



% 16.08.2011

Present: Mr. Abhishek Maratha, Senior Standing Counsel for the Revenue with Ms. Sulekha Verma, Additional Commissioner of Income Tax in person. Mr. P.V. Kapur, Sr. Advocate with Ms. Maneesha Dhir, Mr. Apoorve Karol & Mr. Chirag Kher, Advocates for Respondent No.1.

+ WP (C) No.1875/2011

The petitioners seek quashing of the orders passed by the BIFR in Case No.17/1997 dated 9.4.2010 as well as by the AAIFR in Appeal No.133/2010 dated 31.1.2011 in the present writ petition filed under Article 226 of the Constitution of India.

It is the say of the petitioner/Department that once the net worth of a company becomes positive, the benefit of the scheme should not be available to the party. We put to learned counsel for the petitioners that this submission is contrary to the settled legal position in view of the judgements of this Court in WP (C) No.13505/2009 titled M/s. Synergy Steels Limited Vs. The Appellate Authority for Industrial & Financial Reconstruction and Ors., decided on 21.9.2010 and in WP (C) No.1940/2011 (along with connected matters) titled Director General of Income Tax (Admn.) & Anr., New Delhi Vs. Board for Industrial & Financial Reconstruction, New Delhi and Ors., decided on 23.3.2011.

Learned counsel for the petitioners faced with the aforesaid position seeks to contend that respondent No.1 has not been



complying with the obligations under the scheme and they, in fact, approached this Court by filing WP (C) No.4614/2011, which they withdrew so that they could seek modification of the scheme by approaching the BIFR. We may note that a window of two (2) months was provided by this Court in terms of order dated 5.7.2011 for the said purpose, which has still not expired. It is, thus, the say of the learned counsel for the petitioners/Department that respondent No.1 is violating the scheme and thus the benefit of the scheme should not be made available to respondent No.1.

The violation alleged by the petitioners is broadly that respondent No.1 has been indulging in sale of assets without defraying the income tax liabilities in consonance with paragraph 9S(b) of the sanctioned scheme. It is the learned counsel's say that the Department had not taken in past coercive action for recovery of huge amounts of income tax dues in accordance with the provisions of paragraph 10(k) of the sanctioned scheme. It is submitted that this course of action of sale of assets to satisfy the scaled down claim of the petitioners in terms of the scheme is not permissible. It is the say of the Department that since it is a scheme of revival, respondent No.1 ought not be allowed to sell the assets without paying the dues to the Department.

In our considered view, the impugned orders cannot be faulted, which are, predicated on the factual position at that stage of time. If the grievance is, as is now sought to be urged before us;



the appropriate remedy for the petitioner is to move the BIFR for lifting of the bar under Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 by articulating before the said forum the factum of alleged violation of the sanctioned scheme.

We make it clear that we are not commenting on the merits of the allegation as the finding with respect to the same has to be arrived at by the BIFR.

We accordingly dismiss the writ petition with the aforesaid liberty.

CM No.4012/2011 (Stay)

In view of the dismissal of the writ petition, no further directions are called for on this application. The same stands accordingly disposed of.

  
SANJAY KISHAN KAUL, J.

  
RAJIV SHAKDHER, J.

AUGUST 16, 2011  
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