

**(1996) 04 CAL CK 0020**

**Calcutta High Court**

**Case No:** Civil Order No. 11541 (W) of 1991 and C.R. 7863 (W) of 1983

India Machinery Co. Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

**Date of Decision:** April 30, 1996

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Industrial Reconstruction Bank of India Act, 1984 - Section 40
- Industries (Development and Regulation) Act, 1951 - Section 18A, 18A(2)

**Citation:** (1996) 2 ILR (Cal) 303

**Hon'ble Judges:** Nikhil Nath Bhattacharjee, J

**Bench:** Single Bench

**Advocate:** S.N. Mukherjee, Ratnanko Banerjee and S.S. Khanna, for the Appellant; Saptansu Basu, for the Respondent

**Final Decision:** Allowed

### **Judgement**

Nikhil Nath Bhattacharjee, J.

The aforesaid writ applications are taken up together for sake of convenience. The facts are stated below:

2. The Petitioner No. 1, India Machinery Company Ltd. (hereinafter referred to as the Petitioner company) is engaged in the manufacturing and trading of Weighing Machines, Printing Machines, Machine Tools, Textiles Machines, Agricultural Implements etc. The Petitioners No. 2 to 6 are the registered members of the Petitioner company holding more than 51 per cent of its equity capital. In the year 1967 the company declared a lock-out and reopened on April 15, 1970. By an order dated November 25, 1972 the management and control of the Petitioner company was taken over by the Central Government u/s 18A of the Industries (Development & Regulations) Act, 1951. No hearing was given before the take over. Some share-holders and directors of the company challenged the said take over by a writ

petition and in the Civil Rule No. 8278 (W) of 1972 P.K. Banerjee, J. held that there had been breach of natural justice but that the order of taking over management could not be set aside as the Petitioner company was not a party to the said writ petition. Section 18A(2) of the Industries (Development & Regulations) Act. 1951 lays down that the order of taking over of the management shall have effect for a period not exceeding five years initially, though, however, the Central Government may extend continuation of take over of management and control of the industrial undertaking for such further period not exceeding two years at a time as may be specified in the order so, however, that the total period of such continuance after the initial period of five years does not exceed twelve years. In other words the management and control of an industrial undertaking can be retained by the Central Government for a total period of seventeen years by issuance of notified orders.

3. In C.R. No. 7863 (W) of 1983 the subject-matter of challenge is the order dated May 21. 1983 passed by the Central Government directing that the original order dated November 25, 1972 by which the management of the Petitioner company was taken over for five years shall continue to have effect for a further period upto and inclusive of November 24. 1983. In this writ application the Petitioner company has prayed for mandamus commanding the Respondent Union of India not to give effect or further effect to the said order dated May 21, 1983 as also commanding the Respondent to return the management of the Petitioner company to its share-holders in accordance with law.

4. In C.R. No. 11541 (W) of 1991 the challenge is the refusal on the part of the Central Government to deliver back possession of the assets and records of the company. The Petitioners have prayed for issuance of mandamus commanding the Respondents to deliver forthwith to the Petitioners the possession of the assets including the factory and undertaking situated at Dass Nagar, Howrah, as also all records and documents of the Petitioner company which are required to be kept statutorily in the registered office of the company. The alternative prayer is for appointment of a Special Officer to receive possession of the undertaking of the Petitioner company and to hold a general meeting for the purpose of appointment of Directors of the said company and thereafter to deliver possession of the undertaking to the newly appointed directors.

5. There is no denying that since the take over in 1972 the maximum period of seventeen years expired on November 24, 1989. But till today the company has not been handed over to the writ Petitioners or to its share-holders. No further extension for the take over period beyond November 24, 1989 having been given, the workers and staff union of the Petitioner company filed a writ application under Article 226 of the Constitution of India praying for a direction on the Union of India to ensure that the Petitioner company continued to be controlled and run by or on behalf of the Central Government. On August 8, 1990 the said writ application was

dismissed by Mr. Justice Umesh Chandra Banerjee.

6. After the Central Government took over the management of the Petitioner company the Industrial Reconstruction Corporation of India Ltd. (IRCI) which is subsequently renamed as Industrial Reconstruction Bank of India (IRBI) advanced various Term Loans to the Petitioner company which together with interest and liquidated damages calculated upto December 31, 1991 amounted to Rs. 9,65,41,000.00. The Bank of Baroda also granted several Term Loans to the Petitioner company after the take over which may amount to about a crore including interest.

7. On July 17, 1992 IRBI filed an application u/s 40 of the IRBI Act, 1984 in this Court against the Petitioner company praying for an order for sale of the properties and assets belonging to the company and appointment of a receiver over such assets and properties with a direction to take over possession of the same forthwith. Also injunction was prayed for to restrain the Petitioner company from transferring or removing or alienating the properties and assets of the company.

8. By an order dated July 17, 1992 Ajit Kr. Sengupta, J. appointed Mr. Dipak Deb, Advocate as receiver and by an interim order restrained transfer, removal or alienation of the assets and properties of the Petitioner company.

9. By an order dated December 21, 1992, Ajoy Nath Roy, J. appointed Mr. Dipak Deb as the Sole Receiver to undertake and process the sale of the assets and properties of the Petitioner company, the sale by the Receiver shall, however, be subject to confirmation of the Court.

10. Being aggrieved by the said order, India Machinery Mazdoor Union preferred an appeal before the Division Bench and by an order dated February 12, 1993 the Division Bench directed the Receiver to proceed with the sale of the assets on condition that the sale notice shall be published as ordered by the Trial Court but as a running concern. On May 26, 1993 the said Division Bench observing that a scheme for revival of the undertaking being under consideration ordered that the sale shall not be effected and the interim order to continue for six weeks hence.

11. There is no denial that the assets and properties of the Petitioner company are at present in the custody of the Receiver and that IRBI and Bank of Baroda are spending huge sums of money every month to pay the salary of the security guards appointed to safe-guard the assets and properties which are mortgaged to IRBI and Bank of Baroda.

12. In the aforesaid background the question for consideration is how far the writ applications are liable to be allowed, if at all. In the first application C.R. No. 7863 (W) of 1983 the challenge is against the extension order dated May 21, 1983. It is already evident that after the said extension, a number of extensions have already been given and thereby this writ application has become infructuous. In the second

writ application C.R. No. 11541 (W) of 1991 the subject-matter of challenge is the refusal on the part of the Central Government to deliver back possession of the assets and records of the company even after expiry of the maximum period of 17 years for which an industrial undertaking can be kept under control and management by the Central Government. It has transpired that during the period the Petitioner company was under control and management of the Central Government financial assistance from the IRCI (IRBI) as also from the Bank of Baroda were received to help the company to tide over its financial difficulties and the said assistance has now amounted to more than 11/12 crores of rupees including interest. The question is if the Petitioner company is now returned to its shareholder who will ensure repayment of the loans received from the IRBI and Bank of Baroda? Also significant is the fact that assets and properties of the Petitioner company are mortgaged to the said two financial institutions and if the company is returned back to the share-holders, such return must necessarily be subject to such mortgages It appears that at some point of time there was a talk of revival of the Petitioner company but nothing tangible appears to have come out, at least on the record. At the same time there is no justification for keeping the company under the control of the Central Government on papers alone although the company is practically in the process of winding up.

13. In such circumstances and in all considerations the following order is passed for ends of justice:

The writ petition No. C.R. 7863(W) of 1983 having been infructuous is dismissed.

14. The writ application No. 11541 (W) of 1991 sustains and is allowed subject to mortgages subsisting with IRBI and Bank of Baroda for the financial assistance extended to the Petitioner company. To liquidate the mortgages and to get the assets and properties of the company returned back, the erstwhile Directors, or share-holders of the moiety share of the Petitioner company may apply to the company Court for voluntary winding up of the Petitioner company in accordance with law or they may otherwise take steps for liquidating the debts and liabilities to get all assets and properties of the Petitioner company returned to them free from any encumbrance. Any step towards the voluntary winding up of the company or refunding the loans including interest received from the aforesaid financial institutions has to be taken within sixty days from this date, in default the Receiver Mr. Dipak Deb shall take steps for sale of the company by public auction after due publicity given for the said auction through at least two leading newspapers of each of Calcutta, Delhi and Bombay. If not otherwise directed the receiver shall initiate such steps for auction sale after lapse of sixty days from today and must complete the process of sale within a period of three Months thereafter. The sale shall be subject to approval by this Court and its proceeds shall be applied at the first instance towards liquidating the loans received from IRBI and Bank of Baroda and thereafter any sum left after deducting the cost and expenses shall be kept in

deposit in any Nationalised Bank. The Receiver shall place all offers in sealed covers before this Court for acceptance and further order. A plain copy of the operative part of this judgment shall be given to the contesting parties.

15. There shall be no order as to cost.