(2008) 02 MAD CK 0017

In the Madras High Court

Case No : Writ Petition No. 8846 of 2007 and M.P. No''s. 2 and 3 of 2007

Tamil Nadu Industrial Development Corporation Ltd. — APPELLANT

Vs

Board for Industrial and Financial Reconstruction and Others (No. 1) — RESPONDENT

Date of Decision : 20-02-2008

Acts Referred:

Companies Act, 1956 — Section 255
Constitution of India, 1950 — Article 226, 31C
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15(1), 17(3), 18, 18(2), 18(4)

Citation : (2008) 145 CompCas 9

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : G. Masilamani, General, for the Appellant; R. Muthukumarasamy, for A.R. Ramanathan, for the Respondent

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—By consent the writ petition itself was taken up for final disposal.

2. Prayer in the writ petition is to quash the order of the first respondent (BIFR) made in BIFR Case No. 327 of 2000 dated July 27, 2005,

confirmed by the second respondent (AAIFR) in Appeal No. 107 of 2005, dated October 12, 2006 and for consequential directions.

3. The facts necessary for disposal of the writ petition are as follows:

(a) The petitioner is a State level institution, fully owned by the Government of Tamil Nadu, incorporated on May 21, 1965, as a company, under

the Companies Act, 1956, with a purpose of development and growth of the industrial undertakings in Tamil Nadu (hereinafter called as

TIDCO"").

(b) The petitioner on December 31, 1992, entered with an agreement to the promoter, viz., K. Jagadeesh Reddy, for setting up 100 per cent,

export oriented unit for the manufacture of 40.50 lakhs metres per annum of coarse cotton grey fabric at Mugalapalli village, Hosur taluk, as a

result, the third respondent herein was incorporated in March, 1993, which commenced its operations in April, 1995.

(c) In June, 1996, the third respondent-company undertook an expansion of its weaving capacity to 80.25 lakhs metres per annum to manufacture

grey heavy fabric like bull denim at an estimated cost of Rs. 760 lakhs. The said project was completed in December, 1997, and it suffered a set

back due to the recessionary trend in the overseas market and low sales realisation. By March 31, 2000, the worth of the third respondent-

company was eroded by accumulated losses of Rs. 1,537 lakhs and it was referred to the BIFR, the first respondent herein.

(d) u/s 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), the first respondent on January 17, 2001, declared that

the third respondent is a sick Industrial company in terms of Section 3(1)(o) of the Act 1 of 1986 and the Industrial Development Bank of India

(IDBI) was appointed as the ""operating agency"" u/s 17(3) of the Act.

(e) The operating agency was directed to examine the viability for rehabilitation of the third respondent-company and the cut-off date for

rehabilitation was fixed as June 30, 2001. The third respondent/promoters were directed to submit rehabilitation proposal. In the meeting held on

February 11, 2004, the BIFR observed that there was no rehabilitation proposal submitted in spite of sufficient opportunity having been afforded

and issued a show cause notice on March 15, 2004, for winding up of the third respondent-company.

(f) On May 21, 2004, the third respondent submitted a proposal envisaging the taking over of the management by the fourth respondent and for

one-time-settlement of the dues of the IDBI and the Industrial Financial Corporation of India Ltd. (IFCI) Thereafter, BIFR kept the show-cause

notice dated March 15, 2004, in abeyance during the meeting held on May 26, 2004 and granted 45 days time to the third respondent and the

secured creditors to finalise the one-time-settlement proposal and other pending issues.

(g) The operating agency submitted a report with the scheme for rehabilitation by letter dated November 23, 2004. The BIFR, taking the cutoff

date as March 31, 2004, framed a draft revival scheme and directed the circulation of the scheme for information seeking suggestions and

objections of the shareholders including the petitioner, which according to the petitioner is u/s 19(2) read with 19(1) of the Act. All the parties

were directed to submit their objections/suggestions in writing within 60 days.

(h) In the draft rehabilitation scheme, the following suggestions were made in so far as the equity shareholders:

(i) To agree to the proposed change of management in favour of M/s. Satidham Syntex Ltd. as also terms of OTS offered to institutions for revival

of the company.

(ii) To agree to write down the present equity shareholding in the company by 99 per cent. The face value of each equity share would be brought

down from existing Rs. 10 per share to Re. 0.10 per share.

(iii) To agree for conversion of face value (after writing down) of Re.0.10 per share into Rs. 10 per share by accepting 1 (one) equity share of Rs.

10 each against every 100 shares of Re. 0.10 share held in the company.

(iv) Shareholding pattern post schemeï¿½

Existing Post scheme

Amount Amount

(Rs. in lakhs) Percentage (Rs. in Percentage

lakhs)

Promoters and Associates 448.60 43.96 804.49 88.39

TIDCO (Joint Sector 266.00 26.06 2.66 0.29

Promoter)

Financial institutions 206.00 20.18 91.29 10.3

IDBI

IFCI Ltd. 100.00 9.80 11.77 1.29

General public Nil Nil Nil Nil

Total 1020.60 100.00 910.21 100.00

Post scheme holding arrived after writing down of existing equity by 99 per cent, and fresh issue of shares of Rs. 900 lakhs to incoming promoters

and institutions.

(i) On June 16, 2005, the petitioner submitted its objection as the scheme would adversely affect the rights of the petitioner since equity

shareholding of the petitioner was for a sum of Rs. 266 lakhs constituting 26.06 per cent, of the equity shares in the third respondent-company.

The petitioner requested that the rivival scheme be sanctioned without reduction of existing share capital.

(j) The petitioner further states that it is a trustee of public funds for investment and it cannot agree to the writing away of public funds in a manner

adverse to the public interest. It prayed for deletion of the following paragraphs from the draft rehabilitation scheme:

(i) For reduction of share capital from Rs. 10 per share to be paid Re. 0.10 per shareholding;

(ii) Conversion of face value (after writing down) of Re. 0.10 per share into Rs. 10 per share by accepting l(one) equity share of Rs. 10 each

against every 100 shares of Re. 0.10 held in the company ;

(iii) For stepping down from the board of the company; and

(iv) For transferring the entire equity holding in the company at reduced value from Rs. 10 per share to 10 paise per share to the new promoters.

(k) However, the BIFR by the impugned order dated July 27, 2005, recorded that the petitioner had given its consent to all the concessions and

reliefs sought in the draft rehabilitation scheme and passed an order u/s 18(4) read with Section 19(3) of the Act and sanctioned the rehabilitation

scheme. The said order of the BIFR was challenged by filing an appeal before the AAIFR, the second respondent herein in Appeal No. 107 of

2005 which was also dismissed by the second respondent by order dated October 12, 2006.

(l) The abovesaid orders are challenged in this writ petition on the ground that consent of the petitioner, which is a State level financial institution, is

mandatory for sanction of the rehabilitation scheme in accordance with Section 19(2) of the Act and reduction of share capital value is without any

basis. The revival of the scheme can be implemented without reduction of capital and without affecting the control of the new promoters.

According to the petitioner, respondents Nos. 1 and 2 have failed to protect the interest of the petitioner, which is a State level financial institution.

4. The third respondent filed counter affidavit by stating that the writ petitioner TIDCO, even though is a State level institution, had not provided

any financial assistance to come within the purview of Section 19(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, but only

invested the shares and as such it is a equity shareholder and therefore no consent as claimed by the petitioner need be obtained for approving the

rehabilitation scheme. It is further stated that the IDBI and IFCI were the lending institutions and they agreed for approval of the rehabilitation

scheme. The scheme is also implemented by spending about Rs. 10 crores for about 20 months towards settlement to lenders and for operational

purposes. The petitioner, who is only a shareholder in the third respondent-company, has no locus standi to object the scheme, which is approved

by the BIFR in accordance with Section 18 of the SICA and approved by the AAIFR. The shareholding of the petitioner was 26.06 per cent, and

the share value became zero per cent, and therefore the third respondent industry was declared as sick industrial company. The petitioner being the

shareholder, invested its shares in the third respondent-company with an intention to earn profits in its capacity as owner of the shares, cannot be

treated as creditor. Section 19 would come into operation only if there is any financial assistance provided by a State level institution and the

petitioner has not provided any financial assistance, either prior to the financial sickness or after that. The IDBI and IFCI, which are financial

institutions have lent a sum of Rs. 15.97 crores and 92.19 crores respectively, and they are the parties who are covered within the purview of

Section 19 of the SICA and they had consented to the scheme. The revival of the third respondent-company could not be taken place without the

reduction of the existing share capital. The fourth respondent who is the new promoter, has agreed to infuse a huge amount of Rs. 17.68 crores. If

the revival proposal is not implemented, the company would be left with no other option except to wind up u/s 20 of the Act, which would cause

not only loss to the petitioner, but also to the creditors and the employees. The scheme having been approved on July 27, 2005 and being in

operation for more than 20 months, the same cannot be stalled at the instance of the petitioner, who is only a shareholder and as per Section 18(8) of the Act, once the sanctioned scheme comes into operation it is binding on the sick company''s shareholders, creditors, guarantors and

employees of the said company. BIFR and AAIFR being expert bodies, created under the statute for speedy determination and take remedial and

other measures, and they having exercised their statutory duty, the petitioner is not entitled to challenge the said order by way of this writ petition

before this court. Stating all these things, third respondent prayed for dismissal of the writ petition.

5. The learned Advocate General appearing for the petitioner submitted that the petitioner TIDCO being a State owned company and having

invested huge amount for promoting the third respondent-company, is to be treated to be a person rendered financial assistance and in terms of

Section 19(2) of the Sick Industrial Companies (Special Provisions) Act, 1985, consent is necessarily required to be obtained by the operating

agency for revival of the company. The petitioner submitted objections for the revival proposal on June 16, 2005 and the BIFR without

considering the said objection in its order stated that the consent was given by the TIDCO, which is apparently wrong. The appellate authority also

treated the petitioner only as shareholder and not as a financial institution and dismissed the appeal. The learned Advocate General further

submitted that due to the mistake committed by the directors of the third respondent-company, it went sick and the same cannot be taken

advantage of to reduce the capital value of the shares owned by the petitioner. It is further contended that even though the rehabilitation is

mandatory, the petitioner-company being a Government owned company, having invested the public money in the third respondent-company

through shares, is entitled to object the scheme offered for revival and the petitioner need protection to its share capital value without any

reduction.

6. Learned senior counsel appearing for the third respondent on the other hand submitted that the petitioner is only an equity shareholder even

according to the agreement entered into with the promoter and it will have only the shareholder''s right under the Companies Act, 1956, though it is

styled as a State owned financial corporation. Except the share capital no financial assistance was advanced through loan by the petitioner-company and only IDBI and IFCI provided loan to the company for its establishment and towards working capital and the consent from the said

two lenders/ secured creditors having been obtained, the BIFR is justified in rejecting the objection raised by the petitioner-company while

approving the revival scheme. Learned senior counsel further submitted that the petitioner being only the shareholder, its consent is not necessary

u/s 19(2) of the SICA. Based on the revival scheme approved by the BIFR and confirmed by the AAIFR, the revival has already been

implemented by spending huge amount and if at this stage the same is set at naught, the interest of the party, who revived the industry will be

affected and if the revival proposal was not approved and acted upon, the third respondent-company is liable for winding up and in that event the

writ petitioner-company will not get anything since the secured loan is more than the assets of the third respondent-company. The company having

been revived, the writ petitioner is also benefited to certain extent and the same was the consideration made by the BIFR and the AAIFR, who are

the expert bodies in the field, approved the scheme and the same is just and proper.

7. I have considered the rival submissions made by the learned Advocate General appearing for the petitioner as well as learned senior counsel

appearing for the third respondent.

8. The petitioner has entered into an agreement with the promoters of the third respondent-company on December 31, 1992. The agreement

states that the third respondent-company is permitted to be promoted by the parties with authorised capital of Rs. 50 lakhs, divided into 5,00,000

equity shares of Rs. 10 each. The petitioner, who was the first party in the said agreement, agreed to arrange for subscription for equity shares of

the company within the limits of 26 per cent. The petitioner as well as the promoter further agreed that they will not transfer, sell or encumber any

part of the shareholding of the company, without the prior consent of the other party in writing. In Clause 10 of the agreement it is stated that no

guarantee or counter guarantee will be furnished by the first party, viz., the petitioner to any bank/financial institution for term loan, bridge finance,

etc., granted to the company by the banks or institutions. In Clause 14 it is stated that out of the directors nominated or designated by the parties, each party shall have the right to appoint equal number of non-retiring directors subject to the limit prescribed u/s 255 of the Companies Act,

1956. In so far as the project implementation is concerned, Clause 28 of the agreement contemplates the promoter (second party) shall also be

responsible to negotiate and obtain all necessary finance on behalf of the company for the timely and effective implementation of the project and its

efficient working. The first party (petitioner) shall provide all assistance possible in the procurement of sanctions, approvals, etc. If the first party

disinvest its entire shareholding in the company progressively over a period of three years, it shall make an offer to the second party pursuant to

Clause 34(b) for purchase of shares and the same shall be subject to requisite approval of the Government of India and the financial

institutions/banks, who have granted loan to the company and subject to the provisions of the Companies Act, 1956 and other Acts. Clause 41

clearly states that the agreement is exclusive to the parties and neither of them shall assign its rights or benefits there under, except as otherwise

agreed to. Clause 46 contains an arbitration clause, which reads as under:

46. If any dispute and/or difference shall at any time arise between the parties hereto touching on concerning or arising out of these presents or the

interpretation of any clause hereof or the respective rights, claims or liabilities hereunder or otherwise however in relation to or arising out of or

concerning this agreement such dispute and/or difference shall be referred to arbitration by two arbitrators, one to be appointed by each party with

the provisions for an umpire to be appointed by the said two arbitrators before commencement of the arbitration. The Arbitration Act, 1940, as

amended from time to time shall apply.

9. The agreement shall remain valid until either party withdraw its shareholding in the company by way of transfer or sale in terms of Clauses 34

and 35 of the agreement. On behalf of the petitioner, the chairman and the managing director signed the said agreement.

10. The argument of the learned Advocate General is that the petitioner being the State owned corporation, fully financed by the State of Tamil

Nadu, is to be treated as an institution, which gave financial assistance to the third respondent-company and therefore its consent is required to be

obtained u/s 19 of the SICA, 1985.

11. Learned senior counsel for the third respondent on the other hand submitted that even though it is a State owned company, it has not given any

financial assistance as secured credit and the amount invested by the petitioner-company is only by way of equity shares, viz., 26 per cent, and the

petitioner being an equity shareholder of the sick industrial company for rehabilitation, no consent is required to be obtained from the petitioner,

who is an equity shareholder.

12. Section 19(1) and 19(2) of the Sick Industrial Companies (Special Pro visions) Act, 1985, reads as follows:

19. Rehabilitation by giving financial assistance.--(1) Where the scheme relates to preventive, ameliorative, remedial and other measures with

respect to any sick industrial company, the scheme may provide for financial assistance by way of loans, advances or guarantees or reliefs or

concessions or sacrifices from the Central Government, a State Government, any scheduled bank or other bank, a public financial institution or

State level institution or any institution or other authority (any Government, bank, institution or other authority required by a scheme to provide for

such financial assistance being hereafter in this section referred to as the person required by the scheme to provide financial assistance) to the sick

industrial company.

(2) Every scheme referred to in Sub-section (1) shall be circulated to every person required by the scheme to provide financial assistance for his

consent within a period of sixty days from the date of such circulation or within such further period, not exceeding sixty days, as may be allowed by

the Board, and if no consent is received within such period or further period, it shall be deemed that consent has been given.

13. From the perusal of the above provision it is evident that rehabilitation scheme prepared u/s 19(1) is to be circulated to every person required

by the scheme to provide financial assistance for his consent within a period of sixty days or not exceeding sixty days as may be allowed by the

Board. If no consent is obtained within such period, it shall be deemed that consent has been given.

14. Here, in this case, the rehabilitation scheme has been circulated to the petitioner and it offered its remarks/objection on June 16, 2005. The

petitioner being an equity shareholder and not extended any financial assistance by way of loan, it is to be treated as shareholder only and its

consent is not required for approving the rehabilitation scheme.

15. Admittedly, the third respondent-company became sick and declared as a sick company on January 17, 2001, on the basis of the application

submitted on September 21, 2000, as per the resolution passed in the board of directors meeting held on September 20, 2000 and operating

agency was appointed and rehabilitation scheme was called for. Once the company/unit is declared as a sick unit, every efforts should be taken to

revive the unit to the extent possible as per the object of the Act 1 of 1986, i.e., an Act to make, in the public interest, special provisions with a

view to securing the timely detection of sick and potentially sick companies owning industrial undertakings/the speedy determination by a board of

experts of the preventive, ameliorative, remedial and other measures which need to be taken with respective to such companies and the

expeditious enforcement of the measures so determined and for matters connected therewith or incidental thereto.

16. The term ""sick industrial company"" has been defined u/s 3(o) of the Act, which reads thus:

sick industrial company7 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.

17. The company having been declared as sick, the share value of the company also become zero per cent, as the liability is more than its assets.

Hence definitely there will be a loss to the shareholders while taking steps to rehabilitate the sick company. The IDBI and IFCI, who advanced

loans, have given their consent for rehabilitation scheme and based on their consent, the BIFR by order dated July 27, 2005, approved the

rehabilitation scheme. The BIFR being the statutory authority, established u/s 4 of the Act, to approve the rehabilitation scheme, considered the

objections filed by the petitioner as a shareholder and also the consent given by the secured creditors and reduced the shareholding amount from

26.06 per cent, to 2.66 per cent., i.e., by 0.29 per cent, of the petitioner-company.

18. The petitioner challenged the said approval granted by the BIFR by filing appeal before the AAIFR, constituted u/s 5 of the Act, in Appeal

No. 107 of 2005. The grievance of the petitioner with regard to Clause 9(7)(2) pertaining to the reduction of its share capital in the third

respondent-company and the direction to accept one equity share against every 100 shares was considered. In the AAIFR''s order it is stated that

the objections of the petitioner were considered by the BIFR in the hearing held on July 27, 2005 and the objections were found to be untenable.

The petitioner raised the following four contentions in the appeal:

(1) even though TIDCO was 26 per cent, shareholder, its objections were not considered by the BIFR;

(2) the consent of the TIDCO for reduction of share capital was not considered by the BIFR even though it was a party u/s 19(1) of SICA;

(3) the BIFR ordered reduction of share capital without following the procedure laid down under the Companies Act, 1956; and finally,

(4) the revival of the company could be achieved by implementing the scheme which does not involve reduction of the share capital.

The AAIFR heard the General Manager of TIDCO and gave a finding that TIDCO was represented by its General Manager and objections were

duly considered by the BIFR.

19. Insofar as getting consent from the petitioner, the TIDCO being an equity shareholder and the share value having been eroded and the

company having been declared as sick, the revival leads to reduction of share capital and transfer of management control to include promoters,

who have infused substantial funds as a result of which dues of secured creditors are being settled. A definite finding is given by holding that

TIDCO''s role in the case was an equity shareholder and its consent under the SICA is not a mandatory requirement and as per SECTION 18(2)

(d), (f) and (i) of the SICA, curtailment of rights of the shareholder can be ordered if the same is required for the revival of a sick industrial

company.

20. In so far as the allegation for not following the provisions of the Companies Act, 1956, while reducing the share capital, the BIFR held that

while reviving a sick industrial company, the provisions of SICA have to be followed as per the express provisions u/s 18(2)(f) of SICA and as

shares of the sick companies are usually valued at zero since the erosion under net worth has already been taken place and the net value of the assets of the company is negatived and in that circumstance it is usual that such shares are transferred to new promoters at a nominal value, which

has been rightly done by the BIFR. Pointing out all these grounds, the appeal was also dismissed.

21. As regards the fourth ground of challenge that revival of RQL could have been accomplished by implementing a scheme, which did not require

reduction of share capital, TIDCO''s argument is not tenable. If TIDCO/erst-while promoters had brought in funds to the company, i.e., RQL

would not have become sick. In the instant case the change in management control/ pattern of share holding structure coupled with a reduction of

share capital was required in view of the fact that the new promoter, i.e., M/s. Satidham Syntex Ltd. was infusing a substantial amount of Rs.

16.68 crores for repayment of dues to creditors and also for meeting the capital expenditure. The new promoter was, therefore, well within his

rights to demand that the control of RQL, which was being revived should be handed over to him. The BIFR had accordingly in exercise of its

power u/s 18(2)(d), (f) and (i) approved the scheme based on the change in the shareholding structure through reduction in share capital and

allotment/transfer of shares to the new promoter of RQL, namely, M/s. Satidham.

22. Since the petitioner-company is having only the status of shareholder in the third respondent-company, as rightly held by the BIFR and the

AAIFR, the consent of the petitioner is not required to be obtained while approving the rehabilitation scheme. Since the third respondent-company

has become sick, automatically there must be a reduction of value of the shares and the same is a reason given by the BIFR and the AAIFR for

reducing share value of the petitioner-company. There is no dispute with regard to the declaration of the third respondent-company as a sick unit.

Hence the petitioner cannot contend that its share capital value should be preserved as before without any reduction and without reducing its share

capital value, the company can be rehabilitated. Such an argument cannot hold good in view of the loss sustained by the third respondent-

company, which was declared sick.

23. Equity shares under the Company Law is treated as ""risk capital"", normally conferred on their holders the residue of rights of the company,

which have not been conferred on other classes. The equity shares usually carry the main financial risk if the company is unsuccessful, but they

carry the greatest prospect of financial reward if the vendor of the company is successful. It is well-settled in law that if a company earns profit, the

share holders will get higher dividend and if the company is at loss, the value of the share will also get decreased. Hence the contention of the

petitioner that without reducing the share capital, value of the petitioner the company can be rehabilitated, is unsustainable.

24. (a) Whether the BIFR and the AAIFR are empowered to approve the scheme of rehabilitation by reducing the share value of the shareholders

in a sick industrial company to the extent necessary for reconstruction and whether the willingness of the shareholders is relevant was considered

by the Supreme Court in the decision reported in Navnit R. Kamani v. R.R. Kamani [1989] 66 Comp Cas 132. In the said judgment it is held that

the value of the shares could be determined only ""it the intrinsic value of the shares and the Board reached the firm conclusion that each share at

zero value. Even then the Board directed that the value of the share be reduced to Re. 1 per share and directed them to transfer the shares at Re. 1

per share. The said reduction was found perfectly right in order to effectuate the scheme for revival. It is also held that the scheme having been

approved by the statutory authority and directions were given to revive the industry in larger public interest and inasmuch as there is a necessary

declaration contained in Section 2 of the Act, which attracts the applicability of Article 31C of the Constitution of India, the decision rendered by

the Board for reconstruction is unassailable.

(b) A Division Bench of the Delhi High Court in the decision reported in National Textile Corporation Ltd. v. Suresh Chand Gupta [2007] 77 SCL

45 : [2008] 144 Comp Cas 771, considered the scope of interference in the approved schemes by BIFR under Article 226 of the Constitution of

India by the High Court. In paragraphs 31 and 32, it is held as follows (page 779):

31. It is well-settled that even if there is a violation of law, this Court is not bound to interfere in discretionary jurisdiction under Article 226 of the

Constitution, vide Chandra Singh Vs. State of Rajasthan and Another, and Champalal Binani Vs. The Commissioner of Income Tax, West Bengal

and Others, , etc.

32. In Master Marine Services Pvt. Ltd. Vs. Metcalfe and Hodgkinson Pvt. Ltd. and Another, , the Supreme Court observed:

...the modern trend points to judicial restraint in administrative actions.... Quashing decisions may impose heavy administrative burden on the

administration and lead to increased and unbudgeted expenditure.... Even when some defect is found in the decision-making process, the court

must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not

merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention

is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, should the court interfere, (pages

2304 and 2305 of AIR 2005 SC).

(c) In the decision reported in Devraj Ramdhawan since Decd. thro his heir and L.R. Vs. Rohit Mills Ltd., , also it is held that orders passed by the

BIFR and the AAIFR consisting of technical experts, unless it is shown that the policy or action is inconsistent with the constitution and the laws

are abuse of the power, the court will not interfere in such matters.

(d) The same is the view taken by this Court in the decision reported in K.C. Palanisamy v. Appellate Authority for Industrial and Financial

Reconstruction [2003] 117 Comp Cas 73. In the said judgment, this Court followed a Division Bench decision reported in J.M. Malhotra v. Union

of India [1997] 89 Comp Cas 600, for the proposition that the Board consists of persons who are experts in the field that it is presided over by a

person who has been or is qualified to be judge of the High Court and it has to record its opinion with reasons after considering all the relevant

facts and circumstances and after hearing all the concerned parties. The Board while acting u/s 7, acts as a judicial body. There is no scope for the

Board to act arbitrarily and adopt different procedure and apply different modes or norms.

Here in this case, tae AAIFR also confirmed the order. The AAIFR is also an expert body and its chairman shall be a person, who is or has been

a judge of the Supreme Court or who is or has been a judge of the High Court for not less than five years. Hence the third respondent-company is

entitled to be revived as per the rehabilitation scheme.

(e) Whether the consent of the shareholder is required to be obtained while approving the revival of the scheme by the BIFR was considered by a

Division Bench of the Delhi High Court in the decision reported in Bennett, Coleman and Co. Ltd. and Others Vs. Appellate Authority for

Industrial and Financial Reconstruction and Others, . In paragraph 5 it is held as follows (page 235 of 85 Comp Cas):

...As far as BIFR was concerned BCCL was another shareholder though having substantial shareholding and it was not necessary for the BIFR to

issue any separate notice to BCCL, and that notice issued to ACL, which was represented by its managing director Dr. Jain, was enough notice

for the purpose of the SICA. It is also difficult to believe that BCCL was ignorant of the proceedings pending before the BIFR. BCCL, therefore,

cannot have any grievance that it was not associated in the proceedings before the BIFR on behalf of the ACL upto the time when ACL was

represented through the managing director, Dr. Jain and till BCCL put in its appearance.

25. The scope of judicial review in writ jurisdiction was considered by the Supreme Court in the recent decision reported in Sarabjit Rick Singh v.

Union of India AIR 2008 SCW 390 and in paragraph 45 the Supreme Court held thus:

45. ...We must bear in mind that the High Court was dealing with a writ petition filed by the appellant herein under Article 226 of the Constitution

of India and not an appeal from the order of the learned Magistrate.

The superior courts while entertaining a writ petition exercises a limited jurisdiction of judicial review, inter alia, when constitutional/statutory

protection is denied to a person. But when it is required to issue a writ of certiorari, the order under challenge should not undergo scrutiny of an

appellate court. Jurisdiction of the superior court in this behalf being limited inter alia to the question of jurisdiction, it was obligatory on the part of

the petitioner to show that a jurisdictional error has been committed by the court while exercising the statutory powers....

26. Here in this case no jurisdictional error is pointed out by the petitioner and the case of the petitioner is, its objections were not duly considered.

27. In view of the finding arrived at by me that consent of the petitioner is not necessary for approval of the rehabilitation scheme, I hold, there is

no error in the order passed by the first respondent/BIFR, confirmed by the second respondent/AAIFR. There is no merit in the writ petition and

consequently the writ petition stands dismissed. No costs. Connected miscellaneous petitions are also dismissed.

