

(2007) 03 DEL CK 0274

In the Delhi High Court

Case No : Writ Petition (C) 3326 of 1992 and CM No's. 4223, 12878 and 15715/06 and 2838/07

Seth Industries Ltd. and Others

APPELLANT

Vs

AAIFR and Others

RESPONDENT

Date of Decision : 07-03-2007

Acts Referred:

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 3(1)

Citation : (2009) 149 CompCas 672

Hon'ble Judges : Mukul Mudgal, J; Aruna Suresh, J

Bench : Division Bench

Advocate : Sandeep Mittal, for the Appellant; Gayatri Singh and P. Ramesh Kumar for Aparna Bhat, for Woolen Kamgar Sanghatana, Arun Mohan and Mary Mitzy, for Cowtown Land Developers, Pratap Venugopal and Harshad V.H. for Respondent No. 5 and Abdul Talib, for R3, for the Respondent

Judgement

Mukul Mudgal, J.—This writ petition challenges the order dated 25th May, 1990 of the Board for Industrial and Financial Reconstruction (in short "BIFR") and the order in appeal dated 27th May, 1992 passed by the Appellate Authority for Industrial and Financial Reconstruction (in short "AAIFR"). By the impugned order dated 25th May, 1990, the BIFR recommended the winding up of the petitioner company and that is the said order which was unsuccessfully challenged before the AAIFR in appeal which was dismissed by the AAIFR vide order dated 27th May, 1992, leading to the filing of the present writ petition in this Court.

2. During the pendency of this writ petition, the present application CM No. 2838/2007 was filed in this Court. The prayers in the said application are as follows:

a) Dispose of this Writ Petition by declaring that all proceedings before BIFR are now infructuous. And formally set aside the order (advice) of BIFR dated 25-05-1990 as confirmed in appeal by AAIFR (on 27-05-1992) against which the

above writ petition was filed.

b) Direct BIFR to close and end all *proceedings and consequential actions thereto, related to file this company.

3. Even during the pendency of the writ petition in this Court, the petitioner company continued its efforts to make its net worth positive and accordingly a one time settlement was entered into with Canara Bank, the major creditor, and a sum of Rs. 2.36 crores was paid off to the Canara Bank. In order to secure the finances, the company entered into negotiations for granting development rights of its property to M/s. Cowtown Land Developers Private Limited (represented in this Court through Sh. Arun Mohan, Senior Counsel) for a consideration of Rs. 14.5 crores, which contribution was eventually increased to Rs. 25.5 crores on 29.10.2004. The Canara Bank, on 29.11.2004, confirmed the receipt of the full and final settlement and acknowledged that there were no dues outstanding from the company. Consent terms with other workmen were already arrived at and filed in CW 6899/2006 before the Bombay High Court and a sum of Rs. 8,41,82,659/- has been deposited with the appropriate Labour authorities for disbursement to the workmen. The municipal dues of approximately Rs. 60 lacs have been paid to the Mira Bhayandar Municipal Corporation. Due to the profits made by the company, a sum of Rs. 79 lacs has been paid to the Income Tax Department on 26.2.2006 and the net worth, after turning positive as per the latest audited balance-sheet, is Rs. 6.27 crores.

4. The sum and substance of the averments in this application show that the petitioner company has not taken any advantage of the reference to the BIFR and all liabilities of the company have been settled and paid for and the net worth of the company has now turned positive and the party who sought a reference to the BIFR namely Canara Bank has been paid in full and final settlement of all its dues. It has also been stated that all other creditors have been paid though this statement is disputed by Ms. Gayatri Singh appearing for Woolen Kamgar Sanghatana who states that while the other creditors may have been paid, as far as her claim on behalf of Woolen Kamgar Sanghatana is concerned that has not been settled and is pending determination before the Bombay High Court. It has also been stated by the petitioner that a sum of Rs. 8.5 crores has already been transferred to the Labour authorities for distribution to the workmen pursuant to a settlement.

5. Mr. Venugopal, the learned Counsel appearing for respondent No. 5 states that he has no objection to the writ petition or the CM No. 2838/2007 being allowed. The only opposition to the application has come on behalf of Woolen Kamgar Sanghatana and Ms. Gayatri Singh who appears on behalf of the said Sanghatana has submitted that the determination of workers' claim is pending before the Bombay High Court and she has succeeded before the learned Single Judge on the issue of her right to represent the workmen. The learned Counsel for the petitioner has submitted that the said judgment of the locus of the Woolen Kamgar Sanghatana is pending before the Division Bench and in fact the

operation of the same has been stayed. He also submitted that in fact there has not been any judicial determination of the claim set up by Woolen Kamgar Union, though certain disputes relating to Woolen Kamgar Union are pending before the Bombay High Court in Writ Petition No. 3023/2006. Ms. Gayatri Singh further submitted that while revival of the company may be ordered nevertheless all the rights of the workers/Woolen Kamgar Sanghatana before the Bombay High Court need to be preserved even if this application is allowed. Ms. Singh further submitted that if the company claims revival by stating that it has paid all its creditors and is out of the purview of the BIFR by its net worth becoming positive, then the workers should not be faced with a situation in the Bombay High Court about the financial inability of the company or Cowtown Developers to honour the dues of the workers. Both the learned Counsel appearing for the petitioner as well as the Cowtown Land Developers who has now entered into a development agreement with the petitioner company state that they will honour the order of the Bombay High Court in favor of the workmen including those represented by Woolen Kamgar Sanghatana. It is submitted by Ms. Singh that this Court had indicated a figure of Rs. 5 crores in its order dated 1st March, 2007 as Constituting the claim of the workmen in the year 1994 but the amount maybe larger according to law.

6. It is submitted that net worth of the petitioner on account of the factors detailed in this application has become positive and the petitioner is no longer within the purview of the Sick Industrial Companies (Special Provisions) Act, 1985 (in short "SICA") as defined u/s 3(1)(o) of the SICA. Section 3(1)(o) of the SICA reads as follows:

3. Definitions.-- (1) In this Act, unless the context otherwise requires,--

...

(o) "sick industrial company" means an industrial company (being a company registered for not less than five years) which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth.

7. We are of the view that taking into account the facts averred in the application to the effect that the net worth of this company has turned positive which averments are not opposed by any of the respondents and the fact that creditors' dues have been cleared save those of workmen which dispute is pending determination before the Bombay High Court, we are of the view that the proceedings before the BIFR cannot now survive.

8. We are of the view that since all the municipal Taxes have been paid and the company has also paid income tax amounting to Rs. 79 lacs on its profits the company has thus shown its positive net worth, as per its latest audited balance-sheet, to the tune of Rs. 6.27 crores and all the secured creditors have been paid except those agitating through Woolen Kamgar Sanghatana, the appropriate order in the interest of justice of the company as well as the workmen sought to be represented by Woolen Kamgar Sanghatana, would be to take the company

out of the purview of Sick Industrial Companies Act and secure adequate finances for satisfying the claim of the workmen in the Bombay High Court put forth by Woolen Kamgar Sanghatana. Having taken into account the aforesaid averments we are of the view that since the averments made in the application remained uncontroverted except the plea of the Woolen Kamgar Union said to be representing the workmen, the proceedings before the BIFR cannot now survive as the net worth of the company has become positive and accordingly, the orders impugned deserve to be set aside. If the creditors have been paid and further arrangements have been made to secure the interest of the workmen by the deposit of Rs. 8.41 crores and the disbursement of Rs. 3.5 crores as well as the fact that the order dated 1st March, 2007 contemplated an additional bank guarantee to be furnished in the sum of Rs. 1.5 crores, we are of the view that this would adequately protect the interest of the workmen though the claim now sought to be raised is said to be larger. However, taking into account the existing pleadings of the parties even in the Bombay High Court, we are of the view that the sums already deposited in Bombay High Court (Rs. 8.5 crores), disbursed (Rs. 3.5 crores) and ordered to be secured by way of bank guarantee (Rs. 1.5 crores) by today's order would adequately protect the interest of the workmen and no further orders are called for. Even if we take the figure of Rs. 5 crores to be less than the actual claim, as contended by Ms. Singh, the sum enhanced by Rs. 1.5 crores, in addition to the deposit of Rs. 8.36 crores in our view, would sufficiently protect the interest of the workmen. Accordingly, we direct that the Cowtown Land Developers shall furnish a bank guarantee of Rs. 1.5 crores before the Prothonotary and Senior Master of the Bombay High Court in LPA No. 51/2005 with an advance copy to the learned Counsel appearing for the Woolen Kamgar Sanghtana.

9. Accordingly, it is directed as follows:

(a) Apart from the sum of Rs. 8.41 crores and the sum of Rs. 3.5 crores, which has already been paid to the workmen, a further sum of Rs. 1.5 crores be secured in the Bombay High Court by Cowtown Developers by filing a bank guarantee to secure the claims of the workmen within 4 weeks from today.

(b) Furthermore, since the company is claiming that its net worth has turned positive due to a Development Agreement with M/s. Cowtown Developers Pvt. Ltd, both Cowtown Developers Pvt. Ltd. and the company will abide by the decision of the Bombay High Court in case the claim said up by the Woolen Kamgar Sanghatana succeeds and will honour the said dues and the present order is based on the said premise. Undertakings on affidavit shall be filed within two weeks by the petitioner company and Cowtown Developers to honour the decision of the Bombay High Court, if any, in favor of the workmen sought to be represented by the Woolen Kamgar Sanghatana. The invocation and discharge of the bank guarantee shall be according to the orders of the Bombay High Court.

(c) The order of the BIFR dated 25th May, 1990 and the order of the AAIFR dated 27th May, 1992 are accordingly set aside.

10. It will be open to the learned Counsel appearing for Woolen Kamgar Sanghtana to move an appropriate application before the Division Bench of Bombay High Court seeking sufficient protection in respect of the said bank guarantee of Rs. 1.5 crores furnished pursuant to this order by praying that the said deposit of the bank guarantee should ensure for the benefit of workers in Writ Petition No. 3023/2006.

11. The writ petition and all pending applications stand disposed of accordingly.