

CRESCENT IRON AND STEEL CORPORATION LTD.

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v.

UNION OF INDIA AND ANOTHER

OCTOBER 9, 1992

[KULDIP SINGH AND N.M. KASLIWAL, JJ.]

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*Sick Industrial Company (Special Provisions) Act 1985 :*

*Section 15(1)—Sick Company making reference to BIFR—During pendency of reference government granting permission to close down undertaking—BIFR directing winding up of company—Appellate Authority upholding order—Validity of the order.*

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The appellant, a private limited company was running a foundry. It declared a lock out in its foundry in July, 1985. The company made a reference to the Board for Industrial and Financial Reconstruction under Section 15(1) of the Sick Industrial Company (Special Provisions) Act, 1985, and during its pendency made an application to the State Government under Section 25(O) of the Industrial Disputes Act, 1947, seeking permission to close down its undertaking at the existing location and requested the BIFR to revive the undertaking at another location preferably in a backward area of the State. It was also alleged that the company had paid up all the secured and unsecured creditors, as well as the workers employed in the foundry.

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The BIFR on 15.2.91 passed an order proposing the winding up of the company. On 16.5.91, at a general meeting of the company, a special resolution was passed by the share-holders that the aforesaid order of the BIFR was not in the interest of the company.

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The company forwarded the resolution along with a letter dt. 21.5.91 and requested the BIFR to revoke its order dated 15.2.91. The BIFR by its order dt. 23.5.91 observed that it was not possible to adopt any measures for the revival of the company, and reiterated its stand that the company should be wound up.

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Aggrieved, the company filed an appeal before the Appellate Authority for Industrial and Financial Reconstruction, which by its order

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A dated September 13, 1991, upheld the order of the BIFR and did not find any reason to take a different view. It further held that carrying out the same activity at the new site does not constitute rehabilitation of a sick unit, that the developing of the land for commercial activity also does not constitute rehabilitation by a sick unit, and that there was no provision in the SICA to drop a case once a reference has been made and heard by the BIFR.

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E The appellant company appealed to this Court, challenge the order of the Appellate Authority by contending that during the pendency of the reference before the BIFR, the shares of the company have been transferred in favour of the present shareholders, the new management had settled liabilities of all the creditors, workers' dues, as well as the Government dues, by arranging funds of their own, that the claims of the nationalised banks have also been settled, all the workers of the foundry except two have voluntarily resigned and have been paid their dues, that the State Government by its order dated 13.7.92 has also taken the view that no permission for closure under Section 25(O) of the Industrial Disputes Act, 1947 would now be necessary. Reliance was also placed on the order dated 31.3.1989 of the BIFR in the case of *Belapur Sugar and Allied Industries Limited* rejecting the reference made under Section 15(1) of the SICA, which was affirmed by the Appellate Authority by order dated 13.7.1989.

Allowing the appeal, this Court,

F HELD: 1. The foundry unit at Guregaon, Bombay is lying closed since 1985 and according to the new management of the company, the liabilities of all the secured and unsecured creditors have been settled and out of 288 workers, 286 have already resigned and accepted the retrenchment compensation, the remaining two workers being not traceable. The new management is taking steps with the State Government and other authority for shifting of the location of the new foundry unit at a place outside the metropolis of Bombay. The State Government in its letter dated 13.7.92 has also taken the view that no permission for closure of the industrial undertaking under Section 25(4) of the Industrial Disputes Act would be necessary. The shareholders in a general meeting of the appellant company held on 16.5.91, passed a special resolution that the order of H BIFR dated 15.2.91 was not in the interest of the company. The Appellate

Authority has not taken all these factors into consideration while passing the order dated 13.9.91. The order of the State Government dated 13.7.92 has come into existence after the passing of the order by the Appellate Authority. [935-H, 936 A-D] A

2. The BIFR and the Appellate Authority are authorised to take into consideration the facts and circumstances of each case and then to decide whether any reference under Section 13(1) of the Sick Industrial Company (Special Provisions) Act, 1985 was at all necessary or not. [936-E] B

3. The order of the Appellate Authority dated 13.9.91 as well as the orders of the BIFR dated 15.2.91 and 23.5.91 are set aside and the matter is remanded to the BIFR for passing a fresh order. [936-F] C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4055 of 1992.

From the Judgment and Order dated 13.9.91 of the Appellate Authority for Industrial & Financial Reconstruction, New Delhi, in Appeal No.71/91. D

Ashok K. Desai, Niten Thakkar, Sunil Dogra and P.H. Parekh for the Appellant.

A Subba Rao and Ms. Sushma Suri for the Respondents. E

The Judgment of the Court was delivered by

KASLIWAL, J. Special leave granted.

The appellant Crescent Iron and Steel Corporation Limited (in short 'the appellant company'), a private limited company was running a foundry. The appellant declared a lock out in its foundry in July 1985. The appellant company made a reference to the Board for Industrial and Financial Reconstruction (hereinafter referred to as the 'BIFR'). under Section 15(1) of the Sick Industrial Company (Special Provisions) Act, 1985 (in short 'SICA'). During the pendency of the said reference the appellant company made an application to the State of Maharashtra under Section 25(O) of the Industrial Disputes Act, 1947 for seeking permission to close down its undertaking located at Goregaon and requested the BIFR to revive the undertaking at another location preferably in a backward area of H

- A Maharashtra. The appellant company also alleged to have paid up all the secured and unsecured creditors of the company as well as all the workers employed in the foundry. The BIFR on 15.2.1991 passed an order proposing the winding up of the appellant company. On 16.5.1991 at a general meeting of the appellant company a special resolution was passed by the
- B shareholders that the order of BIFR dated 15.2.1991 was not in the interest of the company. The appellant company forwarded the aforesaid special resolution along with a letter dated 21.5.1991 requesting the BIFR to revoke its order dated 15.2.1991. The BIFR vide its order dated 23.5.1991 observed that it was not possible to adopt any measures for revival of the company and reiterated its stand that the appellant company should be
- C wound up.

- Aggrieved against the aforesaid order of the BIFR dated 23.5.1991, the appellant company filed an appeal before the Appellate Authority for Industrial and Financial Reconstruction, New Delhi. The Appellate
- D Authority of its order dated September 13, 1991 upheld the order of the BIFR and did not find any reason to take a different view. The Appellate Authority further held that even carrying out the same activity at the new site does not constitute rehabilitation of a sick unit. It also held that developing of the land for commercial activity also does not constitute rehabilitation of a sick unit and there was no provisions in the SICA to
- E drop a case, once a reference has been made and heard by the BIFR. The appellant company has now come in appeal before this Court challenging the aforesaid order of the Appellate Authority.

- It was contended by Mr. Ashok Desai, learned senior counsel appearing for the appellant company that during the pendency of the refer-
- F ence before the BIFR the shares of the appellant company held by Voltas Limited, were transferred in favour of the present share holders, after obtaining approval of the concerned authorities. The new management had settled liabilities of all the creditors, workers' dues, as well as government dues, by arranging funds of their own. As regards the claims of the Canara
- G Bank, the dues had been settled to the satisfaction of that bank and in case of United Bank of India, part of the dues had been settled and for the balance amount undertaking had been given, supported by bank guarantee of the satisfaction of the that bank. All the workers of the foundry had also voluntarily resigned and have been paid their dues, except for two workers
- H whose whereabouts could not be traced. The final settlement of the dues

of the workers was done with a view to shifting the location of the industrial undertaking outside the metropolis of Bombay and for establishing a new foundry unit. It has now been submitted by Shri Desai that the State Government by its order dated 13.7.1992 has also taken the view that no permission for closure under Section 25 (O) of the Industrial Disputes Act, 1947 would now be necessary. The aforesaid letter of the Government of Maharashtra dated 13.7.1992 has been placed on record. It was thus submitted that it would not be in the interest of justice to wind up the company.

Mr. Desai also submitted that the BIFR in case No.188/88 in the matter of Belapur Sugar and Allied Industries Limited on 31.3.1989 passed an order rejecting the reference made under Section 15(1) of the SICA. A copy of the aforesaid order has been placed on record and our attention was drawn to the following observations made in the said case.

"The management of the company has closed down the sugar factory and is in no position to revive it. All the workers have been paid off and there is no labour left. There is no industrial unit, sick or otherwise nor is there any factory employing 50 or more workers, in existence in this case, as required under the I(D&R) Act. The Bench was, therefore, of the opinion that it has no jurisdiction at all in this case. All this was put to the management of the company and to the banks and institutions concerned at the time of hearing and was accepted by them.

The reference is accordingly rejected in *limine*, as not maintainable."

It was also pointed out by Mr. Desai that the aforesaid order of the BIFR was affirmed by the Appellate Authority by order dated 13.7.1989.

We have considered the submissions made by Shri Desai and have perused the record thoroughly. The foundry unit at Goregaon Bombay is lying closed since 1985 and according to the new management of the company the liabilities of all the secured and unsecured creditors has been settled and out of 288 workers, 286 have already resigned and accepted the retrenchment compensation. The remaining two workmen are not traceable. The new management of the appellatant company is taking steps with

**A** the State Government and other authorities for shifting of the location of the new foundry unit at a place outside the metropolis of Bombay which would also be in the interest of the avoidance of pollution hazard. The State Government in its letter dated 13.7.1992 has also taken the view that no permission for closure of the industrial undertaking under Section 25(4) of the Industrial Disputes Act, 1947 would be necessary. The shareholders in a general meeting of the appellant company held on 16.5.1991 have passed a special resolution that the order of BIFR dated 15.2.1991 was not in the interest of the company. The Appellate Authority had not taken all these factors into consideration while passing the impugned order dated 13.9.1991.

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**C** All the above circumstances have happened after the passing of the order by the BIFR and the order of the State Government dated 13.7.1992 has come into existence after the order passed by the Appellate Authority. The BIFR and the Appellate Authority are authorised to take into consideration the facts and circumstances of each case and then to decide whether any reference under Section 15(1) of the Sick Industrial Company (Special Provisions) Act, 1985 was at all necessary or not and to pass any other appropriate order meeting the ends of justice in each case.

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**E** In the result, we allow this appeal, set aside the order of the Appellate Authority dated 13.9.1991 as well as the orders of the BIFR dated 15.2.1991 and 23.5.1991 and remand the matter to the BIFR for passing a fresh order in accordance with law and in the light of the observations made above. No order as to costs.

N.V.K.

Appeal allowed.