

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) Nos. 27754-27755/2012

(Arising out of impugned final judgment and order dated 19/03/2012 in WP No. 7028/2011 and WP No. 8424/2011 passed by the High Court Of Delhi At New Delhi)

THE PRINCIPAL SECRETARY, INDUSTRIES DEPARTMENT, GOVERNMENT OF UTTAR PRADESH & ANR.	... Petitioners
VERSUS	
M/S SUPERIOR INDUSTRIES LTD.& ORS.	... Respondents

(With appln. (s) for modification of court's order)

Date : 11/03/2016 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI  
HON'BLE MR. JUSTICE R.K. AGRAWAL

For Petitioner(s) Ms. Reena Singh, Adv.  
Mr. Ashish Malik, Adv.  
Ms. Alka Sinha, Adv.  
Mr. Anuvrat Sharma, Adv.

For Respondent(s) Ms. Indu Malhotra, Sr. Adv.  
Mr. Amarjit Singh Bedi, Adv.  
Mr. Varun Chandiok, Adv.  
Mr. Astar H. Warsi, Adv.

Mr. Rakesh Kumar S., Adv.  
Mr. W. A. Nomami, Adv.  
Mr. Binay Kumar Das, Adv.

Mr. Rajeev Sharma, Adv.  
Ms. Radhalakshmi R., Adv.  
Ms. Priyanka Raj, Adv.  
Mr. Sahil Bhalaiik, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

These petitions are filed by the State of Uttar Pradesh as well as M/s. Indian Turpentine & Rosin Company Ltd. ('ITRCL' for short) challenging the order dated March 19,

2012, passed by the High Court of Delhi in Writ Petition Nos. 7028 of 2011 and 8424 of 2011. Those writ petitions were directed against the order of the Appellate Authority for Industrial and Financial Reconstruction ('AAIFR' for short) dated 28.06.2011.

It is not necessary to take note of the facts in detail. Suffice it is to state that ITRCL has become a sick company and a reference was made to the Board for Industrial and Financial Reconstruction ('BIFR' for short). In the proceedings before BIFR, IFCI Limited was appointed as Operating Agency. IFCI, as on today, is the main creditor of ITRCL. In those proceedings, ultimately, the BIFR came to the conclusion that it is not possible to revive ITRCL and, therefore, recommended its winding up. Against that order, the petitioners have filed appeal before the BIFR which is still pending and there is an interim stay of the directions of the BIFR.

In the proceedings pending in the High Court of Allahabad, the High Court had directed sale of Potable Alcohol Unit (PAU) of ITRCL. It was put to auction and the respondent herein viz., Superior Industries Ltd. ('SIL' for short) purchased the same. Agreement to sell was executed on 5.4.2003 between ITRCL and SIL at a consideration of Rs.11,65,40,000. In terms of the said agreement, SIL was required to pay 20 per cent of the sale consideration within one month and balance 80 per cent equivalent to

Rs.9,32,32,000/-, after a moratorium of one year in six equal annual installments along with interest at the rate of 14 per cent per annum.

SIL deposited a sum of Rs. 2,33,08,000/- and took possession of the PAU on 10.04.2003. Thereafter, some dispute arose about the payment and the matter was referred to arbitration which resulted in Award dated 14.09.2009. By the said Award, the Arbitrator held that the first installment became due and payable on 05.04.2005 while the subsequent five installments became payable annually in the succeeding years. He dismissed the counter claims of the SIL against the ITRCL. Against this Award, petitions were filed under Section 34 of the Arbitration and Conciliation Act, 1996, which are still pending before the District Judge, Bareilly, Uttar Pradesh.

In the writ petition filed by the SIL in the High Court, the High Court has noted in the impugned judgment that SIL had paid subsequently a further sum of Rs.7,82,32,000/- in the following manner : -

- a. Rs. 2 Crores earlier and during the course of the writ petitions, a further sum of Rs.5,82,32,000/-.

The High Court has disposed of the petition by directing that the aforesaid amount of Rs.5,82,32,000/- which was deposited in the Court shall be remitted to the IFCI Limited which was an Operating Agency and that amount shall

be kept by IFCI in the interest bearing No Lien account. It is further directed that the disbursement of this amount shall be subject to the further order of BIFR.

In the present petitions filed by the petitioners, various orders were passed from time to time. The primary intention of those orders was to find out as to how much further amount is to be paid by SIL to the petitioners in respect of purchase of the aforesaid PAU. The entire controversy in this behalf is stated and captured in orders dated 26.08.2015 passed by this Court and, therefore, we would like to reproduce the said order in its entirety: -

“Heard.

One of the issues that falls for determination in these appeals is : whether the High Court of Delhi was justified in directing execution of a sale deed in favour of respondent no.1 on payment of the principal amount excluding interest recoverable in term of agreement of sale at the rate of 14% per annum.

Ms. Reena Singh, learned Additional Advocate General of the petitioner-State, argues that the direction issued by the High Court for execution of a sale deed in favour of respondent no.1 without payment of entire sale consideration comprising the principal amount Rs.11,65,40,000/- and interest due on the same at the rate of 14% per annum is wholly unjustified and legally untenable. It is contended by learned counsel that a sum of Rs.12,38,11,183/- is outstanding against respondent no.1 as on 30<sup>th</sup> April, 2015 towards interest. She has to that effect filed a statement of calculation before us today. She submits that respondent no.1 has taken charge of the Unit in-question as early as on 10th April, 2003 and has been making beneficial use of the same without paying the sale consideration in terms of the agreement to sell executed by them. It is submitted that on account of non-payment of amount, lawfully recoverable from respondent no.1, the sale in its favour deserves to be set aside and the Unit directed to be sold afresh.

On behalf of respondent no.1 it is argued by Mr

Rajeev Sharma that the question whether any interest should or should not be paid, is a matter that has been left to be decided by B.I.F.R. It is further submitted the calculation of interest in the statement filed today is not correct. He referred to page '198' of the SLP paper book to argue that the sick company had itself determined the interest recoverable from the purchaser at Rs.8,45,50,979/-. To the same effect is the averment made at page '173' of the SLP paper book in an affidavit filed before the High Court on behalf of the sick company where interest has been shown to be Rs.8.5 crores only. Mr. Sharma argues that the respondent-purchaser had deposited a sum of Rs.2.33 crores towards 20% of the bid amount followed by another amount of Rupees two crores and finally an amount of Rs.5,82,32,000/- some time in the year 2011, pursuant to the direction issued by the High Court. The petitioner has in that process deposited the entire principal amount according to the sale agreement. He submits that even if the liability towards interest was not to be deferred till determination by B.I.F.R. or till finalisation of the proceedings before the Additional District Judge at Bareilly in a petition under Section 34 of the Arbitration Act filed to challenge the arbitral order made by the arbitrator, yet the amount of interest will have to be calculated taking into consideration the payments made by respondent no.1 from time to time. He submits that the respondent shall not only file a true and correct calculation of interest recoverable in terms of the agreement to sell but also deposit the amount so payable. He seeks three months' time to make payment of the entire amount due towards interest to avoid re-sale of the property in-question.

In the circumstances, therefore, we direct respondent no.1 to deposit in this Court the amount payable towards interest at the rate of 14% per annum within three months taking into consideration the payment made by him towards principal amount from time to time. A copy of the calculation of interest shall be furnished to counsel opposite who shall also calculate and file a verified and accurate statement showing the true and correct position as regards liability towards interest accrued against respondent no.1. The amount deposited by respondent no.1 shall be invested by the Registry in a term deposit initially for a period of six months to enure benefit for the successful party.

Learned counsel for the petitioner-State shall keep a responsible state government official, capable of answering all relevant questions, present in the

Court on the next date of hearing including question relating to the ownership of the land underlying the Unit in-question.

Post in the month of January 2016."

After the aforesaid order was passed, SIL paid a further sum of Rs.8,45,50,979/- as there was some dispute with regard to the calculation of the amount of interest payable. Insofar as the principal amount is concerned, there is no dispute as the same stands paid. We had advised the parties to sit together and sort out the issue.

Both the parties have given their calculations in respect of the outstanding amount. It is claimed by SIL that the entire amount stands paid. There are calculations which are furnished by the petitioners. The only amount shown as outstanding is the interest which the petitioners have calculated as Rs.5,82,32,000/- that was deposited by the SIL in the High Court and which amount is directed to be released to IFCI to be kept in a No-lien account. Obviously, when the said amount is deposited in the High Court by SIL, that too pursuant to the directions given by the High Court, this amount cannot be treated as outstanding and as a consequence, the petitioners are not entitled to any interest for the period after the deposit of the said amount. From this, it becomes clear that the entire amount stands paid by SIL. In view thereof, we direct Respondent No. 3, i.e., ITRCL to execute the sale deed in favour of SIL within a period of two

months from today.

The only other question which remains to be decided is as to what treatment should be given to the amount so deposited by SIL.

As mentioned above, a sum of Rs.5,82,32,000/- was deposited by SIL in the High Court which is released to IFCI to be kept in a No-lien account. The High Court has further directed that BIFR shall decide as to who should be given this amount. Balance sum of Rs. 8,45,50,979 is deposited in this Court.

We direct that out of the aforesaid amount, a sum of Rs.8,37,91,570/- shall be released to IFCI and shall be kept in a No-lien account. As directed by the High Court, BIFR shall decide as to who has to get this amount ultimately.

Balance amount out of 8,45,50,979/- deposited by SIL in this Court, i.e., a sum of Rs.7,59,409/- shall be paid to the Supreme Court Advocates-On-Record Welfare Trust.

Learned counsel appearing for the SIL states at the Bar, on instructions, that petition of SIL under Section 34 of the Arbitration and Conciliation Act, 1996, is pending in the Court of District Judge, Bareilly, Uttar Pradesh, which shall be withdrawn.

SIL has also filed writ petition in the High Court of Allahabad. He, further, submits that SIL shall withdraw that

writ petition as well.

We, thus, record that insofar as the sale of PAU to SIL is concerned, there is no dispute left between the parties.

We would also expect the BIFR to decide the matter expeditiously and the parties can approach the BIFR for this purpose.

The special leave petitions are disposed of, accordingly.

(Nidhi Ahuja)  
Court Master

(Tapan Kr. Chakraborty)  
Court Master