

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WP (C) No.5878/2008

Reserved on: 25.08.2008
% Date of decision: 29.08.2008

M/S SHREE CEMENT LTD.

...PETITIONER

Through: Mr.P.V.Kapur, Sr.Adv.with Mr.Ashim Vachher, Mr.Vivek Sibal and Ms.Achal Gupta, Advocates for the Petitioner.

Versus

M/S GANNON DUNKERLEY & CO.LTD & ORS ...RESPONDENTS

Through: Mr.Amarjit Singh Chandhiok, Sr. Adv with Ms.Maneesha Dhir, Ms.Shikha Bhardwaj, Ms.Purti Marwaha and Ms.Tripti Kohli, Advocates for R-1.

Mr.Sanjiv Kakra & Mr.Atul Kumar, Advs for R-3/SBI.

Ms.Raj Rani Bhalla and Mr.Ajit H., Advocates for R-4

Mr.Kanchan Singh, Adv. with S.N.Sharma,Sr.Addl.Director, Department of Industries, Govt. of Rajasthan/R-5.

Mr.R.C.Chawla, Advocate for RPFC/R-28.

Mr.Rajiv Nayar, Sr.Adv with Mr.Gopal Jain, Ms. Ruby Singh Ahuja, Ms.Jay Singh Brar, Mr.Debmalya Banerjee and Ms.M.Gupta, Advocates for Jaipur Udyoug/R-9

Ms.Rashmi Chopra, Advocate for R-26 and R-29

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?	No
2. To be referred to Reporter or not?	No

3. Whether the judgment should be reported in the Digest?	No
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SANJAY KISHAN KAUL, J.

1. M/s. Jaipur Udyog Ltd., respondent No.9, ('the said Company' for short) was incorporated in May, 1948 as a private limited company under the management of the Dalmiya Group and was converted into a public limited company in 1955. The management of the Group changed hands in 1958. The company is stated to have started incurring losses from 1971 onwards and an application was filed under Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as 'SICA') in 1983-84. The Government of Rajasthan and the financial corporations having interest in the Company also made a reference to the Board for Industrial and Financial Reconstruction ('BIFR' for short) in 1987 and the BIFR came to a conclusion that the said Company had become a sick industrial company under SICA in terms of the Order dated 26.08.1987.
2. The Scheme for rehabilitation for the said Company was directed to be formulated on 17.09.1987 with Industrial Investment Bank of India ('IIBI' for short) being appointed as the operating agency. The Scheme for revival was prepared but the BIFR came to the conclusion that it was not possible to revive the said company and was thus liable to be wound up.
3. The winding up of the said Company was opposed by filing objections against the winding up order and a fresh rehabilitation Scheme was approved on 21.04.1992 by the BIFR. In terms of this new Scheme labeled as SS-92 a new management of R-1 was introduced in the said Company. The progress of the said

Scheme was reviewed from time to time.

4. The petitioner-Company claims that it approached the Government of Rajasthan in the year 1999 showing interest in the revival of the said Company and the Government of Rajasthan addressed a letter to the operating agency on 20.05.1999 making a recommendation for consideration of the revival scheme of the petitioner. The Scheme SS-92 in terms whereof R-1 was running the affairs of the said Company apparently did not result in the revival of the Company and the BIFR once again on 24.11.2000 passed an Order recommending the winding up of the said Company. The said Company being aggrieved by the same, filed an appeal before the Appellate Authority for Industrial and Financial Reconstruction ('AAIFR' for short) being Appeal No.22/2001. The AAIFR granted a conditional stay on 03.08.2001 requiring deposit of Rs.10 crores in a non-lien account of the SBI. The amount of Rs. 3 crores out of this non lien deposit of Rs.10 crores was to be utilized for part payment of the terminal benefits of the retired workers. It was categorically stated that the failure to deposit the amount of Rs.10 crores would result in dismissal of the appeal. The next date fixed in the appeal was 06.09.2001.

5. The said company aggrieved by the condition imposed to deposit Rs. 10 crores for entertainment of the appeal, approached the High Court of Rajasthan at Jaipur in WP(C)4380/2001. The interim order was passed by the High Court on 04.09.2001 staying the operation of the order dated 03.08.2001 passed by the AAIFR. The appeal thereafter came up before the AAIFR on 06.09.2001. The AAIFR took the view

that the purport of the Order dated 04.09.2001 of the High Court was to stay the condition of deposit of Rs.10 crores and thus proceeded to hear the appeal on merits. The AAIFR dismissed the appeal by a reasoned order. The said company thereafter moved an application in the writ petition filed before the Rajasthan High Court and in terms of the order dated 12.09.2001, the operation of the order dated 06.09.2001 passed by the AAIFR dismissing the appeal was also stayed.

6. The writ petition came to be finally decided by the Rajasthan High Court on 02.08.2004 whereby the impugned orders of the AAIFR dated 03.08.2001 and 06.09.2001 were set aside and the appeal was restored to its original number. Status quo was directed to be maintained as regards the deposits till disposal of the appeal.
7. The Cement Works Karamchari Sangh filed an SLP 4088/2005 against the said Order of the Rajasthan High Court dated 02.08.2004 in which leave was granted and the appeal was registered as Civil Appeal No.2076/2008. The appeal was decided vide a detailed order of the Hon'ble Supreme Court dated 24.03.2008. The operative directions are contained in para 38 of the said judgment. The sub para A of the said para 38 of the said judgment deals with directions regarding proceedings before the BIFR/AAIFR which reads as under:

" A. Re. The proceedings before the BIFR/AAIFR

- I. The matter is remitted to the AAIFR and it is directed to restore Appeal No.22/2001 filed by JUL against the winding up order, dated November 24,2000 passed by the BIFR, provided the deposit of Rs.10 crores s, as directed by the AAIFR by its order dated August 3,

2001 is made within two months from today.

II. In case the appellant JUL fails to make the deposit within the specified time, the appeal shall stand dismissed and the earlier order passed by the AAIFR on September 6, 2001 shall stand restored.

III. In case, however, the deposit is made within the specified time, the AAIFR will proceed to dispose of the appeal after hearing the appellant and any of the parties to this appeal before this Court (including the proposed interveners) or the parties to the appeal before the AAIFR who may appear before it. The judgment of this Court is deemed sufficient notice to all concerned and the AAIFR need not issue to all concerned and the AAIFR need not issue any further notices to any of the parties.

IV. In case the appellant makes the deposit within the specified time, it will be open to it to file before the AAIFR a revised rehabilitation scheme. It will also be open to any other parties including the workmen to file before the AAIFR a rehabilitation scheme for the sick company. In case a revised scheme is filed the AAIFR will consider it and pass appropriate orders in accordance with law.

V. Most importantly, the AAIFR shall make all endeavours to dispose of the matter as early as possible and in any event not later than four months from the date of deposit of Rs.10 crores by the appellant."

(emphasis supplied)

8. A reading of the aforesaid order makes it clear that the said Company was required to deposit the amount of Rs.10 crores within two months from the date of the Order as a pre condition for the appeal filed by the Company to be heard on merits by the AAIFR failing which the appeal would stand dismissed. If the amount was so deposited within the specified time, the appeal was to be heard on merits without requiring any further notice to

the parties and the judgment passed by the Supreme Court was deemed to be sufficient notice to all the concerned parties.

9. The direction which has given rise to the subsequent legal proceedings including the present writ petition arises from the direction contained in para 38 (IV) of the Order dated 24.03.2008 which not only permitted the said Company to file a revised rehabilitation scheme before the AAIFR but also gave an opportunity to 'any other parties' including the workmen to file before the AAIFR a rehabilitation scheme for the sick company. It is in view of this direction that the petitioner herein sought to move an application under Section 13 of the said Act for impleadment as a party in the proceedings. There was, in fact, a dual prayer made of impleadment as a party in the proceedings as also permission to submit a revival scheme/proposal to revive and rehabilitate the sick company. It is this application which has been rejected by the impugned order dated 17.07.2008.

10. The AAIFR did notice the plea of the learned counsel for the Government of Rajasthan that the promoters had no preferential right to file a scheme and therefore the petitioner, as a applicant, should be allowed to file a rehabilitation scheme for revival of the said company. In fact, the Government of Rajasthan supported the scheme sought to be propounded by the petitioner. However, the AAIFR opined that the term "any other parties" would necessarily mean a party to the appeal before the Hon'ble Supreme Court including the proposed interveners" or the parties to the appeal before the AAIFR, but could not be treated as an open ended concept which allows anybody interested in the revival of the said company to file a rehabilitation scheme.

It was opined that allowing such an application would amount to opening floodgates for anybody or everybody who may claim to have any interest in this case to file a rehabilitation scheme for the said company. The petitioner not even being a proposed intervener before the Hon'ble Supreme Court, the application was held as not maintainable. The AAIFR did note that the petitioner was ready to settle all liabilities including workmen's dues, dues of secured creditors and unsecured creditors and statutory dues of the said company. It was observed that under Section 18(1)(b) of SICA, it was the BIFR which has the power to sanction a scheme providing for proper management of the sick industrial company by change or takeover of the management of the sick industrial company while the AAIFR was only concerned with the appeal.

11. Learned senior counsel for the petitioner contended before us that the phraseology used by the Hon'ble Supreme Court in para 38(IV) of the order dated 24.03.2008 is quite wide in its meaning and it should not be given a restrictive meaning. Thus the expression "any other parties" should not be deemed to imply any party which is interested in the company. In the alternative, it was submitted that in any case the petitioner had a right to propound the scheme in view of the support extended by the Government of Rajasthan which was a party in all the proceedings. The plea of the company that the appeal before the AAIFR was only concerned with the validity of the order of the BIFR was sought to be negated on the basis that the Hon'ble Supreme Court itself had given liberty to the said Company to file even a revised rehabilitation scheme. There was also a

liberty given to "any other parties" including the workmen to file a rehabilitation scheme. Thus, the AAIFR had to consider not only the effect of the Order of the BIFR seeking to wind up the company on account of SS-92 not being viable but to also consider any revised scheme of the management of the company as also a scheme which may be presented by "any other party".

12. In view of the line of the submissions advanced by learned counsel for the petitioner, a specific query was posed to the counsel for the Government of Rajasthan about its stand. Learned counsel for the Government of Rajasthan categorically stated that it was supporting the case of the petitioner. A reference was also made to the letter dated 20.05.1999 of the Government of Rajasthan referring to the well established credentials of the petitioner and asking the IIBI to look into the scheme as in its view the earlier promoters did not appear to be interested in reviving the company. Not only that, the counsel stated that he had *received clear instructions that the Government of Rajasthan was willing to adopt and sponsor the scheme propounded by the petitioner being a party in the proceedings in order to enable the AAIFR to consider the scheme on merits.*

13. The arguments on the petition were concluded on the first date itself, i.e. 19.08.2008, as the learned counsel for the parties wanted to finally argue the matter. It was pointed out that all the necessary parties in respect of the matter in controversy were already present. Learned counsel for R-1, the present management, apart from advancing his submissions sought

some time to obtain instructions and that is the reason the matter was deferred to 25.08.2008. R-1 was of the view that that it may be able to persuade the Government of Rajasthan to continue to support its scheme. On 25.08.2008, learned counsel for the Government of Rajasthan, on instructions from Mr. S.N.Sharma, Sr. Addl.Director, Department of Industries, Government of Rajasthan, stated that he was re-affirming what had been submitted on the last date of hearing that the scheme propounded by the petitioner was being adopted and sponsored by the Government of Rajasthan for consideration by the AAIFR.

14. Insofar as the submissions on merits by learned counsel for R-1 and R-9(the said Company) are concerned, the impugned order was sought to be supported by contending that the scope of scrutiny by the AAIFR is limited since the appeal was filed by the present management i.e.R-1. Thus the scrutiny by AAIFR should be limited to the winding up order passed by the BIFR and a restrictive meaning has to be given to the direction in para 38 (IV) of the Order dated 24.03.2008 of the Hon'ble Supreme Court. The amount of Rs.10 crores had been deposited within time and thus the appeal has to be heard on merits which included the right to file a revised rehabilitation scheme. It is only any other party including the workmen who had been given a right to file a revised rehabilitation scheme and the matter should not be made open ended by inviting schemes from third parties as that would have required consideration by the BIFR with notice to the public at large.

15. We have given our thought to the submissions advanced by learned counsel for the parties. The first aspect to be

considered is as to the purport of the order passed by the Supreme Court on 24.03.2008 while passing the directions in respect of the proceedings before the BIFR/AAIFR in para 38 (IV). It cannot be lost sight of that the matter in appeal was not restricted only to hearing the appeal on merits insofar as the impugned order by the BIFR for winding up of the company was concerned. It appears that the passage of time has changed the situation and thus the Supreme Court deemed it appropriate in its wisdom to permit the appellant therein to file even a revised rehabilitation scheme. Not only that, liberty was given to "any other parties" including the workmen to file a rehabilitation scheme before the AAIFR. The scope of scrutiny by AAIFR was thus extended as per the directions of the Supreme Court. In respect of the conclusions as aforesaid, we are also of the view that the object of the direction could not have been to permit anyone and everyone to file a scheme for rehabilitation as that would open the floodgates. It may also require an appropriate public notice giving all and sundry a right to submit their schemes. To that extent, no fault can be found with the impugned order.

16. There is, however, an extremely important aspect in the present matter which is the adoption and sponsoring of the scheme of the petitioner by the Government of Rajasthan.

17. The Government of Rajasthan is a party in all the proceedings. The Government of Rajasthan has a vital interest in the matter and even the earlier scheme of the appellants had been forwarded by the Government of Rajasthan. It cannot thus be said that a scheme, which is sought to be adopted and

sponsored by the Government of Rajasthan, which is a party, cannot be considered by the AAIFR. Learned counsel for R-1 sought to produce in Court an application filed by the Government of Rajasthan before the AAIFR in July, 2008 seeking leave to permit the petitioner to submit the rehabilitation scheme and further seeking certain other prayers about the manner of dealing with Rs.10 crores deposited by the earlier management for payment of terminal benefits to the retired workmen. Learned counsel claimed that the application was not to the knowledge of R-1 when the matter was heard on 19.08.2008 though this was disputed by counsel for the Government of Rajasthan. On the basis of the application, it was pleaded that the Government of Rajasthan cannot ask for utilization of the amount deposited by R-1 and simultaneously seek submission of the scheme by the petitioner.

18. In our considered view, the said plea on behalf of R-1 is misplaced for the reason that the intent of the application is very clear from its prayer i.e. the rehabilitation scheme of the petitioner was being supported by the Government of Rajasthan. The Government of Rajasthan has taken a further step by submitting before us that it was adopting and sponsoring the scheme.

19. A reference has been made before us to the judgment of a Division Bench of this Court in Bennett, Coleman & Co. Ltd and Ors v. Appellate Authority for Industrial and Financial Reconstruction and Ors; AIR 1996 Delhi 172 where it was observed in para 6 that no principle of law which gave the promoters any preferential right for revival of the company after

the stage under sub-section (2) of Section 16 is crossed was brought to their notice. However, we see not much relevance of the said judgment as what has to be seen is the directions passed by the Supreme Court and the rights given to the parties under the said directions.

20. We are thus of the considered view that though the petitioner is not required to or entitled to be impleaded as a party, the scheme of the petitioner is required to be considered by the AAIJR as the same has been adopted and sponsored by the Government of Rajasthan. The Government of Rajasthan would, of course, have a right to seek any assistance from the petitioner during the course of hearing or for any other act in furtherance to the scheme of the petitioner. The AAIJR would have all the powers and authority to impose such conditions as it deems appropriate for consideration of the said scheme including of deposit of amounts and for compliance of the same, the Government of Rajasthan may seek the assistance of the petitioner.

21. The object of any scheme of rehabilitation is to seek revival of the sick company. The scheme under which the R-1 has taken the management of the company was held not workable by the BIFR which is one of the issue before the AAIJR. The Apex Court while giving directions to decide the appeal also permitted the first respondent to file a revised scheme for rehabilitation of the company to be considered along with other schemes, if any, as may be propounded by other parties including workers. In fact besides depositing the requisite amount, respondent No.9 has also submitted the revised rehabilitation scheme. It is also

submitted by them before us that after the proceedings held on 19.8.2008, some further amount has also been deposited to show their *bona fide*, though it is not of much relevance.

22. The AAIFR would thus have to consider the revised scheme so submitted by R-9 while deciding the appeal. For the reasons stated above we are of the view that the scheme submitted by the petitioner which has been sponsored and adopted by the Government of Rajasthan is also required to be considered simultaneously without impleading them as a party to the proceedings as the said scheme also comes within the definition of a scheme submitted by "*any other parties*" permitted by the Apex Court as per the directions contained in para 38 (IV) of the order dated 24.3.2008. However, it would be subject to the deposit of at least a sum of Rs.10.00 crores by the petitioner either before the State of Rajasthan or before AAIFR within such time as may be directed by AAIFR, in addition to complying with such other and further conditions imposed by AAIFR as may be deemed fit and proper.

23. The writ petition is disposed of with the aforesaid directions leaving the parties to bear their own costs.

SANJAY KISHAN KAUL, J.

AUGUST 29, 2008
dm

MOOL CHAND GARG, J.