

(2009) 08 DEL CK 0262

In the Delhi High Court

Case No : Writ Petition (C) 11088 of 2009

Polymermann (Asia) Pvt. Ltd.

APPELLANT

Vs

Board for Industrial and Financial Reconstruction and Others

RESPONDENT

Date of Decision : 28-08-2009

Acts Referred:

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 25

Citation : (2009) 08 DEL CK 0262

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

Bench : Division Bench

Advocate : Maneesha Dhir and Preeti Dalal, for the Appellant; R.V. Sinha, for Respondent No. 1, Sanjay Bhatt and Abhishek Kumar, for the Respondent

Final Decision : Disposed Off

Judgement

Badar Durrez Ahmed, J.—By way of this writ petition, the petitioner is seeking a mandamus for discharging the petitioner company from the purview of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as SICA). An alternative prayer is also made seeking a direction be issued to respondent No. 1- BIFR to discharge the petitioner company from the purview of SICA forthwith and close the file and drop further proceedings in case No. 219/2004. The petitioner has also prayed for a declaration that the action of respondent No. 1 in not discharging the petitioner company from the purview of SICA and continuing proceedings for its revival are illegal and without jurisdiction.

2. At the outset, we may state that when this matter came up for hearing on the first date i.e., on 24.08.2009, we had straightaway asked the learned Counsel for the petitioner that this writ petition is premature inasmuch as there is no order which has been passed by the BIFR, either way. In response to this, the learned Counsel for the petitioner drew our attention to a letter dated 04.08.2009 received from the BIFR in response to a query raised under the Right to Information Act, 2005. The petitioner had sought copies of the note-sheets from page Nos. 8 to 12 in respect of the said case No. 219/2004 entitled Polymermann

(Asia) Pvt. Ltd. Copies of the note-sheets have been filed at pages 98 to 102 of the present paperbook. The note-sheets indicate that the entire case was considered first by Mr. Pavan Raina, a member of the BIFR and he prepared a note dated 18.06.2009 wherein he concluded that:

Hence a discharge, as is sought in this case on grounds of networth turned positive through an OTS without the revival of the sick industry would negate the very objectives for which SICA was enacted. The representation may hence be rejected.

3. Immediately following the note is the endorsement of the Chairperson of the BIFR to the following effect:

I agree in court.

It is because of this noting that we issued notice returnable today.

4. The learned Counsel appearing for the BIFR (respondent No. 1) stated that this writ petition is premature inasmuch as no order has been passed by the BIFR and what has been placed on record are mere file notings. The learned Counsel for the BIFR also submitted that the petitioner, in any event, has an alternative remedy by way of appeal u/s 25 of the SICA before the AAIFR.

5. We have considered the submissions made by the learned Counsel for the parties. With regard to the plea of the writ petition being premature, we are of the view that once the members of the Board have already come to a conclusion in view of the admitted notings that the representation is to be rejected, the hearing which is to be granted on 31.08.2009 by the aforesaid members of the BIFR would be a mere formality and, rather, it would be an eye-wash. We are not at all impressed by the manner in which the BIFR has functioned, particularly, in this case. There is no reason as to why there should be any notings on the file pre-determining an issue which ought to be decided after hearing the parties. Such a procedure is completely alien to consideration of a matter by any judicial or quasi judicial authority. Earlier also this Court in W.P. (C) No. 356/2009 had commented upon the procedure adopted by the BIFR in disposing of the matters. We are told that pursuant to the directions issued in that matter, the BIFR has now formulated rules for listing of miscellaneous applications in pending references.

6. Insofar as the question of alternative remedy by way of filing an appeal u/s 25 is concerned, that remedy would only be available when an order is passed. Since there is no order passed by the BIFR, the petitioner could not avail the remedy provided u/s 25 of SICA. In these circumstances, the petitioner cannot be relegated to approach the AAIFR.

7. Having considered the circumstances indicated above, we are of the view that instead of this Court going into merits of the matter and taking a decision one way or the other, the BIFR be directed to take a decision on the representation filed by the petitioner. However, because of the file notings referred to above, Mr.

Pawan Raina and the Chairperson have disqualified themselves from hearing this matter any further. Consequently, we direct that another Bench of the BIFR be constituted, where neither of the above-mentioned two persons are members, for conducting the hearing. The file notings referred to above and the views expressed by the said two members shall be disregarded by the new Bench which shall consider the matter afresh, on merits. We expect that all principles of natural justice would be followed, in letter and spirit, by the new Bench which hears the representation of the petitioner. The new Bench so constituted shall take up hearing of the matter in the first instance on 04.09.2009 at 11 o'clock so that no Bench of the BIFR, in future, adopts the rather quaint procedure for decision making as done in this case, a copy of this order be circulated to all members of the BIFR.

This writ petition stands disposed of.