

**(2000) 09 DEL CK 0008**

**In the Delhi High Court**

**Case No : CWP No. 5126 and CM 7906 of 2000**

M/s. Weston Electronics Ltd.

APPELLANT

Vs

The Appellate Authority for Industrial and Financial  
Reconstruction and Others

RESPONDENT

**Date of Decision : 08-09-2000**

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

**Citation :** (2003) 115 CompCas 178 : (2000) 57 DRJ 232 : (2001) 4 RCR(Civil)  
63

**Hon'ble Judges :** Dr. Arijit Pasayat, C.J;D.K. Jain, J

**Bench :** Division Bench

**Advocate :** Ms. Manisha Dhir, for the Appellant;

## Judgement

Arijit Pasayat, C.J.—In this writ petition the challenge is to the order of the Board for Industrial and Financial Reconstruction (in short "BIFR") allowing request of State Bank of India (in short "SBI") to proceed in the matter of recovery in terms of a consent decree obtained by the SBI from Debt Recovery Tribunal, Delhi (in short Tribunal). The said order of BIFR was affirmed by the Appellate Authority of Industrial and Financial Reconstruction (in short "AAIFR").

2. Brief reference to the factual aspects would suffice:

Petitioner had filed a reference u/s 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as the Act) for declaring the petitioner as a sick industrial company. The reference was considered and BIFR by its order dated 4th December, 1998 declared the petitioner a sick industrial unit u/s 3(1)(0) of the Act. Industrial Finance Corporation of India (in short OA) in terms of Section 17(3) of the Act to examine the viability of company and for formulating a scheme for its revival. Company and/or its promoters were directed to submit their comprehensive and fully tied up rehabilitation proposal within six weeks to the Operating Agency who was required to examine it in the light of techno-economic viability study conducted by them and submit their

report to the BIFR after holding a joint meeting to evolve an agreed package within further six weeks. Though the company had submitted a pro-posal in June, 1999, it was observed by the OA that the proposal was not submitted as per RBI parameters and the list of assets proposed to be sold by the company was not given. Liabilities were shown at a reduced level and the cost was worked out at Rs. 160.51 lakhs. If the liabilities were fully provided and relief's/concessions restricted within RBI parameters, the company would not be viable. The company was asked in August, 1999 to furnish requisite details/documents including their Balance Sheet for the period ending 31st March, 1999 and further financial details which were not made available despite orders. It was indicated that company was not cooperating with the OA in formulating a proper viable scheme and the promoters were not showing seriousness in that regard. It would be able to formulate a proper scheme on receipt of all the requisite details/documents from the company. It was noticed that the company had leased out the brand name "Weston" to one of the leading electronic firms in India.

3. SBI prayed for permission to proceed with the consent decree obtained by it. It was submitted that the consent decree dated 30th August, 1995 was passed on the company promising to pay Rs.30 crores to the Bank and Tribunal had issued a recovery certificate for Rs.63.04 crores. Present dues were in the neighborhood of Rs.101 Crores. Protection u/s 22(1) of SICA, it was submitted, should not be allowed to be operative in respect of execution of consent decree. It was submitted that company had let out certain premises forming part of the securities charged to the secured creditors without their permission. Stand of petitioner before the BIFR was that proposal was submitted to the OA in June, 1998 and delay was caused on account of serious illness of the CMD of the company; it was negotiating marketing tie up which was essential for formulating the proposal. Details of consent decree/Tribunal's order were disclosed in the reference filed by the company with the BIFR. Payments in accordance with the Tribunal's order could not be made by the company as SBI did not give permission to sell the property which was to be disposed of to mobilise funds. It was further submitted that proposal envisaged a cost of Rs.160.51 lakhs which would be brought in by the promoters as equity and same would make the company commercially and techno-economically viable there was also likelihood of the promoters bringing in further funds to meet any shortfall in cash accruals. It was further submitted that Balance Sheet for the required period, provisional balance sheet for September, 1999 and projections up to 31st March, 2000 shall be submitted.

4. BIFR noted that the company/promoters had not shown expediency and seriousness in their approach to revive the sick company and had submitted a proposal seeking extra-ordinary reliefs/concessions which was not-found acceptable by the secured creditors and felt that since the company was enjoying protection u/s 22(1) of the SICA by keeping he secured creditors at bay from recovering their dues and delaying the process of rehabilitation, grant of permission as prayed for by SBI would be proper and appropriate. Accordingly,

BIFR allowed SBI to proceed in the matter of recovery pursuant to consent decree obtained from Tribunal. This part of the order was challenged before the AAIFR. It is relevant to note that certain other directions were given with which we are not concerned. It was the stand of the petitioner before the AAIFR that efforts for revival will be frustrated if SBI proceeds with the execution of the decree; it had approached the Tribunal for modification of the consent decree and it wants to negotiate for modifications in the consent decree with SBI. Prayer was made to stay BIFR order giving consent to SBI to proceed in the matter of recovery in terms of the consent decree. Said prayer was opposed by the SBI on the ground that petitioner and its promoters had been giving assurances from time to time without fulfilling the same and, Therefore, it has lost confidence in them. It wanted to proceed with the recovery of dues in terms of the consent decree. AAIFR noted that the issue raised by the petitioner was essentially a matter between it and SBI. Petitioner stated that it was prepared to deposit Rs.1 crore in the bank account with the SBI and time may be granted for negotiating the matter further with SBI. Representative of the SBI stated that if the deposit is made within one or two days, the petitioner can approach the bank authorities for further instructions. However, at that stage learned counsel for the petitioner stated on instructions from the petitioner that at least one or two months' time may be granted for the purpose. Representative of the SBI declined to accept the offer. Taking note of the fact that protection u/s 22(1) of the Act should not be allowed to permit parties to wriggle out the commitments made before the Tribunal or any Court or from the consent decree passed, order of the BIFR was affirmed by AAIFR.

5. Learned counsel for the petitioner stated that the permission granted to SBI would frustrate the efforts to have a one time settlement. It is further stated that consent decree was passed at a point of time when the petitioner was a viable concern and by passage of time on account of factors beyond its control it has become sick. Fresh efforts for revival should not be allowed to be frustrated in the manner done by BIFR and AAIFR.

6. Since, before AAIFR petitioner had wanted time of a month or two for making payment of at least Rs.1 Crore we directed learned counsel for the petitioner to deposit the amount within a week when the matter came up before us yesterday. It was adjourned to today at the request of learned counsel for the petitioner. Today, on instructions, learned counsel for the petitioner states that it would not be possible to do so and at least one month's time would be necessary. We find no reason to accept the prayer of petitioner to grant one month time particularly when the time asked for by petitioner before AAIFR is taken into account. Reluctance shown by the petitioner in fulfilling the conditions shows lack of seriousness.

7. Section 22(1) of the Act reads as under:

"22. Suspension of legal proceedings, contracts, etc.:- (1) Where in respect of an industrial company, an inquiry u/s 16 is pending or any scheme referred to u/s

17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal u/s 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof (and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans on advance granted to the industrial company) shall lie or be proceeded with further, except with the consent of the Board or as the case may be, the Appellate Authority".

The provision is certainly not intended to be used as a weapon to riagevoid payments. As observed by the Apex Court in *The Gram Panchayat and another Vs. Shree Vallabh Glass Works Ltd. and others*, it may be against the principles of equity if the creditors are not allowed to recover their dues from the company. But such creditors are required to approach BIFR for permission to proceed against the company for recovery of their dues etc. The BIFR at its discretion may accord its approval for proceedings against the company. u/s 22(1) there is no absolute bar against any suit for recovery of money. The suit cannot be proceeded with except with the consent of the Board (BIFR) or the Appellate Authority (AAIFR). Therefore, in an appropriate case, BIFR or AAIFR, as the case may be, is entitled to give its consent to such a claim being proceeded with. (See: AIR 1997 1644 (SC) ).

8. The terms contained in the consent decree passed by the Tribunal were as under:

The respondent will pay a sum of Rs.30 crores only to the applicant in the manner as under:

i) Up-front (by 31.8.1995) Rs. 7.00 of the upfront payment of Crores Rs.700 lacs, Rs.328.52 lacs has already been received by way of mortgaged properties (The balance is to be paid by 31.8.95) ii) Balance to be paid as under: a) In 14 half yearly Rs.13.00 installments by 1.7.2002 Crores with interest thereon at the rate of 10% per annum up to the due date. First Installment to commence on 31.12.1995. The first 13 installments shall be of Rs. 128.50 lacs and the last Installment shall be of Rs.129.50 lacs. Interest will be paid half yearly along with installments in addition to the same. b) That within 90 days of Rs.2.50 payment of agreed amount Crores company will allot zero interest secured debentures repayable in two half yearly installments, the first of Rs.100 lacs and the next of Rs.150 lacs with effect from 1.7.2002 (i.e. after payment of dues under (ii) (a) above viz. of Rs. 1800 lacs. c) That within 90 days of Rs.2.50 payment of agreed amount Crores as per the compromise deed company will allot by way of equity shares (to be issued on terms acceptable to them Bank)

Admittedly the commitments have not been kept. We find from the records that there was a statement made by the SBI before the BIFR that present liability of the petitioner would be in the neighborhood of Rs.101 crores. On analysis of the factual background BIFR and AAIFR concluded that there was lack of seriousness and expediency on the part of the company and its promoters. They had submitted a proposal seeking extra-ordinary re-liefs/concessions which were not found acceptable by secured creditors. Company was utilising the protection of Section 22(1) of the Act y keeping secured creditors at bay, and was consequentially delaying process of rehabilitation.

9. These are conclusions of fact and unless they are perverse or unreasonable, there is no scope for interference under Articles 226 and 227 of the Constitution of India, 1950. Jurisdiction under Article 227 must be sparingly exercised and may be exercised to correct errors of jurisdiction and the like but not to upset pure findings of fact, which falls in the domain of the concerned Court. Tribunal or forum only. (See: Khimji Vidhu Vs. Premier High School AIR 2000 SC 2333). Exercise of power under Article 227 can be done only in cases of:

- (i) Erroneous assumption or excess of jurisdiction.
- (ii) Refusal to exercise jurisdiction.
- (iii) Error of law apparent on the face of the records as distinguished from a mere mistake of law or error of law relating to jurisdiction.
- (iv) Violation of the principles of natural justice.
- (v) Arbitrary or capricious exercise of authority or discretion.
- (vi) Arriving at a finding which is perverse or based on no material.
- (vii) A patent or flagrant error of procedure.
- (viii) Order resulting in manifest injuries.

10. The case at hand does not suffer from any of the enumerated deficiencies to warrant interference. We find nothing illegal in orders passed by BIFR and AAIFR. The petition is without merit and is dismissed.