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CW.4718/2001

♦ IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CW 4718/2001

DIRECTOR GENERAL OF INCOME TAX ..... Petitioner  
Through Mr.Sanjiv Khanna with Ms.Premalata  
Bansal & Mr.Rajendra, Advs.

versus

A.A.I.F.R. & ORS. .... Respondents  
Through Dr.Debi Pal, Sr. Advocate with  
Mr.B.S.Nagar for R-3.

**CORAM:**  
**HON'BLE MR. JUSTICE D.K. JAIN**  
**HON'BLE MR. JUSTICE MADAN B. LOKUR**

**ORDER**  
**04.03.2003**

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This writ petition by the Director General of Income Tax (Admn.), New Delhi is directed against the order dated 17 November 2000, passed by the Appellate Authority for Industrial & Financial Reconstruction (for short 'the AAIFR'), dismissing petitioner's appeal against the order passed by the Board for Industrial & Financial Reconstruction (for short 'the BIFR') on 9 July 1999 in Case No.60/99, declaring M/s.Amitabh Bachchan Corpn. Ltd., respondent No.3 herein, as a sick industrial company.

The main grievance of the petitioner before the AIFR was that the BIFR has held the demand created by the Income Tax Department against respondent No.3 as a contingent liability, without affording an opportunity of being heard,



with the result that the Income Tax Department will not be in a position to recover its dues because these will not be treated as part of the liabilities of the company.

We have heard Mr.Sanjiv Khanna, learned senior standing counsel for the revenue and Dr.Debi Pal, learned senior counsel for respondent No.3.

During the course of arguments, it is pointed out by Dr.Pal that the said respondent has already given an undertaking before the BIFR, which forms part of the summary record of the proceedings of hearing, held on 5 December 2002, which reads as under:

"The Bench recalled that at the hearing held on 9.7.1999, the Bench had declared the company M/s. Amitabh Bachchan Corpn. Ltd. (since renamed A.B.Corp. Ltd.) (ABCL) a sick industrial company under section 3(1)(o) of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as the 'Act'), and had appointed IDBI as the Operating Agency (OA). A Draft Rehabilitation Scheme (DRS) was circulated on 13/7/01, which was discussed at the hearing held on 16/10/01. ABCL submitted that they had filed an appeal with the Tribunal against the order of Directorate of Income Tax (DIT), which was yet to be heard. DIT submitted that Income tax demand of Rs.17.74 crores was outstanding but a provision of Rs.6.58 lacs only had been made towards IT liability. The Bench had noted that as the company had filed an appeal against the order of the DIT, the latter could not be asked to consider granting exemptions envisaged in the rehabilitation scheme. The company/promoters would undertake that in case the Tribunal did not allow the appeal filed by the company, they would make arrangements for payment of the dues as per the order of the Tribunal. The scheme was thereafter sanctioned on 22/4/02 providing for the Income Tax Deptt. to consider granting reliefs to the company. Further, all liabilities not disclosed in the DRS were to be the personal responsibility of the promoters."



Learned counsel submits that in view of the said undertaking, respondent No.3 is obliged to liquidate its liability towards the Income Tax Department as and when its appeal pending in the Tribunal is decided. Learned counsel further states that the said respondent undertakes to this Court also that as soon as the Tribunal decides the appeal of the company, demand if any, pursuant to the said order shall be paid forthwith, subject of course to the company taking recourse to any legal remedy which may be available to it in law and obtaining appropriate orders in those proceedings.

We feel that the afore-extracted portion of the summary record of the proceedings of the BIFR and the statement of learned counsel for respondent No.3 before us adequately protects the interest of the revenue and the issue of non-grant of opportunity of being heard by the BIFR is rendered a mere academic exercise.

Resultantly, while taking on record the afore-noted statement of learned senior counsel for respondent No.3, we dispose of the writ petition without expressing any opinion on the question of grant of opportunity to the Income Tax Department of being heard by the BIFR.

Learned counsel for the parties are agreed that they will approach the Income Tax Appellate Tribunal for getting the hearing in the appeal expedited.

*D.K. Jain*  
D.K. JAIN, J

*Madan Lokur*  
MADAN B. LOKUR, J

MARCH 04, 2003

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