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

\+ W.P.(C) 6238/2019, CM APPLs. 10800/2021, 20685/2021, 33895/2021, 33896/2021, 34574/2021

MODI SPINNING AND WEAVING MILLS COMPANY LTD. ..... Petitioner

Through: Mr. M.A. Niyazi, Mr. Nikhil Sighvi, Mr. Parth Aggarwal and Mr. Milind Raj Dixit, Advocates.

versus

UNION OF INDIA AND ORS. ..... Respondents

Through: Mr. Rakesh Kumar, CGSC with Mr. Sunil, Advocate along with Mr. Abhishek Khanna, GP for UOI.
Ms. Jayashree Shukla Dasgupta and Mr. Abhijeet Nandi, Advocates for defendant no. 4 (Dr. D.K. Modi)
Mr. Jayant K. Mehta, Senior Advocate with Mr. Adhish Sharma and Mr. N.S. Ahluwalia, Advocates in CM APPL. 3122/2021.
Mr. Nilesh Kumar, Advocate for R-4 & 7.
Mr. Gaurva Dhama, Addl. AG with Ms. Malvika Raghavan, Advocate for State of Punjab.
Mr. Ashish Mehra, Advocate for R-10
Mr. Pradeep Misra, Mr. Daleep Dhyani and Mr. Bhuwan Chandra, Advocates for R-16.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI
HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

O R D E R

% **26.04.2023**

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The hearing has been conducted through hybrid mode (physical and virtual hearing).

CM APPL. 10011/2023(by R-10 for directions)

1. The present application preferred by R-10 seeks issuance of directions to the petitioner for furnishing of details and other documents.
2. The learned counsel for the petitioner submits that the requisite monies, in terms of the para 3 of the order dated 03.03.2023, have been kept aside/deposited in the form of a Fixed Deposit Receipt (FDR) by the petitioner and the same shall be available for disbursal to the rightful claimants, in terms of the BIFR Sanctioned Scheme-04 (BIFR Scheme); in effect in terms of the said scheme, the interests of the workmen are secured; including interest, if payable, on the dues. Therefore, the restraint upon the petitioner from creating any encumbrance on the assets of the company, without permission of the court, may be lifted.
3. The aforesaid submission is persuasive and logical. In view of the above, the said restraint in the last sentence of para 5 of the order dated 21.07.2022 be removed.
4. Since the monies have been deposited, this application seeking deposit of title deeds, etc. apropos the assets of the petitioner company is redundant.
5. The application is disposed-off accordingly.

CM APPL. 3123/2021 & CM APPL. 33896/2021 (exemptions)

6. Allowed, subject to all just exceptions.
7. The applications stand disposed-off.

CM APPL. 3122/2021 (for impleadment by Modi Industries Ltd.)

8. Since the stay in terms of the order dated 21.07.2022 has been lifted, the

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learned counsel for the petitioner/non-applicant submits that the property identified as Modi Bhawan situated at Modinagar, Ghaziabad, U.P., will neither be treated as a property forming a part of the BIFR Scheme nor will it be utilized for implementation of the BIFR Scheme. Therefore, there is no need for impleading the applicant as a party

9. The learned counsel for the petitioner/non-applicant further submits that the statement apropos Modi Bhawan is only with respect to the present proceedings, without prejudice to the rights and contentions of the parties, apropos other claims and/or proceedings.

10. In view of the above, the application is disposed-off.

<u>CM APPL. 31878/2022(By R-10 for urgent relief)</u>

11. This application seeks urgent relief apropos pending dues of the applicant. It is stated that a residual amount remains to be paid which is about Rs.12 crores. It is agreed between the parties that R-4 & 5 or their nominees will transfer the requisite amount i.e. Rs.12 crores in terms of the BIFR Scheme to the petitioner company within a period of six weeks of receipt of this order, whereupon the said monies shall be kept in an FDR by the petitioner. The said amount will be disbursed to the creditors/statutory authorities in terms of the sanctioned scheme, which records as under:

> *"1.2 The sanctioned scheme was partly implemented by the company. The delay in implementation of the scheme and defaults to institutions/banks were mainly due to delays in sale of assets due to problems faced by the company in effecting the handing over of vacant possession of properties to buyers due to litigation/occupation of properties and the down trend in real estate market and recession in industry. The financial*

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progress made in the implementation of the scheme is given below:-

Cost of the scheme (Rs. lakh)			*Means of finance (Rs. lakh)*		
	As per SS	*Incurred till 30.09.02*		*As per SS*	*Raised till date*
OTS of liabilities of FIs/banks/others	*5178.00*	*2094.37*	*Sale of surplus assets*	*6036.99*	*1736.40*
Pressing creditors/ statutory dues	*1113.77*	*9.38*	*Sale of investments*	*1098.98*	*486.59*
Workers dues	*678.97*	*147.49*	*Fixed deposits*	*160.00*	*160.00*
Others	*0.67*	*...*	*Internal accruals*	*75.44*	*...*
Margin money for working capital	*400.00*	*...*			
Total	***7371.41***	***2251.24***	***Total***	***7371.41***	***2382.99***

1.3 The implementation of the scheme was reviewed by BIFR at the hearing held on March 20, 2003 wherein the Bench noted that there was no viable rehabilitation proposal with means of finance fully tied up for consideration of the Board and accordingly issued show cause notice for winding up of the company. However, the Bench permitted the company to submit a OTS proposal in the meantime.

1.4 The company submitted a revised rehabilitation proposal envisages splitting of the company into three parts by creation of two Special Purpose Vehicles and OTS of dues of secured creditors within a year of sanction of the revised scheme by

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BIFR. The rehabilitation proposal of the company was discussed at a joint meeting on June 9, 2003 wherein 85% of the secured creditors by value Punjab National Bank(PNB) Industrial Development Bank of India (IDBI), Industrial & Investment Bank of India (IIBI) and ICICI indicated that they were in-principle agreeable to the OTS subject to certain conditions. The rehabilitation proposal of the company was considered at the BIFR Hearing held on June 17, 2003 wherein the Bench directed that the proposal would have to be modified on the basis of the directions given and objections raised at the hearing, The company had submitted a revised rehabilitation scheme on July 30, 2003 after reworking the proposal on the basis of the directions of BIFR.

3.1 ***Scheme for De-merger:***

The revised rehabilitation proposal of the company envisages splitting of the company into three parts by creation of two Special Purpose Vehicles (SPVs) i.e. Haryana Distillery Ltd. (HDL) and Rajputana Fertilizers Ltd. (RFL). Some identified assets/investments along with units of MSWM would be transferred to HDL and RFL while HDL and RFL would in turn make payment of the revised OTS to the secured creditors in the ratio 40:60. The balance assets would remain with MSWM and would be sold to make Payment of workers dues, central and state govt. due identified pressing creditors and public deposits. The scheme of de-merger is at ***Annexure II****.*

3.3 ***Cost of the scheme and Means of finance:***

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Cost of the scheme (Rs. lakh)			Means of finance (Rs. lakh)		
A) HDL and RFL					
	HDL	RFL		HDL	RFL
OTS of liabilities			Share Capital	575.00	350.00
▪ PNB **	825.54	1238.10	Unsecured Loans from promoters	300.00	0.00
▪ IDBI	131.92	197.87			
▪ IFCI	75.35	113.02			
▪ ICICI	61.38	92.08	Sale of assets / investments	247.22	1492.68
▪ IIBI	16.06	24.09			
▪ LIC	8.20	12.30	Other loans	350.00	
▪ Benares State Bank **	23.51	35.27	Internal Generations	444.94	
▪ HUDCO	9.48	14.23			
▪ UP Govt.	4.32	6.48			
▪ GIC Debentures	20.72	31.06			
▪ LIC Debentures	20.34	30.52			
▪ UTI Debentures	20.34	30.52			
Sub Total	1217.16	1825.75			
Capital Expenditure	700.00	0.00			
Total	1917.16	1825.75	Total	1917.16	1842.68

** Loans and debentures

B) MSWM			
Pressing creditors	425.94	Sale of assets/investments	1715.40
Excise and Customs	525.43		
UPSEB Dues	136.20		
ESIC Dues	69.44		
Municipal Corporation, Modi Nagar	3.09		
Workers dues	554.63		
Public deposits	0.67		
Total	1715.40	Total	1715.40

12. To facilitate the release/payment of monies to the various creditors in terms of the Scheme, at the petitioner's request, Ms. Mahjabeen, Advocate (M:9811978974) is appointed as the Court Commissioner/Facilitator. Looking at the extensive nature of transfer of assets to be undertaken between the companies, the Court Commissioner's fees, for the present is fixed at Rs.18 lacs. Expenses shall be extra. Rs. 6 lacs shall be paid upon consent to/acceptance of the responsibilities, upon receipt of this order. Further monies/fees shall be

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paid as per two more bills to be raised by the Local Commissioner.

13. Once the monies have been disbursed and possibly no-dues certificate has been issued in terms of the quantified dues, the residual properties, excluding Modi Bhawan, will stand automatically vested to the petitioner in terms of section 18(6A) of the SICA Act, 1985 , which reads as under:

> *"....[(6A) Where a sanctioned scheme provides for the transfer of any property or liability of the sick industrial company in favour of any other company or person or where such scheme provides for the transfer of any property or liability of any other company or person in favour of the sick industrial company, then, by virtue of, and to the extent provided in, the scheme, on and from the date of coming into operation of the sanctioned scheme or any provision thereof, the property shall be transferred to, and vest in, and the liability shall become the liability of, such other company or person or, as the case may be, the sick industrial company.]..."*

14. The properties falling in the petitioner's share are shown in the last column of Table-1 of the Inter-se Agreement dated 24.04.2019. The same is reproduced as under:

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Table I

Sl. No.	PARTICULARS	To be vested in Group A / Nominee	To be vested in Group B/ /Nominee	To remain with MSWM Residual
	LAND & BUILDINGS AT MODINAGAR U.P. currently owned by and in the name of MSWM			
1	54 units at Satish Park, Yogendra Park, Mohan Park & Staff Quarters as per SS 04			✓
2	Devendrapuri land – land admeasuring ....Sqyds in Khasranos...		✓	
3	Harmukhpuri land – Land admeasuring..... sqyds in Khasranos....	✓		
4	Mahesh Park Colony			✓
5	Tent Factory Quarters			✓
6	Servant quarters behind DM Training College			✓
7	Devendrapuri Colony			✓
8	Harmukhpuri Colony			✓
9	New Mahendrapuri Colony			✓
10	Misc. Structures (30 rooms)			✓
11	ModiBhawan along with land and building and appurtenant thereto and all portions to be vested as below: (i) Portions occupied by and in possession of Dr. D K Modi and Group A including portions occupied previously by late K N Modi, Y K Modi, M K Modi and family will be vested with Haryana Distillery Ltd – SPV I, Dr. D K Modi or	40%	60%	

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	Nominee without any further deed or action. (ii) Portions occupied by and in possession of Shri K KModi/Group B including occupied by the brothers of Shri K KModi and family will be vested with RajputanaFertilisers Ltd – SPV II, Shri K.KModi or Nominee without any further deed or action. (iii) All common facilities and areas to be vested in the ratio of 40% by Group A and 60% by Group B without any further deed or action.			
12	GinnibaiModi Junior High School		✓	
13	Vacant pieces of land at Hanmukhpuri Colony about 5000 sqyds			✓
14	Vacant pieces of land at New Mahesh Park Colony about 12000 sqyds			✓
15	Vacant pieces of land at New Mahendrapuri Colony about 2500 sqyds			✓
16	Houses of Vinay Park (2.5 units) & houses of Mahendrapuri Colony (209 units) to be transferred from Modern Spinners			✓
17	01 Godown at Satish Park			✓

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18	Harmukhpuri school	✓		
19	Tent factory building		✓	
20	S.Type Building (DMT College)			✓
21	Library Building (Welfare Centre)			✓
22	Workers Club near PNB			✓
23	Guest House (Opp. Gaylord)			✓
24	Harmukhpuri Temple			✓
25	DevendraPuri Temple			✓
26	Saw Fact[illegible] / Building, Godowns, erstwhile Motor Workshop and appurtenant areas (See map as per point 30 which forms part of the gate/road to go to Group A)	✓		
27	There will be two entrance to MSWM compound. One for the properties controlled by Mr. S.K. Modi and another for Dr. D.K. Modi & Trusts / Institutions Societies controlled by him as per plan in Annexture A for which 60 feet road will be provided. Group A shall withdraw the case pending in Civil Court, Ghaziabad for easement right.	✓	✓	
28	Parks in Colonies			✓
29	Temples in Colonies			✓
30	Club Houses in Colonies			✓
31	Tubewells / pumping room area in Colonies			✓
32	Any other property,Asset,Building, Land not specifically listed above and later discovered shall go to Group A,, Haryana Distillery Ltd.-SPV I/Nominee in the ration of 40% to Group A and Group B/RajputanaFertilisers Ltd – SPV II/Nominee in the ratio of 60%	✓	✓	

15. The application is disposed-off in terms of the above.

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16.Re-notify on 04.09.2023.

NAJMI WAZIRI, J

SUDHIR KUMAR JAIN, J

APRIL 26, 2023
N/AM/rd

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