the required quantum of funds. It was also of the opinion that the debt burden being substantial could not be serviced out of the operations nor any other alternative was in sight. Even after a number of opportunities, the banks maintained their earlier stand in

regard to viability and the extent of reliefs/concessions. In fact, it is observed that the efforts of the bank to identify and locate a person who can take over the company or join as a co-partner did not yield any results. In the Appeal Court, a draft scheme was filed on 15th April, 1993. This was ordered to be published in the newspapers inviting objections/suggestions. The operating agency was directed to have a dialogue with all concerned and file a report. The operating agency filed its report disclosing that twice letters were sent to the workers unions but there was no response. The workers were refusing to execute some agreement which was envisaged in the scheme. Similar was the position with regard to the workers union. Without the agreement of the workers and the workers union there was no question of implementation of any scheme. All other efforts had failed. In view of the above, the appeal was dismissed.

2. On 14th August, 1997 one Krishnakumar Seth and Kamal Kishore Chadha purchased the entire share capital of the company and they along with one Deepak B. Sekri became the Directors of the respondent company. Thus the company has been taken over by a new management. This management has inducted funds to the extent of Rs. 3,17,00,000/- into the company. Out of this sum Rs. 1,67,55,000/- have been paid to Bank of India who were the secured creditors of the company in full and final settlement of their dues. The new management have also paid a sum of Rs. 1,35,00,000/- to the workers in full and final settlement of their dues. On that basis all the workers have resigned voluntarily. A sum of Rs. 1,83,51,990/- was payable to the erstwhile sister company viz. M/s. Krishna Steel Ltd. As per the orders of the Appellate Authority dated 26th May, 1993, the same was merged with M/s. Golden Falcan Pacific Limited who transferred this amount to the ex promoter Khurana. Including this amount a total sum of Rs. 2,77,45,248/- is due and payable to Khurana. He by his letter dated 30th December, 1998 has confirmed that he will not press for this payment nor he would approach any Court of law for winding up of the respondent company and he will settle the payment terms of the aforesaid amount on mutually acceptable convenient terms and conditions. He has also stated that he can accept allotment of shares in lieu of the aforesaid amount. Thus, out of the total liabilities of a sum of Rs. 6,53,01,139.87 a major portion in the sum of Rs. 5,87,18,248/- are paid or settled leaving a balance liability of Rs. 65,82,891/-. This sum is due on account of the sundry creditors (Rs. 36,12,092/-) and the remaining liability of Rs. 29,70,799/- representing statutory dues. Out of which, Navi Mumbai Municipal Corporation is paid Rs. 5.23 lakhs and for the balance amount of Rs. 1,95,000/- post dated cheque has been issued. Thus the net balance liability are to the tune of Rs. 58,64,891/-. Even the Maharashtra State Electricity Board after negotiations will be paid a sum of Rs. 1,52,723/-. Sales tax as per an ex parte order is Rs. 20,78,490/-. However, it is submitted that since the company was doing job work the same will not be required to be paid. However, appeal will have to be filed and in the event of final determination of the sales tax against the company the same will be paid. Income tax as per the ex parte order is stated to be Rs. 7,39,586/-. Appeal has

been preferred against this.

3. The facts narrated above make it apparent that the new management has made genuine efforts to rehabilitate the company. The circumstances as they prevailed at the time when the order was passed by the B.I.F.R. and by the Appellate Board do not exist at present. Taking these facts into consideration, this Court is of the opinion that the order passed by the B.I.F.R. and the Appellate Authority have lost their relevance at the present stage. The company has been taken over by a new management. Large amounts of funds have been brought into the company. Consequently the major liabilities have been met. Thus the circumstances that existed at the time of the passing of the order by the B.I.F.R. no longer exist. In these circumstances it would not be just and equitable to order the winding up of the company. This is a fit case where the matter needs to be remanded back to the B.I.F.R. to reconsider the whole issue by taking into account the changed fortunes of the company. This view, is supported by a judgment of the Supreme Court in the case of Crescent Iron and Steel Corporation Ltd. v. Union of India, 1992 J.T.(6) 18. The Supreme Court considered the change in circumstances of the company after the passing of the order by B.I.F.R. and remanded the matter to the B.I.F.R. for reconsideration. It was stated before the Supreme Court that during the pendency of the reference before the B.I.F.R. the shares of the appellant company held by Voltas Limited were transferred in favour of the present shareholders, after obtaining approval of the concerned authorities. The new management had settled liabilities of all the creditors, workers dues, as well as Government dues, by arranging funds of their own. As regards the claims of the Canara Bank, the dues had been settled to the satisfaction of that bank and in case of United Bank of India, part of the dues had been settled and for the balance amount undertaking had been given, supported by bank guarantee to the satisfaction of that bank. All the workers of the foundry had also voluntarily resigned and have been paid their dues, except for two workers whose whereabouts could not be traced. The Supreme Court noted that all the above circumstances have happened after the passing of the order by the B.I.F.R. and by the Appellate Authority. It was held that the B.I.F.R. and the Appellate Authority are authorised to take into consideration the facts and circumstances of each case and then to decide whether any reference u/s 15(i) of the Act was at all necessary or not and to pass any other appropriate order meeting the ends of justice in each case. This judgment of the Supreme Court has been followed by the Madhya Pradesh High Court in the case of Board for Industrial and Financial Reconstruction v. Gwalior Synthetics Pvt. Ltd., Company Cases Vol. 91 page 514. In that case the B.I.F.R. recommended the winding up of the company on 9th November, 1992. Thereafter on August 23, 1995 the company made a prayer before the Board that the order be recalled. It was stated that the financial position of the company has since improved and it has satisfied the demands of several of its creditors including the M.P. Financial Corporation. This prayer was rejected on the ground that the B.I.F.R. had no power to review under the Act. The company had filed a writ petition against the

aforesaid order. In the meantime the company petition came up before the High Court on the basis of the recommendation made by the B.I.F.R. by its order dated 9th November, 1992. Following the law laid down by the Supreme Court and taking note of the fact that the company in question had satisfied some of the major creditors it was held by the M.P. High Court that it would not be just and proper to proceed further with the winding up of the company. A direction was given to the Board to reconsider the matter in the light of the changed circumstances. I had also earlier taken a similar view in the case of Appellate Authority for Industrial & Finance Reconstruction v. Sealord Containers, 1997 3 L.J. 376 although the aforesaid judgement of the M.P. High Court was not brought to the notice of the Court. In that case the workers of the company were in favour of the rehabilitation of the company. In spite of the orders of B.I.F.R. and the Appellate Authority the company and the workers continued in their efforts to rehabilitate the company. Subsequently by an agreement, Adani Properties Pvt. Ltd. on behalf of the company settled all the dues of the secured creditors of the company by giving interest free loans to the company. These funds were brought in to enable the company to revive and in fact the company was revived and all secured creditors were paid off in full. Subsequently the company issued shares to Adani Properties Pvt. Ltd. against their loans. In the meantime the secured creditors had filed suits for recovery of the outstanding dues. In these suits Receiver had been appointed. Upon payment having been made in full the secured creditors withdrew their suits against the respondent company and the Court Receiver was discharged. The creditors declared that they have no objection if the order recommending winding up passed by the B.I.F.R. is set aside. The company had also arrived at a settlement with the workers committee which has been set up with the consent of the workers union. Under the settlement, individual agreements were entered into with each worker and all their dues had been settled except for 3 workers who had not come for settlement. One of the workers had apparently expired and the other two had left and were said to be in Dubai. It was stated that the new management of the company was making all out efforts to revive the existing unit. On the basis of the aforesaid facts it was submitted that even though there may have been justification for recommending winding up of the company at the time when the matter was pending before the B.I.F.R. no such circumstances were in existence at the time of the hearing of the petition. This Court relied on the judgement of the Supreme Court in the Crescent case (supra) and dismissed the winding up petition. The matter was remanded to the B.I.F.R. for passing a fresh order in accordance with law and in the light of the observations made therein. In my view, the facts in the present case are akin to the facts in the three cases mentioned above. Thus this Court is of the opinion that the winding up petition deserves to be dismissed. Consequently the winding up petition is hereby dismissed with no order as to costs. However, in view of the changed circumstances the matter is remanded back to the B.I.F.R. to pass appropriate orders in accordance with law and in the light of the observations made above.

Certified copy expedited.

4. Petition dismissed.