

K.M.A. Ltd. and Another Vs. Union of India and Others

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Court : Delhi

Decided On : Feb-16-1996

Reported in : [1996]86CompCas725(Delhi)

Judge : Devinder Gupta and; M.K. Sharma, JJ.

Acts : Sick Industrial Companies Act, 1985 - Sections 3(1), 15, 17 and 18(2)

Appeal No. : C.W.P. No. 4842 of 1994

Appellant : K.M.A. Ltd. and Another

Respondent : Union of India and Others

Advocate for Def. : Ms. Meera Bhatia, ; Gajendra Kumar, ; Ms. Indira Jai Singh

Advocate for Pet/Ap. : Arun Jaitley,; Ms. Kum Kum Sen,; Vikas Dhawan and;

Judgement :

Dr. M. K. Sharma J.

1. This writ petition is directed against the order dated July 22, 1994, passed by the Appellate Authority for Industrial and Financial Reconstruction (in short, 'the AAIFR') upholding and affirming the order passed by the Board for Industrial and Financial Reconstruction (in short, 'the BIFR') holding that the reduction in the value of share of K. M. A. Ltd. was required in order to revive the company under the sanctioned scheme and accordingly, directing for transfer of shareholding of

the existing promoters and their associate holders at the rate of Re. 1 for each share.

2. Originally, this petition was preferred by K. M. A. Ltd. and Mr. Ashish Kamani as petitioners Nos. 1 and 2 respectively. After notice was served on the respondents and on an objection taken by respondents Nos. 4 and 5 stating that the BIFR had restrained the second petitioner from acting on behalf of the first petitioner, learned counsel appearing for the petitioner made a request to this court that without prejudice to his rights and contentions and for the purpose of the present petition he had no objection to petitioner No. 1 being transposed as respondent No. 6. In view of the aforesaid statement of learned counsel for the petitioner, K. M. A. Ltd., petitioner No. 1, was transposed as respondent No. 6 and the present petition was being pursued by respondent No. 2, Mr. Ashish Kamani as the sole petitioner.

3. K. M. A. Ltd. under the old management headed by Mr. Ashish Kamani, the petitioner, made an application under section 15 of the Sick Industrial Companies (Special Provisions) Act (in short, 'the SICA') to the BIFR. In the said reference, it was stated by Mr. Ashish Kamani that the net worth of K. M. A. Ltd. was negative. On such a reference being made, the BIFR took up the reference for consideration and on consideration of the records and after hearing the concerned parties declared the said company to be a sick company under the provisions of section 15 of the SICA. Consequently, BIFR appointed the Bank of Baroda as the operating agency to examine the viability of K. M. A. Ltd. and to prepare a scheme for its revival, rehabilitation and reconstruction. Consequently, a draft scheme was prepared by the operating agency to provide for the rehabilitation of the workers. A viability report was also prepared by the operating agency which came up for consideration before the BIFR. During the proceedings before the BIFR, the financial institutions and the banks expressed their total lack of confidence in the management headed by Mr. Ashish Kamani, the petitioner. A draft scheme was approved by the BIFR which provided for taking over the management of K. M. A. Ltd. by the workers co-operative. The said draft scheme was published in accordance with section 17 of the SICA inviting objections/suggestions for hearing by the BIFR. During the proceedings before it, the BIFR considered the draft scheme as well as the objections received along with the alternative proposals

submitted by some of the parties. After due consideration of the draft scheme, the BIFR asked for the consent of the financial institutions and the banks. The financial institutions including the banks, the IDBI as also the State Governments of Maharashtra and Karnataka consented to the draft scheme and by its order dated April 16, 1993, the BIFR sanctioned the scheme. While doing so the BIFR specifically recorded that there was no alternative except to make an attempt to revive the company under the aegis of a workers co-operative. In the said order, the BIFR also recorded its view that a substantial number of the work force would be deprived of their livelihood if the scheme was not given a chance for implementation. The scheme which was approved by the Board by its order dated April 16, 1993, envisaged at para 3.4 that there should be a transfer of the shareholding of the existing promoters and their associate holders to the workers' co-operative. It has, therefore, proposed that in order to give effect to the take over of management and speedy restart of the operations of the company, the shareholding of K. M. A. Ltd. in the existing group should be transferred and allotted to the workers' co-operative immediately on the sanction of the scheme. It was directed that the consideration for the shares would be at rupee 1 for each share which would be offered by the workers' co-operative immediately on sanction of the scheme.

4. Being aggrieved by the aforesaid order passed by the BIFR sanctioning the scheme the erstwhile management filed an appeal which the AAIFR dismissed against which order this writ petition was preferred.

5. Mr. Arun Jaitley, appearing for the petitioner, submitted that the reasonings given by both the Appellate Authority as also by the BIFR to the effect that as the net worth of the company was negative the share value would become zero and the fixation of value at Re. 1 was permissible, are void and without jurisdiction. In short, according to him, the very basis of the criteria followed by the BIFR and the AAIFR in valuing the shares and directing for transfer of the shares at Re. 1 is in conflict and also in violation of the provisions of section 18(2)(I) of the SICA. During the course of his arguments, he drew our attention to the provisions of section 18(2)(I) of the SICA which is quoted hereunder :

'18(2)(l) transfer or issue of the shares in the sick industrial company at the face value or at the intrinsic value which may be at discount value or such other value as may be specified to any industrial company or any person including the executives and employees of the sick industrial company;'

6. Relying on the aforesaid provision, learned counsel submitted that the value of the shares should be effected under the provisions of section 18(2)(l) at the face value or intrinsic value or such other value as may be specified whereas both the appellate as well as original authorities in the present case, instead of valuing the shares on the face value or on the intrinsic value wrongly concluded that the valuation would be made on the basis of the book value and since the same was zero the share be transferred at the rate of Re. 1. According to him, the book value method which was resorted to by the BIFR for the purpose of determining the value of the shares of the present company is unknown and foreign to the scheme of the provisions of section 18(2)(l) of SICA and, accordingly, the entire conclusion of both the authorities is vitiated.

7. Mr. Anand Grover, counsel for respondent No. 6 and Ms. Indira Jai Singh, counsel for respondents Nos. 4 and 5, on the other hand submitted, before us that there are a number of recognised and known methods for calculating the value of the assets, i.e., the book value, break-up value, replacement value, etc. It was submitted that the book value is a well known method for determining the net asset value and hence it is also an accepted method of valuation of the assets for the purpose of determining the valuation of shares under the provisions of the SICA. Since the BIFR had used the book value method for the purpose of ascertaining the value of assets and, thereafter, determining the share value, the decision of the appellate authority as well as the original authority in arriving at the conclusion that the shares of the company K. M. A. Ltd. should be transferred at Re. 1 per share is legal and valid. According to them the argument of learned counsel for the petitioner is totally misconceived in view of the decision rendered by the Supreme Court in *Navnit R. Kamani v. R. R. Kamani* : (1989)ILLJ47SC . Learned counsel for the respondents submitted that the facts of the aforesaid case decided by the Supreme Court relate to almost similar facts and incidentally relating to a company belonging to the same Kamani family group who was also

the holder of the present company. Learned counsel specifically drew our attention to the conclusion recorded by the Supreme Court in para. 12 of the said judgment, the relevant portion of which is quoted hereunder (at page 146) :

'It, however, appears that no purchaser was coming forth. The aforesaid exercise however, shows the willingness and preparedness of the concerned members of the Kamani group to transfer their shares on their own even without a directive. Their willingness is, however, irrelevant since the BIFR is clothed with the authority and competence to reduce the value of the shares from Rs. 10 per share to Re. 1 per share and direct the transfer of the shares to the employees. A point was made before the BIFR for the transfer of the shares as regards the order reducing the value of the share and the direction to transfer the shares at the reduced value of Re. 1 per share. The BIFR has closely, carefully and dispassionately considered this dimension of the matter and has rightly reached the conclusion that the intrinsic value of the share is actually zero. The liabilities far exceed the assets and even by applying the break up or back up method suggested by the members of the Kamani family the value of the shares could be determined only at the intrinsic value of the shares and the board reached the firm conclusion that each share had zero value. And even so the board directed that the value of the share be reduced to Re. 1 per share and directed them to transfer the share at Re. 1 per share. Having given our anxious consideration to this factor even on our own, we are fully convinced and fully satisfied that the board was perfectly right in directing the members of the Kamani family to transfer the shares at the rate of Re. 1 per share in order to effectuate the scheme for revival of KTL...'

8. Learned counsel for the petitioner, made an endeavor to distinguish the present case from the facts of the said case decided by the Supreme Court. In this connection, learned counsel for the petitioner drew our attention to the conclusions of the Supreme Court in *Navnit R. Kamani v. R. R. Kamani* : (1989)ILLJ47SC , wherein the Supreme Court has specifically approved the finding of the BIFR holding that the BIFR dispassionately considered the dimension of the matter and rightly reached the conclusion that the intrinsic value of the share is zero. Learned counsel submitted that since in the said case of *Navnit R. Kamani v. R. R. Kamani* [1989] 66 Comp Cas 132, the BIFR came to a definite conclusion that the intrinsic

value of the share is zero in that view of the matter the Supreme Court came to the conclusion, as recorded in the said case. However, according to him, in the present case there is no such finding of the BIFR that the intrinsic value of the share is zero. According to learned counsel for the petitioner, the intrinsic value has to be calculated on the basis of the real value of the shares which would take into account the real value of the company's shares and the liability and loss of the company and should determine the share value on that basis. thereforee, the sum and substance of the submission of learned counsel for the petitioner is that the valuation of the shares under section 18(2)(l) should be at the face value or the intrinsic value or at such other value as the board might decide. He further submitted that the words 'such other value' cannot be read in isolation of the preceding specific words 'face value' or 'the intrinsic value' and, thereforee, those words, namely, 'such other value' would draw meaning in relation to the preceding specific words 'face value' or 'the intrinsic value' on the basis of the principle of ejusdem generis.

9. We have given our anxious and thoughtful consideration to the rival submissions of learned counsel for the parties. The AAIFR in its order has discussed in detail the findings of the BIFR with regard to the financial position of K. M. A. Ltd. The BIFR, during the proceedings before it found that the net worth of the company was completely eroded and no party was coming forth to rehabilitate the company nor were the existing promoters in a position to rehabilitate the company. On consideration of the aforesaid findings of the BIFR and also on its own in-depth study of the record available before it the AAIFR found as follows :

'Looking to the case from that angle, if we turn to the scheme, we find that on 31st March, 1991, the net worth of KMA was negative to the extent of Rs. 886 lakhs, with paid-up share capital and free reserves of Rs. 234 lakhs (excluding revaluation reserve of Rs. 760 lakhs). Accumulated losses were Rs. 1,120 lakhs. The fixed asset coverage ratio (FACR) was very low at 0.28 with term loans from IFCI and debentures of Rs. 373 lakhs against net fixed assets (NFA) and current work in progress (CWIP) of Rs. 103 lakhs. Net working capital was negative to the extent of Rs. 60 lakhs. With current liabilities of Rs. 1,213 lakhs against current assets of Rs. 612 lakhs, resulting in low current ratio of 0.5:1.'

10. On the basis of the aforesaid financial conditions of K. M. A. Ltd. as reflected from their records the appellate authority came to the conclusion that the share value of the company was zero at the time of sanctioning of the scheme and, therefore, even keeping the share value of Re. 1 after reduction, was something which the shareholders, as of right were not entitled to but had been provided in the scheme. On a totality of the circumstances and in view of the aforesaid financial position of K. M. A. Ltd. as reflected from the records, the apparent and only conclusion that could be arrived at is that the liabilities of the company far outstripped the assets.

11. The book value method which was made the basis for determining the valuation of shares in the present case, is one of the recognised methods for calculating the value of assets. Such valuation of shares following the book value method has been accepted as a proper and valid mode of valuation of shares in *Tinsukia Electric Co. Ltd. v. State of Assam* : AIR 1990 SC123 . In paragraph 98 of the said decision, it has been held by the Supreme Court that the concept of book value is an accepted accountancy concept of valuation and that it cannot be said to be illusory. therefore, the aforesaid calculation of the share value after ascertaining the net asset value on the basis of the book value could be accepted as a proper mode of valuation of the shares. The BIFR having resorted to such a method of valuation for the purpose of determining the net worth of the company and thereupon determining the share value, in our opinion, did not commit any error. On consideration of the provisions of section 3(o) and section 18(2)(l), it is crystal clear that the book value method of calculating the asset value and thereupon determining the share value is also a recognised mode under the SICA and as such, the BIFR did not err in resorting to the aforesaid method for the purpose of determining the share value of the company.

12. The financial position of K. M. A. Ltd. which was noticed by the appellate authority in its impugned order and quoted hereinabove has not been challenged before us. The said findings clearly prove and establish that the liabilities of the company at that stage far outstripped the assets of the company. The jurisdiction of this court exercising the powers under article 226 of the Constitution of India is limited and this court has no power and jurisdiction to sit over and scrutinise the

findings of the appellate authority as a court of appeal. This court has only to find out whether the order of the appellate authority is within the framework and ambit of SICA. In *Tata Cellular v. Union of India* JT [1994] 4 532, while dealing with the scope of judicial review in contractual matters, the Supreme Court held thus (at page 554) :

'The duty of the court is to confine itself to the question of legality. Its concern should be :

1. whether a decision-making authority exceeded its powers?
2. committed an error of law;
3. committed a breach of the rules of natural justice;
4. reached a decision which no reasonable Tribunal would have reached; or
5. abused its powers.'

13. On testing the findings of the appellate authority by the aforesaid touchstones it cannot be said that the findings of the appellate authority are vitiated.

14. Besides, Mr. Ashish Kamani, the sole petitioner, has himself accepted the book value method of calculating the asset value and, therefore, the share value, at the time when he himself made a reference of the matter to the BIFR under the provisions of section 15 of the SICA. In view of the aforesaid action on the part of the petitioner in referring the matter to the BIFR on the ground that the net worth of K. M. A. Ltd. had become negative and, therefore, was liable to be declared sick under the provisions of SICA itself shows that he also accepted that the company had become sick on the basis of calculation of the value of the assets on the basis of book value. At this stage, we may also appropriately refer to the conclusion reached by the Supreme Court in paragraph 12 of the judgment in *Navnit R. Kamani's case* : (1989)ILLJ47SC . In our considered opinion the said findings recorded in paragraph 12 are squarely and fully applicable to the facts of the present case also. We particularly rely on the pronouncement of the Supreme Court in that case, that the liabilities far exceeded the assets and even by applying

the breakup or backup method suggested by the members of the Kamani family the value of the shares could be determined only at the intrinsic value of the shares and the Board reached the firm conclusion that each share had zero value. The aforesaid finding could definitely be made applicable to the facts of the present case relating to the financial position of the company as noticed hereinabove and, therefore, on an overall consideration the findings given by the appellate authority as also the original authority, namely, the BIFR, are required to be held as legal and valid.

15. In the result, this writ petition has no merit and is dismissed, but without any costs.

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