

B.I.F.R. vs. H.E.C. Ltd.

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Court : Jharkhand

Decided On : Apr-28-2005

Reported in : 2005(53)BLJR2158; [2005(3)JCR345(Jhr)]

Judge : S.J. Mukhopadhaya, J.

Appeal No. : Company Petition No. 5 of 2004 with W.P. (C) No. 4513 of 2004

Appellant : B.I.F.R.; H.E.C. Ltd.

Respondent : H.E.C. Ltd.; B.i.F.R. and ors.

Advocate for Pet/Ap. : Rajiv Ranjan, Adv.,; Krishna Shankar, Adv.,; Dilip Jerath

Judgement :

ORDER

S.J. Mukhopadhaya, J.

1. Progress Report for rehabilitation of M/s. Heavy Engineering Corporation Limited :

From the supplementary affidavit filed on behalf of State of Jharkhand in W.P.(C) No. 4513 of 2004. It appears that a meeting of Officers was held on 7th April, 2005 at Ranchi to discuss the step to be taken for revival of the Company, M/s. Heavy Engineering Corporation (hereafter referred to as M/s. HEC). Apart from Chief Secretary, State of Jharkhand and other officials. Secretary, Ministry of Heavy

Industries, Government of India, other Officials of Union of India and Chairman-cum-Managing Director of the Company (M/s. HEC) took part in the said meeting and decided as follows :

1. Government of Jharkhand may consider purchase of buildings which it is already occupying, and other buildings that can be made available to it by HEC to house its officers, residences and other premises. The Government of Jharkhand may also consider purchase/transfer of land that can be made available to it, leaving a compact connected area for the use of HEC after its revival.

2. Valuation of the following needs to be done :

(i) Properties already occupied by the State Government.

(ii) Properties to be occupied by the State Government.

(iii) Land which can be made available to Government of Jharkhand.

3. The Principal Secretary Finance, Government of Jharkhand and the Financial Adviser, Ministry of Heavy Industries can sit together and recommend the principles to govern the valuation of land and buildings.

4. There can be three task forces/ committees to look into the following :

(i) A committee comprising the Secretary Buildings, Jharkhand, Director MHI and the CMD HEC to look into the identification and grouping of buildings and appurtenant land which can be transferred to the State Government. The grouping should be done in a manner so that buildings being given to the State Government and those that shall remain with HEC are in separate chunks and there is no intermingling.

(ii) A committee comprising Principal Secretary Land Revenue, Jharkhand, Director MHI and CMD HEC to identify the land that can be transferred and also the legally permissible modalities of the transfer.

(iii) A committee comprising Secretary Industries, Jharkhand, Director MHI and CMD HEC to look into how and for what purposes a special purpose vehicle can

be created on a revenue sharing model.

5. The amount owed by HEC on account of commercial taxes deferment, which it has already collected from its customers can be paid to the Government of Jharkhand by HEC.

6. As regards the quantum of waiver of the Delayed Payment Surcharge (DPS) on electricity dues, the State Electricity Regulatory Commission will have to be approached. In this regard an affidavit has been filed before the Hon'ble High Court, Ranchi by Jharkhand State Electricity Board, stating that 'In pursuance of the direction No. (iv) of the order dated 4.11.2004, resolution has been taken by JSEB being resolution No. 217/2004-2005 wherein it has been decided that the pending bill till October, 2004 amounting to Rs. 6,34,85,87,838.00, if a sum of Rupees five hundred crore worth to be paid at one go, the electricity board would waive/set off the rest of the dues. The aforesaid resolution was duly communicated to the Chairman-cum-Managing Director, HEC Ltd. with a copy to the Energy Secretary vide Memo No. 430, dated 4.12.2004 as also to other authorities of the Board.'

7. The land use map of the land presently with HEC, prepared by School of Planning and Architecture, Delhi was seen and generally met the approval of all present....

School of Planning and Architecture may be entrusted to conduct a study for identification of the core area to be left with the company.

8. Pending formalities, the land require by CISF may be transferred to it forthwith.

9. It can also be considered to transfer land to CRPF and BSF to locate their group centres. The Director General of CRPF and the Director General of BSF have agreed to make full payment for the land which shall be made available to them, at the rates agreed upon by GOI and Government of Jharkhand.

10. Time-frame for the valuation exercise should be the next 30-50 days, so that appropriate proposals may be put up before the respective Governments expeditiously.'

2. In the facts and circumstances, I allow further time to the parties to act as per their decision and to file further progress report by the next date.

I.A. No. 107 of 2005 (filed in W.P. (C) No. 4513 of 2004) :

3. This application has been filed by the Company (M/s. HEC) to allow to take appropriate step in order to liquidate its dues, which it owes to Kendriya Vidyalaya Sangathan (hereinafter referred to as KVS), Central Industrial Security Force (hereinafter referred to as CISF) etc.

Lease of building and land in favour of KVS :

4. Counsel for the Company (M/s. HEC) informed that the KVS is running a school known as Kendriya Vidyalaya in the premises of the Company, Dhurwa, Ranchi. The School is situated over a land having constructed area, as shown hereunder :

Area of land 5.71 acres

Constructed area 30.838 Sqft.

5. The stand of the Company (M/s. HEC) is that due to acute fund constraints, the Company is not in a position to pay the dues to KVS and, therefore, a request was made to KVS to convert the school from the Project Sector School to Civil Sector School so that the total expenditure of the school is borne by KVS. This has been done with effect from 1.4.2003 but outstanding dues of Rs. 140.22 lakhs is payable by the Company (M/s. HEC) to KVS. Further case of the Company is that the Company given offer to KVS to take the school building and the adjoining land on Long Term Lease. The offer includes the cost of building assessed @ Rs. 59.70 lakhs and cost of land assessed @ Rs. 278.77 lakhs for the area 5.71 acres. The total amount of Rs. 338.47 lakhs. Both the Company (M/s. HEC) and KVS have agreed that the outstanding dues of Rs. 140.22 lakhs, payable by the Company to KVS, can be adjusted against the aforesaid amount and the rest of the amount i.e. Rs. 198.25 lakhs will be payable by KVS to the Company (M/s. HEC), if the agreement is entered into between the Company and KVS. Prayer has been made to allow the Company to lease the building and land in question in favour of KVS.

Transfer of land in favour of CISF :

6. In the affidavit, it is stated that as a part of revival plan, Company (M/s. HEC), has offered some proposal to CISF to liquidate its outstanding dues. The offer is that 120 acres of surplus land can be transferred in favour of CISF to liquidate the outstanding dues of Rs. 62.22 crores of CISF, which is now Rs. 70.01 crores as on 1.1.2005. It is stated that to liquidate such amount, now the Company requires to transfer 142 acres of land. The valuation of the land has been assessed @ Rs. 50 lakhs per acre.

Hospital building :

7. Certain prayer has been made to allow the Company (M/s. HEC) to hive off/out source the hospital by way of chance of management or renting out the facilities or leasing out the facilities/portion thereof to a reputed organization, such as Apollo group of hospital etc.

8. Having heard the counsel for the parties, the following order is passed in the aforesaid interlocutory application for the present :

(a) The State of Jharkhand, Union of India and other parties are given opportunity to file affidavit and state whether it has any objection for lease of land and building in favour of KVS in view of decision taken in the meeting held on 7th April, 2005. Such affidavit should be filed within four weeks. The matter will be taken up on the next date.

(b) So far as transfer of land in favour of CISF is concerned, the Company (M/s. HEC) is allowed to take step for transfer of 142 acres of land, if permissible under the laws. The cost of the land should not be less than Rs. 50 lakhs per acre. Before such transfer, the parties may prepare a draft agreement for its approval by this Court.

(c) So far as change of management of hospital is concerned, the matter will be taken up on the next date.

I.A. No. 328 of 2005 :

9. The matter was taken up on 11th March, 2005. On the said date, the Union of India was allowed to take step as per the proposal contained in item Nos. 1, 3, 4, 5 and 10 of the Proposed Scheme. Though more than 1-1/2 months have passed but no affidavit has been filed on behalf of Union of India enclosing action taken report.

10. In the facts and circumstances, Instead of passing any order on the rest of the Proposed Scheme, as submitted by the Union of India and shown at item Nos. 2 and 6 to 9 of the Scheme, the Union of India is allowed two weeks time to file action taken report after serving a copy of the same on each of the counsel for the parties.

I.A. No. 944 of 2005 (filed in both W.P. (C) No. 4513 of 2004 and C.P. No. 5 of 2004) :

11. In the application (I.A. No. 944/05) filed by M/s. HEC, the following statement has been made :

'That following educational institutions were granted land on long terms lease of 30 years. The petitioner herein gives in tabular form names of the Institutions, their year of allotment and date on which lease have expired.

Sl.	Name of the Area	(in Date of Due date)	No. Educational acres)	grant of for renewal
1.	DAV School Sector III	5.00 19.5.1972		
2.	Yodada Satsang	19.80 1974 2004		
3.	Prabhat Tara School	9.50 19.6.1972 18.6.2004		
4.	Ram Krishna Mission	7.25 1969 1999		
5.	Bangiya Sanskrit	5.00 17.6.1972 16.6.2002		
6.	Shishu Vikas Mandir	5.00 1973 2003		
7.	Lal B.N. Sadevi School	5.00 1973 2003		

That it is therefore, necessary to immediately renew these lease which have expired with the aforesaid Institutions as pressure is being raised by the educational institutions for which petitioners has also received payment and some educational institutions are ready to pay the amount.

That all the aforesaid educational institutions are recognized premiere institutions of the city imparting education and are affiliated to different educational boards.'

12. In the facts and circumstances, I allow M/s. HEC to renew the lease of aforesaid Institutions as per the terms and conditions and in accordance with law. Before renewal of lease, a draft proposed renewal lease be prepared for its approval by this Court.

I.A. No. 945 of 2005 (filed in both W.P. (C) No. 4513 of 2004 and C.P. No. 5 of 2004) :

13. In this application, the Company (M/s. HEC) has prayed for direction on its banker i.e. State Bank of India (hereinafter referred to as SBI), who is also one of the stake holders, to cooperate with the Company (M/s. HEC) and to settle the loan amount by waiving part of the interest.

14. Having heard the parties and before deciding the issue, I feel that the Chairman-cum-Managing Director of M/s. HEC should take up the matter firstly with the competent authority of SBI. If the Chairman-cum-Managing Director of M/s. HEC approaches the competent authority of SBI, the Bank will find out whether it can help the Company (M/s. HEC) in the matter of its revival.

Payment of arrears of electrical dues and current dues :

15. The matter was earlier discussed and interim order was passed restraining the Jharkhand State Electricity Board (hereinafter referred to as JSEB) to recover the outstanding dues from the Company (M/s. HEC) until further order.

16. When the case was taken up earlier, the counsel for the Company submitted that there will be no difficulty to pay a sum of Rs. One crore per month in favour of JSEB towards outstanding electricity dues and current energy charges including D.P.S.

17. Counsel for JSEB prayed for direction on the Company (M/s. HEC) to pay at least Rs. 2 crores per month in favour of JSEB to clear the outstanding dues, but taking into consideration the financial position of the Company (M/s. HEC) as also the interest of JSEB the following order is passed for the present :

The Chairman-cum-Managing Director of the Company (M/s. HEC) may take up the matter with the Chairman, JSEB, who in his turn may determine the arrears and number of installment in which arrears can be cleared off.

Till any decision is taken by the Chairman of JSEB, the Company will pay at least a sum of Rs. One crore per month to JSEB towards outstanding electricity dues and current energy charges.

All the parties, including the Company (M/s. HEC), State of Jharkhand, SBI and JSEB are allowed to file their respective affidavits giving details of progress as may be made in the meantime.

Let both the cases be listed for further hearing under the heading for orders on 23rd June, 2005.

Let a copy of this order be handed over to the counsel for the parties for its implementation and communication.

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