

(2001) 09 DEL CK 0092

In the Delhi High Court

Case No : Civil Writ Petition No. 3336 of 1999

XLO India Limited

APPELLANT

Vs

Appellate Authority for Industrial and Financial
Reconstruction and others

RESPONDENT

Date of Decision : 03-09-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15, 15(1), 16,
16(1), 16(2)

Citation : (2001) 60 DRJ 770

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

Bench : Division Bench

Advocate : Mr. A.S. Chandhiok, Mr. Basant and Mr. Dilip Vasudevan, for the Appellant; Mr. Dinesh Garg, for SBBJ, Mr. ADN Rao, for BIFR, Mr. Shahjad Khan, for IFCI, ICICI and IDBI and Mr. Kul Bharat, for RIICOI, for the Respondent

Judgement

Arijit Pasayat, C.J.—This is a petition under Articles 226 and 227 of the Constitution of India, 1950 (in short "Constitution") inter alias challenging orders passed by the Board for Industrial and Financial Reconstruction (in short "B.I.F.R.") and the Appellate Authority for Industrial and Financial Reconstruction (in short "A.A.I.F.R.").

2. The starting point of the controversy appears to be an application for reference made u/s 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 (in short the "Act"). By order dated 20th July 1994, B.I.F.R. held that the petitioner is a sick company and deserves to be wound up. The said order was challenged before the AAIFR, which inter alias held by order dated 6th June 1995 that the reference was incompetent and premature. Thereafter another reference was filed on 24th December 1996 purportedly u/s 15(1) of the Act. There was a communication from the B.I.F.R. rejecting the said purported reference on the ground that a reference can only be made by a sick company, duly supported by a resolution of its Board of Directors and since the prayer for reference was from

the co-promoters and not from the company itself, the purported reference was misconceived. Thereafter the real controversy starts. On 10th February 1997 petitioner filed an application purportedly u/s 16(1)(b) of the Act. The same was treated by B.I.F.R. to be a motion for suo motu initiation of action u/s 16(1)(b) of the Act. The records reveal that the matter was placed before the Members of the B.I.F.R. without any date being fixed, stated to be in Chambers. They were of the view that suo motu initiation of action was not called for, in the circumstances of the case, and there was no scope for reopening of the matter which had already attained finality. Appeal before A.A.I.F.R. was rejected on the ground of delayed presentation.

3. In the writ petition, stand of the petitioner is essentially two fold. Firstly, it is submitted that B.I.F.R. was wrong in not taking action on the petition dated 10th February 1997 on the misconceived notion that there was a prayer for suo motu action. In fact subsequently clarifications/informations were sought for by B.I.F.R. which were supplied. Reference is made to B.I.F.R.'s letter dated 27th June 1997. Secondly, it was submitted that there was no order passed by B.I.F.R. and there was only a communication from a functionary of the B.I.F.R. indicating about the Board's view. That cannot be held to be an order and Therefore an appeal filed before the AAIFR should have been treated as no nest and AAIFR should have held that no order existed which could be assailed and there was no question of delay in presentation as held by it. Per contra, learned counsel appearing for B.I.F.R. and State Bank of Bikaner and Jaipur submitted that the petitioner has not come to this Court with clean hands. The sole purpose appears to be to prolong the matter and thus get the protection available u/s 22 of the Act. it is not even revealed that there was a prayer for a reference which was turned down by the B.I.F.R. on the ground that it was not competent.

4. We had asked the functionary of the B.I.F.R. to file an affidavit indicating the modalities adopted. Original records were also produced before us. We find that in many instances the matters are placed for perusal of Members of the B.I.F.R., who express their views and there is only a communication by the Registrar or some other officer. This strictly speaking would not constitute an order as is understood in the legal parlance. Orders may be interim or final. The terms "judgment", "decision", "order" are more or less cognate as applied in legal proceedings, and closely allied in meaning. The term "order" is sometimes used as a synonym of "judgment" or "decree". The term "order" indicates some expression of opinion which is to be carried out or enforced. It is conclusion of a Body, Court, Authority or Tribunal upon any motion.

5. Coming to the controversy at hand, we find that Section 16 deals with "Inquiry into working of Sick Industrial Companies". The said provision, so far as relevant, reads as follows:

"Inquiry into working of sick industrial companies -

(1) The Board may make such inquiry as it may deem fit for determining whether

any industrial company has become a sick industrial company-

(a) upon receipt of a reference with respect to such company u/s 15; or

(b) upon information received with respect to such company or upon its own knowledge as to the financial condition of the company.

(2) The Board may, if it deems necessary or expedient so to do for the expeditious disposal of an inquiry under sub-section (1), require by order any operating agency to enquire into and make a report with respect to such matters as may be specified in the order.

(3) The Board or, as the case may be, the operating agency shall complete its inquiry as expeditiously as possible and endeavor shall be made to complete the inquiry within sixty days from the commencement of the inquiry.

[Explanation- For the purposes of this sub-section, an inquiry shall be deemed to have commenced upon the receipt by the Board of any reference or information or upon its own knowledge reduced to writing by the Board.]

(4) Where the Board deems it fit to make an inquiry or to cause an inquiry to be made into any industrial company under sub-section (1) or, as the case may be, under sub-section (2), it may appoint one or more persons to be a special director or special directors of the company for safeguarding the financial and other interests of the company or in the public interest.

[(4A) The Board may issue such directions to a special director appointed under sub-section (4) as it may deem necessary or expedient for proper discharge of his duties.]

6. As a bare reading of sub-section (1) of Section 16 would go to show that it deals with the scope of an inquiry as may be deemed fit by the B.I.F.R. for determining whether any industrial company has become sick industrial company in three situations. One of them is upon receipt of a reference with respect to such company u/s 15. The other two situations are indicated in clause (b) of sub-section (1). They are (i) on information received with respect to such company or (ii) upon its own knowledge as to the financial condition of the company. Therefore the Board has the jurisdiction to make an inquiry when any of the three situations envisaged exists. As noted above, the B.I.F.R. proceeded on the basis as if there was a motion for a suo motu action. On consideration of the materials on record, we are of the view that it is really not so. There was on the contrary, a petition filed giving information to the Board with a request to make an inquiry. The Board was free to either direct an inquiry or to refuse it. For both the purposes, there was requirement of application of mind and an order in the legal sense. The view of the Board as indicated and communicated by the letter of the Register does not meet the requirements.

7. The factual background as highlighted by the respondent cannot be lost sight of. It is an accepted position that the matter is under consideration for nearly a

decade. In the circumstances, we direct the B.I.F.R. to consider acceptability or otherwise of the purported information as conveyed by the letter dated 10th February 1997 and subsequent relevant correspondences, if any. The exercise shall be undertaken by the B.I.F.R. within a month from today to decide whether action u/s 16(1)(b) is called for. We make it clear that we have not expressed any opinion on the merits of the case. If any further information or material is to be placed by the petitioner let it be done by appearance, without any further notice, before the B.I.F.R. on 12th September 2001, so that our direction for completion of the exercise within a month can be worked out. As a consequence of this direction, the order of the AAIFR and the communication dated 30th June 1998 by the Under Secretary of B.I.F.R. become inoperative.

8. Petition is accordingly disposed of.