

Ravi Inder Singh Vs. Aaifr

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Court : Delhi

Decided On : Aug-24-2007

Reported in : [2008]144CompCas410(Delhi)

Judge : Manmohan Sarin and; S.L. Bhayana, JJ.

Acts : Sick Industrial Company Act - Sections 3(1), 15(1), 17(3), 18(2) and 18(11)

Appeal No. : WP (C) No. 4349/2007

Appellant : Ravi Inder Singh

Respondent : Aaifr

Advocate for Def. : Harish Malhotra, Sr. Adv. and ; Naveen Chawla, Adv. for Respondent No. 1 and ;

Advocate for Pet/Ap. : Salman Khurshid, Sr. Adv.,; Naresh Bakshi,; Imtiaz Ahmed

Disposition : Petition dismissed

Judgement :

S.L. Bhayana, J.

1. The petitioner, through present writ petition, has assailed the orders dated 21.11.2003 and 18.12.2003, passed by BIFR with respect to Indian Steel and Wire

Products Ltd. (hereinafter referred to as 'ISWPL') and order dated 8.12. 2006, passed by AAIFR. AAIFR dismissed the appeals Nos. 358/2003 and 91/2004, filed by the ISWPL and appeal No. 40/2004 filed by Bank of Rajasthan against the orders of BIFR, wherein BIFR had approved and sanctioned the scheme of TISCO to revive the sick company ISWPL and also, inter alia, directed the erstwhile directors of the company to vacate their respective offices.

2. The facts culminating in the filing of present writ petition may be briefly noted : Petitioner was the erstwhile Managing Director of Indian Steel and Wire Products Limited (ISWPL) before ISWPL's management was transferred to TISCO by virtue of BIFR's order for rehabilitation of the said Company under SICA. ISWPL was established in year 1927 at Jamshedpur by the petitioner's grandfather. A foundry unit was also established in the year 1936 by the name of Jameshdpur Engineering and machine Manufacturing Company (hereinafter referred to as 'JEMCO'). In 1934-36 ISWPL commenced its commercial production. In 1980 TISCO provided ISWPL with electricity and raw materials. In 1988-91 ISWPL planned to modernize the existing manufacturing facility and for the said purposes financial assistance was sought which was sanctioned as well. The modernization was completed in 1989 and in 1991 JEMCO, a profit making subsidiary unit was merged into ISWPL. According to the petitioner, in the year 1994 TISCO without prior sanction of the Government in writing, unilaterally and arbitrarily raised the tariff rates of electricity and in 1995 it served a notice of disconnection of power on JEMCO, a division of ISWPL and in 1998 disconnected the supply of power to one of the divisions of ISWPL due to which it became inoperative. In 1996 against the said act of TISCO, a writ petition bearing No. 686 of 1996 was filed in the Patna High court. The Patna High Court vide its order dated 24.3.2000 partly allowed the writ petition in favor of the petitioner, however, both the petitioner and TISCO filed an SLP in the Hon'ble Supreme Court which was duly admitted but withdrawn on 24.08.2006 by present/new management of ISWPL.

3. In view of erosion of net worth of ISWPL as reflected in audited balance sheet for the financial year ending 31.3.2000, a mandatory reference under Section 15(1) of SICA was filed. In the mean while, on 20.12.2001, president of Labour Union of ISWPL filed a writ petition No. 2645 of 2001 in Calcutta High court

praying for quashing of order of BIFR dated 24.9.2001 and handing over the unit to TISCO. BIFR vide its order dated 24.9. 2001 declared the company as 'Sick Industrial Company' and appointed IDBI as the Operating Agency hereinafter referred as OA. The OA vide an advertisement dated 16.10.2001, invited offers for change of management. It is alleged by the petitioner that the OA highlighted only negative aspects and completely ignored the positive aspects and patents as a result of which only ISWPL and TISCO submitted their proposals. However, both of them were quite unacceptable to the secured creditors and, therefore, revised proposals were invited. Petitioner states that his revised proposal was placed before the OA, however, the same was not considered and on 22.4.2003, OA proceeded to prepare a Draft Rehabilitation Scheme (hereinafter referred as DRS) based on the proposal of TISCO. The Calcutta High Court also vide its order dated 8.5.2003 directed BIFR to expedite the hearing of the matter of revival or rehabilitation of ISWPL on the basis of report of OA and proposal of TISCO as early as possible preferably within the period of 3 months from the date of communication of this order. OA on its own prepared a DRS based on proposal of Respondent No. 2, which the petitioner claims to be beyond the direction of BIFR and against the provision of Section 17(3) of SICA. The petitioner filed an appeal against the order of the Calcutta High Court but the same could not be heard till the final order of BIFR was passed. The proceedings before BIFR went on and although the petitioner moved an application for removal of IDBI as OA and appointment of neutral OA, BIFR, however, vide its order dated 25.7.2003 approved and circulated the DRS prepared on the basis of the proposal submitted by TISCO. ISWPL on 10.10 2003 filed its objections to the DRS of TISCO before the BIFR. Aggrieved of the said order, the petitioner filed an appeal dated 7.10.2003 before the AAIFR, however the same could not be heard because AAIFR was not functioning at that time. Due to non-functioning of AAIFR, a writ petition before High court was filed on 20.10.2003 praying for quashing of order dated July 25.7.2003 and for appointment of a neutral OA. BIFR on the other hand, on 22.10.2003 sanctioned the rehabilitation scheme submitted by TISCO, however it did not issue any order. In petitioner's array of facts it is further alleged that before the scheme was officially released, TISCO in active connivance with an employee of ISWPL deposited a bank draft of an amount of Rs. 5,85,700/-

purported value of shareholding of ISWPL at Calcutta. It is alleged that the said employee had no authority to sign the paying slip nor had any authorization of the board of directors. The writ petition filed before the High court was heard on 29.10.2003 and the petitioner undertook to deposit a cheque of Rs. 5 crores and deposit the title deeds of property bearing address 17 Tuglak Road, New Delhi. Further vide order-dated 7.11.2003, the court directed not to implement the scheme pending consideration of the case. BIFR on 21.11.2003 released the rehabilitation scheme for ISWPL and in view to give effect to the said scheme a meeting was called on 27.11.2003 without informing the CMD of the ISWPL. CMD on receiving information of the impending meeting, attended the same and also lodged a criminal complaint against the security men of TISCO for harassing the petitioner. The order dated 21.11.2003 passed by the BIFR was challenged before AAIFR on 4.12.2003 vide an appeal No. 358 of 2003. The writ petition filed earlier was sought to be withdrawn on the grounds that BIFR had released the sanctioned scheme of TISCO as a result the petitioner was directed to pay costs and BIFR was further directed to proceed further in the matter in accordance with law. BIFR on 18.12.2003 without giving notice to the petitioners dissolved the Board of Directors of ISWPL and directed to constitute new Board of Directors and also asked the erstwhile Directors to vacate the offices forthwith. The new management through the Company Secretary filed application for withdrawal of application filed by the previous management before AAIFR. The Ld single member of AAIFR vide its order-dated 30.12.2003 allowed the said application. The erstwhile management aggrieved of the said order filed another appeal dated 18.12.2003 before AAIFR and also filed a writ petition before Delhi High Court on 23.2.2004 and the High Court vide order dated 19.5.2004 directed the AAIFR to consider the appeal purportedly allowed as withdrawn by the single member. AAIFR vide its order dated 12.8.2005 held that the earlier order passed by single member is nonest and restored and admitted the appeal earlier construed as withdrawn. Finally AAIFR heard the arguments and vide order dated 8.12.2006 dismissed the appeal of the petitioner. Against the said order an SLP was filed which was dismissed as withdrawn and liberty was given to the Petitioner to approach the High Court.

4. The petitioner through this writ petition assails the order of the AAIFR on the grounds that AAIFR has not given findings on all the issues raised by the petitioner in his written submissions. Petitioner has further assailed that the value of the promoter shares has been fixed at a much lower rate than the market value. The valuation on the basis of which the rate was fixed was much prior in time and the scheme was sanctioned much later and with the passage of time the value of assets have increased, the differential in value due to passage of time has been completely ignored. Petitioner has further assailed that the AAIFR has failed to appreciate the grievance of the petitioner directed against the OA, IDBI. The AAIFR failed to appreciate that the procedure and manner in which the rehabilitation scheme was approved and carried out was not transparent and was deeply flawed as one of the directors of TISCO was also on board of IDBI who was acting as an OA. Petitioner has even suggested that TISCO in connivance with some of ISWPL's employees and workers created circumstances that squarely led to taking over the management of ISWPL by TISCO. The petitioner assails that the decision of BIFR is erroneous in law and on the facts. Petitioner further states that AAIFR has failed to appreciate the contentions of the petitioner raised before AAIFR.

5. Petitioner alleges discriminatory treatment meted out to him and also the manner in which the erstwhile management was removed from the office. Petitioner's case is that the entire procedure followed and the manner in which the control and management of company was handed over to TISCO reeks of malafides and that there has been flagrant violation of principles of natural justice.

6. Learned Senior Counsel for petitioner vehemently argued that TISCO was solely responsible for the financial debacle of the petitioner's company as it deliberately and unilaterally raised the tariff of the electricity without seeking the prior approval of the government. Further ISWPL incurred losses due to insufficient and poor quality of raw material supplied by TISCO and ultimately due to power disconnection, the unit of ISWPL incurred heavy losses and became inoperative. Counsel questioned and raised doubts over the integrity of the operating agency, namely, IDBI appointed by BIFR. It was urged that the operating agency in connivance with TISCO completely ignored the proposals of the

petitioner and prepared the DRS in line with TISCO proposal. Learned Counsel for the petitioner also drew the attention of the Court to the fact that one of the Directors of IDBI was former MD and vice chairman of TISCO and is presently a director of Tata Sons Pvt. Ltd. Counsel for the petitioner also argued that the advertisement issued by OA inviting rehabilitation proposal of ISWPL had highlighted only the negative aspect of the company. Counsel for the petitioner vehemently argued that the petitioner's application for appointment of a neutral OA was side stepped. Counsel for the petitioner also argued that the manner in which the new director was appointed and the way in which the scheme was sanctioned approved and circulated behind the petitioner's back reeks of malafide and reflects glaring discrimination against petitioner. Counsel for petitioner in his argument also addressed the issue of pricing of the shares and argued that the shares were grossly undervalued. Contention of the petitioner is that the shares values do not reflect the value of assets, which have only increased in value with passage of time. Petitioner's counsel has argued that TISCO is liable to pay an amount of Rs. 32 crores as per the directions of the Patna High Court. Petitioner's counsel argued that Indira Singh & Sons Private Ltd. (ISSPL) filed objections to the DRS of TISCO before BIFR and raised doubts over integrity of the O.A., alleged bias against the petitioner and also raised the question of discrimination against the promoter group.

7. We have considered the submissions made and noted above, the averments in the writ petition and also the impugned orders of BIFR and AAIFR. Petitioner criticized OA for completely ignoring his submissions and the settlements proposals and questioned the manner in which the revival scheme was approved and sanctioned by BIFR and also the manner in which the scheme was implemented. Petitioner contends of being deprived of fair hearing as his grievances remaining un-addressed. We have gone through the record before us. From the facts borne out from the record it is clear that the petitioner himself had failed to submit any constructive proposals for rehabilitation as observed by AAIFR. AAIFR has observed that not less than six opportunities were given to the petitioner to file a scheme, which was tied up in all respects and would facilitate rehabilitation of the Company. Petitioner had been banking upon a German promoter for finances, who was to provide much needed finance and to streamline

and remove the difficulties faced by the petitioner. However, the said support as alleged by the petitioner was only a cotton wool tactic and the said argument lost teeth and got completely usurped after it was conclusively proved that no foreign funding was coming to petitioner from the alleged German Company. Further, to prove the financial ability to match with the TISCO's scheme of rehabilitation, the petitioner in order to match the figure, had taken into account an amount of Rs. 20 crores directed by Jharkhand High Court to be paid by TISCO to ISWPL. At the relevant time of consideration of the scheme, the judgment of the High Court had been challenged before the Supreme Court by both the parties and was pending. It was recently withdrawn on 24.8.2006 by both the parties, i.e., much after the sanction of the scheme. In these circumstances, any reliance on the disputed amount by the petitioner, which was sub-judice at the relevant time, could not be acted upon as it would have amounted to speculation. Any interpretation in petitioner's favor would be a gross error and therefore, the argument does not merit any consideration from this Court. Further petitioner has miserably failed to prove his bona fides in view of the fact that he has not been able to comply with the undertaking given to this Court on 29.10.2003 whereby he had undertaken to deposit Rs. 5 Crores and also the title deeds of property located at 17, Tuglak Road, New Delhi.

8. Petitioner has further alleged that TISCO was solely responsible for the debacle and the financial distress faced by the petitioner and ISWPL. Petitioner further alleged that TISCO acted in connivance with the ISWPL workers union and employees to usurp the erstwhile management. Petitioner has also alleged that the role of OA was not free from bias as one of the Director of Tata's Sons was on the board of the OA and who also approved and sanctioned the scheme that enabled TISCO to gain control over the management of ISWPL. It is pertinent to mention that the cause of financial distress is not a question before the court and any findings shall be beyond the realms of adjudication by the Court. ISWPL became a loss making unit whose net worth became negative and therefore was referred to BIFR. The present court cannot traverse beyond these facts. Having said that, the court is constrained to observe that once a company is declared sick and is referred to BIFR, and the fact that the petitioner has actively participated in formulating and submitting a bid to rehabilitate the Company, it would be only an

academic exercise to debate on the cause of financial distress. The Court at this stage would also like to observe that the petitioner's allegation against TISCO causing financial distress by stopping electricity supply has been decided by the Ranchi Bench, Patna High Court. The order of the court is a matter of record and requires no further clarification or comment. Further, the Company's financial distress is a matter of record and, therefore, the petitioner's company i.e. ISWPL was declared sick under Section 3(1)(o) of SICA. The petitioner's company was facing debt recovery cases and its consequent erosion of net worth and, therefore, an O.A. was appointed. The O.A. on the basis of advertisement received proposals from TISCO and petitioner himself. The other allegations made against TISCO remain unsubstantiated and therefore require no comment.

9. Petitioner's own conduct and bona fides are not free from doubt in view of the fact that petitioner himself failed to comply with the undertaking given before the High Court. The petitioner could have revived ISWPL only if it had resources to meet the statutory and contractual obligations and to show his bona fides and the financial capacity in which he had undertaken to deposit an amount of Rs. 5 crores and title deeds of the property which the petitioner failed to meet.

10. The petitioner's argument of gross under valuation of shares finds no merit as the same was computed by BIFR on the basis of well-settled principles. Further, it is quite apparent that the net worth of the company was negative and, therefore, it was referred to BIFR under SICA. AAIFR has observed that 'in case of change of management what really transpires is that the new management settles the dues of secured creditors, workers, statutory dues etc., while the shares belonging to the erstwhile management are transferred to the new management, not free (though they are worthless as such) but at a token price-in this case of Rs. 1/- per share. This is a procedure which is according to law and this manner of valuation has been upheld by different judgments such as the judgment of the Hon'ble Apex Court in Kamani's case. The value of assets is a relevant consideration only when there is a sale of assets involved in terms of Section 18(2)(i), 18(11) etc. and not otherwise. In our opinion, the AAIFR has correctly dealt with this issue and we do not find any infirmity in the afore-mentioned findings of the AAIFR.

11. TISCO, as per the order of BIFR has taken over the control of the management of the company and has also taken control over affairs of the company. It has in line with the settlement scheme made investment and paid off secured creditors. Further, the company became a profit making enterprise solely due to the efforts of the new management and infusion of fresh capital desperately required to make it a going concern. This complete turn around is in the larger interest of the workers, economy and the company itself.

12. In view of the foregoing discussion, we find that there is no merit in the present petition and the same is, therefore, dismissed.

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