

(2009) 07 CAL CK 0088

Calcutta High Court

Case No: Writ Petition No. 8662 of 2009

Kanoria Jute and Industries Ltd.
Sangrami Shramik Union of and
Another

APPELLANT

Vs

Appellate Authority for Industrial
and Financial Reconstruction and
Others

RESPONDENT

Date of Decision: July 2, 2009

Acts Referred:

- Sick Industrial Companies (Special Provisions) Act, 1985 - Section 17, 18, 20(1)

Citation: (2010) 156 CompCas 131

Hon'ble Judges: Sanjib Banerjee, J

Bench: Single Bench

Advocate: Soumya Majumder, Biswarop Bhattacharya, Arju Ray Mukherjee and Ashmita Ghosh, for the Appellant; Utpal Bose, Deepak Jain, S. Sengupta, Jayanta Bhattacharya, Deepak Agrawal, H. Chakraborty, Sutanu Karmakar, A. Chakraborty, Soumitra Banerjee, Aparna Banerjee, Mintu Kr. Goswaami, Anindya Lahiri and Prasun Mukherjee, for the Respondent

Judgement

Sanjib Banerjee, J.

The first petitioner claims to be a union representing some of the workmen of the company. A rival faction of the workers of the company has seriously questioned the locus standi of the petitioners to maintain the proceedings.

2. Kanoria Jute and Industries Ltd. (the company) was referred to the Board for Industrial and Financial Reconstruction (BIFR) when the Sick Industrial Companies (Special Provisions) Act, 1985, was in its infancy. It is a matter of concern that for the next 22 years the company has languished before the Board though proceedings have been had before the appellate authority and also before this court.

3. The BIFR recommended u/s 20(1) of the said Act of 1985 that the company be wound up. Several orders passed in the proceedings including one by the appellate authority were carried in W.P. No. 8237 (W) of 2006 and W.P. No. 7220 (W) of 2007 before this Court which culminated in an order of June 27, 2008 (Kanoria Jute and Industries Ltd. Sangrami Shramik Union v. Appellate Authority for Industrial and Financial Reconstruction (2009) 149 Comp Cas 555). The order of the learned single judge of this Court set aside an order of July 20, 2005, passed by the Appellate Authority for Industrial and Financial Reconstruction (AAFIR) and an order dated December 31, 2002, passed by the BIFR. The BIFR was directed to reconsider "the question of revival of the company". For such purpose, the order stipulated that the BIFR should give "all parties" reasonable opportunity to submit their proposals and schemes, "and after making a detailed inquiry it shall explore the possibility of approving a scheme for revival of the company". The BIFR was left free to make necessary orders imposing conditions on any party or seeking securities.

4. The matter was thereafter taken up by the BIFR and following the meeting before it held on September 2, 2008, it made an order directing the operating agency, IFCI, to issue a notice for change of management u/s 18 of the said Act of 1985. The further directions in the order required parties who submitted any proposal to deposit 25 per cent, of the cost of the scheme with the operating agency to establish their bona fides and the seriousness of their proposal. The present promoters were also left free to give a proposal for the revival of the company. Incidental directions were given for the operating agency to allow interested parties to obtain information regarding the company and its assets and the operating agency was required to make a preliminary examination of all the proposals received pursuant to the directions.

5. The order of September 2, 2008, was carried in appeal by the company at the behest of the promoters. The appellate authority held that the BIFR had failed to appreciate the purport of the order of this Court made on June 27, 2008 (Kanoria Jute and Industries Ltd. Sangrami Shramik Union v. Appellate Authority for Industrial and Financial Reconstruction (2009) 149 Comp Cas 555). The appellate authority dwelt at length on the scope of the expression "all parties" appearing in the order of June 27, 2009 and ultimately concluded that the BIFR had transgressed its authority in acting contrary to the direction of this Court and in taking note of the history of the case that had been rendered irrelevant by virtue of the order dated June 27, 2008. The appeal succeeded and the order of the BIFR was set aside. The matter was thereafter remanded to the Board for fresh consideration.

6. The AAIFR order of March 19, 2009, is under challenge here. The writ petitioners say that there was no occasion for the appellate authority to interfere with the order of the BIFR and the appellate authority erred in jurisdiction in giving a constricted meaning to the order of June 27, 2008. The petitioners also assail the decision of the BIFR taken on December 18, 2008, to ascertain the status of the first petitioner. In

the order of December 18, 2008, the BIFR had noticed that there was a dispute between two rival factions represented by two sets of lawyers both claiming to be the rightful representative of the workers of the company. The BIFR required the company to apprise the BIFR from the relevant rules as to which was the rightful representative. In addition, the BIFR required the operating agency to assess the matter and report to the BIFR on such score.

7. A rival faction which is represented at the hearing today says that subsequent orders of the BIFR have overtaken the petitioners' present grievance and that it is the rival faction which has now been recognised by the BIFR to be the rightful representative and the present petition, apart from the other sinister motives, has been instituted for these petitioners to cite the acceptance of the writ petition as acknowledgment of their locus to represent the workers of the company.

8. The appellate authority, in its order of March 19, 2009, held that the order of this Court did not permit the BIFR to consider any proposal for the revival of the company to be submitted by any person other than the parties who were represented in the earlier proceedings before this court. Such interpretation does not appear to be reasonable as nothing in the order dated June 27, 2008 (*Kanoria Jute and Industries Ltd. Sangrami Shramik Union v. Appellate Authority for Industrial and Financial Reconstruction* (2009) 149 Comp Cas 555), would lend to such a view. The operative portion of such order may be noticed in its entirety (page 562):

For these reasons, I dispose of the writ petitions ordering as follows. The orders of the AAIFR dated July 20, 2005 and the BIFR dated December 31, 2002, are hereby set aside. The BIFR is directed to reconsider the question of revival of the company. For the purpose it shall give all parties reasonable opportunities to submit their proposals and schemes, and after making a detailed inquiry it shall explore the possibility of approving a scheme for revival of the company. During the pendency of the proceedings, it will be free to make necessary orders imposing conditions on any party and seeking securities from anyone submitting the revival scheme or proposal before it. It will also be free to consider prayers and requests that may be made by the creditors including Mr. Mantha's client for any order or direction of any nature. The whole inquiry process shall be concluded and final order shall be made by the BIFR within six months from the date of communication of this order to it. By way of clarification, I say that all the questions connected with the claims and counter claims made by the parties in the petitions and affidavits filed in these cases shall remain open, and that the BIFR will be free to decide any or all of them, if occasion arises. There shall be no order as to costs.

9. What the order required was that the BIFR should consider any revival proposals or schemes that may be submitted by any of the parties before the court. It did not preclude any revival package or proposal being submitted by any person who was not a party to the proceedings that culminated in such order. The substance of the order was that every attempt should be made to explore the possibility of reviving

the company. There were no fetters placed on the class of persons who could apply for revival of the company. The appellate authority, in contesting the order of June 27, 2008, in the manner that it has acted imprudently and in error of jurisdiction.

10. The BIFR noticed that revival schemes had been furnished before it by both the promoters of the company (in the name of the company) and by another of Bajaj Jute and Machinery P. Ltd. The directions contained in the BIFR order recognised that the company's revival scheme would also be considered. Though there is no specific reference to the scheme that was already on record and had been submitted by Bajaj Jute and Machinery P. Ltd., the first direction contained in the BIFR of September 2, 2008, would take in the scheme furnished by Bajaj Jute and Machinery P. Ltd., before the Board.

11. It is true that the order dated June 27, 2008, in a sense, wiped the slate clean and there may not have been any need to refer what transpired in the BIFR proceedings prior to such date. But such order did not bind the BIFR to only consider the proposals submitted by the parties to the court proceedings and, if the BIFR, in its opinion as an expert body, considered it fit to invite outsiders to also submit schemes for the revival of the company to assess the schemes already submitted against the other schemes to be submitted by outsiders, there was neither any irregularity committed by it nor was it so arbitrary or unreasonable that warranted correction in appellate proceedings.

12. As to the decision of the BIFR taken on December 18, 2008, in requiring the company and the operating agency to assess the locus of the petitioners herein to represent the workers of the company, it appears that the BIFR abdicated a jurisdiction vested in it by law. The BIFR is the primary body to recognise the entitlement of persons appearing before it to represent various parties interested in the matter. Surely, the company's assessment of any rules would not tell upon the locus of any workers or a trade union to represent the workers before the BIFR. The operative agency may have a role to play in assessing any revival scheme or in assessing the financial matters relating to a company. The operating agency, in the scheme of the said Act of 1985, cannot take upon the burden of adjudicating as to whether a party claiming a right to appear before the BIFR is authorised to be represented. It was the BIFR's prerogative to be the sole arbiter of such dispute. The BIFR would do well to revisit the position relating to this aspect in its order of December 18, 2008 and adjudicate upon the locus standi of the petitioners herein to represent the workers.

13. The company has contended that the order of June 27, 2008, implied that the BIFR had to restrict itself to the process envisaged u/s 17 of the said Act and not to invoke its authority u/s 18 of the Act to change the management. There is nothing in the order of June 27, 2008, to sustain such interpretation. Further, the BIFR has not directed a change in management. The BIFR has also indicated that the company's proposal would be considered. The BIFR acted most judiciously in telescoping the

process for assessing the revival package by avoiding further delay. If the BIFR does not find the company's proposal worthy, it would immediately have before it other proposals that may be considered and found suitable. It has only avoided the possible delay that would have occasioned in the event the company's proposal was to be rejected. The company's objection to this betrays the promoters' motive in lingering the process, which cannot be condoned.

14. In fine, the appellate authority's order of March 19, 2009, is set aside and the BIFR's order of September 2, 2008, is revived. The appearing parties submit that the BIFR has convened a meeting relating to the company on July 7, 2008. The BIFR should complete the exercise that it has embarked upon expeditiously as possible, considering that this company has remained in its records for 22 years.

15. It is also made clear that this order should not be taken to be a recognition of the locus standi of the petitioners to represent the workers of the company and the BIFR will be free to arrive at a decision on such aspect of the matter.

16. W.P. No. 8662 (W) of 2009 is disposed of without any order as to costs.

17. Urgent certified Photostat copies of this order, if applied for, shall be given to the parties subject to compliance with all requisite formalities.