

BOARD FOR INDUSTRIAL AND FINANCIAL RECONSTRUCTION

SPECIAL BENCH

M/S DECCAN CHRONICLE HOLDINGS LTD.

**RELEASE ORDER DATED 24.04.2014 OF THE HEARING HELD ON
07.04.2014 BEFORE THE SPECIAL BENCH CONSISTING OF
SHRI S.C. SINHA AND SHRI J.P. DUA, MEMBERS.**

1.1 M/s. Deccan Chronicle Holdings Ltd., based on the Provisional accounts of the company for the financial year 2012-13 filed a reference on 26/8/2013 seeking registration as a sick Industrial company under Section 15 (1) of the SICA.

1.2 The Registrar, in accordance to the provisions of Regulation 19 of the BIFR Regulations, 1987 scrutinized the reference of the company and vide his letter dated 17/09/2013 granted 'conditional' registration to the company subject to their submission of Final Accounts for the year 2012-13.

1.3 However, on further scrutiny, and in view of the deficiencies found in the reference, the Registrar-BIFR, withdrew the 'conditional registration' granted to the company on 17/9/2013, and vide his letter dated 19/09/2013 'Declined' to grant registration to M/ s. DCHL.

1.4 The company aggrieved by the Registrar's order, filed an appeal on 27/09/2013 before the Secretary-BIFR as per Regulations 19 (8) (1) of the BIFR Regulations 1987.

1.5 The said Appeal was disposed off by the Secretary-BIFR, and registration was once again Declined to the company vide his order dated 21/11/2013.

1.6 M/s. DCHL., in accordance to Regulation 19 (8) (2) of the BIFR Regulations 1987, on 29/11/2013, preferred an Appeal before the Hon'ble Chairman-BIFR.

1.7 Hon'ble Chairman-BIFR held an Appeal hearing in the matter on 12/12/2013. Vide his order dated 13/01/2014, Hon'ble Chairman-BIFR disposing of the Appeal stated

“.....The Company in appeal has not been able to demonstrate that the company registered under the Press and Registration Books Act, 1867 can be deemed to be a manufacturing activity under the IDR Act, 1951. The business of printing and running of newspapers is clearly not covered under the First Schedule of IDR Act, 1951 and thus not for admission to BIFR.

In view of the aforesaid reason and analysis of the grounds in appeal, I am not inclined to interfere with the order passed by the Secretary, BIFR dated 21.11.2013. As such the appeal filed by M/s. Deccan Chronicle Holdings Ltd., is dismissed”

2.1 Consequent to the rejection of their Appeal by the Chairman-BIFR, the petitioner filed a Civil Misc. Petition No. 1505/2014 and Writ Petition (Civil) No. 750 of 2014 on 21/01/2014, against the BIFR, before the Hon'ble High Court of Delhi, challenging Chairman's order dated 13/01/2014.

2.2 The Hon'ble High Court while disposing of the petition, set aside the orders issued by the Registrar, Secretary and the Chairman, and directed the BIFR to hear the matter. The directions of the Division Bench are reproduced below:

“We have heard the Learned Counsel for the Petitioner as well as the Learned Counsel for the BIFR. We have also heard the Learned Counsel for some of the Creditors including Canara Bank. After hearing the Counsel for the parties it has been agreed that the order dated 19.09.2013 passed by the Registrar-BIFR as also the order dated 21.11.2013 passed by the Secretary-BIFR and the order dated 13.01.2014 issued by the Chairman-BIFR in

exercise of his powers under Regulation 19 (8) of the BIFR Regulations, 1987 be set aside. It is ordered accordingly.

Serious issues have been raised with regard to the validity of the registration of the reference of the petitioner by virtue of the Registrar's order dated 17.09.2013. It has been agreed by the counsel for the parties that the issue of the validity of registration be considered by the Board. Consequently, we direct that the Board shall consider this question in the first instance. The learned counsel for the creditors submits that, they are entitled as a right to be present on the date on which the Board will hear this question. However, for better safety they shall be moving an appropriate application on or before the date on which the Board is to hear the matter and that application would be heard simultaneously with the hearing of the above mentioned question. The matter be placed before the Board on 18.02.2014. We also hope that the Board shall endeavour to conclude the hearing and render a decision on the question as to whether the reference was correctly registered or not within a period of four weeks after hearing all the parties interested. The learned counsel for the petitioner has no objection to the creditors being heard. Since one of the orders which has been set aside by us is that of the Chairman of the BIFR, it would be appropriate if the Chairman is not a member of the Bench which hears the matter on 18.02.2014 on the issue. We may it clear that we have not expressed any opinion on the merits of the case. The writ petition stands disposed off in the above terms. All pending applications also stand disposed off."

3. In the hearing held on 18.02.2014, the Bench observed that Hon'ble High Court of Delhi vide order dated 03.02.2014 has directed that the matter be placed before the Board on 18.02.2014 and the Board shall endeavor to conclude the hearing and render a decision on the question as to whether the reference was correctly registered or not within a period of four weeks after hearing all the persons interested.

4. Thereafter, the Board has held hearings on 19.03.2014 and 07.04.2014.

5. In the hearing held on 07.04.2014, the Bench directed that all those parties including the company may file their written submissions on the line of the submissions made in the hearing latest by 15.04.2014. The Bench “Reserved its Order” on the validity of Registration in compliance of the Hon’ble High Court of Delhi vide its order dated 03.02.2014.

6.1 The Bench noted that the company and various Lenders of the company have filed their written submissions.

6.2 The Bench noted that all the parties including Lenders of the company have overwhelmingly opposed the registration of the company in BIFR on the ground that the Company is not a scheduled industry as per Section 3(1)(f) of SICA. The Lenders also objected that the company is not an industrial undertaking, as it is not into manufacturing. The company is registered with the Registrar of Newspaper of India, Govt. of India under the Press and Registration of Books Act, 1867 and is in the business of Publication of Newspaper. The company does not qualify as an ‘Industrial Company’ as defined under section 3(1)(e) and 3(1)(f) of SICA. As per section 3(1)(n) of SICA, ‘Scheduled Industry’ means any of the industries specified for the time being in the First Schedule to the Industries (Development and Regulation) Act, 1951. The First Schedule of IDR Act, 1951 have excluded “Newspaper” from its purview. As such, the company does not fulfill the conditions as envisaged under Section 3(1)(n) of SICA and therefore not eligible to file reference under section 15 of SICA. The Lenders also objected that the company has filed an improper Form-A, which is a Statutory Form.

6.3 The Lenders also referred to judgment of Hon’ble High Court of Delhi in the matter of Ansal housing & Construction Ltd Vs Commissioner of Income Tax, wherein, High Court is of the opinion that common sense approach would have to be adopted and those undertaking would qualify as

“industrial undertakings” which are involved in “manufacturing activity”. The main activity of Ansal Housing, is in the business of construction, by no stretch of imagination, be treated as manufacturing activity as it does not amount to manufacture or production of an article or a thing. Thus, applying the same analogy, in the present reference, the company is not involved in the manufacturing of a product and therefore it does not qualify as an “Industrial Undertaking”. The Lenders also referred to draw the attention of the Bench to BIFR order dated 25.06.2013 in BIFR Case No.5/2013 M/s Suryachakra Global Enviro Power Ltd, wherein, BIFR Bench has observed that the company in its Form-A has admitted that they are engaged in generation of power by use of bio-mass / agro based products and they are supplying power to earn profits. The Industry generating and supplying Power (Electricity) does not fall within the ambit of the industry covered under First Schedule to IDR Act, 1951. The BIFR, Bench also observed that Bio Fuels is an intermediate product, which the company is not selling for earning profits rather than the company itself is using it to generate power, which is their main line of business. The BIFR, Bench was of the view that the company – M/ s Suryachakra Global Enviro Power Ltd is not a scheduled industry engaged in the manufacture or production of Fuel Gases – (Coal Gas, natural gas and the like) under Heading-2 and sub heading(3) of First Schedule to IDR Act, as they claimed in its Form-1. Thus, on this very ground, the Bench dismissed the Company’s reference – M/ s Suryachakra Global Enviro Power Ltd – as non-maintainable. Lastly, the Lenders also submitted that the secured creditors of the company had already taken SARFAESI Action on the assets of the company, which were exclusively charged to them and therefore, as per the judgment of Hon’ble AAIFR in the matter of M/ s Sheel International case, the company would have to come to BIFR after modifying the balance sheet i.e. removing those assets from the books of accounts, where already action under SARFAESI has been taken.

6.4 The company replied stating that the Section 3(1)(e), 3(1)(f), 3(1)(n) or 3(1)(o) of SICA does not describe or deal with the issue of earning from main

activity and secondary activity of the company. The company claimed that the issues raised by the various creditors also strengthen the cause of the sickness of the company as apparently the said issues i.e. whether the company's business of printing and publication of newspapers, magazines etc falls within printing activity, whether the business activity of the company falls within the definition of the scheduled industry etc. are thus the substantive questions of law and facts and cannot be decided by Registrar, while registering the reference of the company. The company claimed it is in the business of printing and publishing of newspapers, magazines, periodicals journals etc as is evident from the main objects of the company as per its Memorandum of Association. The company referred to various section of Press and Registration of Books Act, 1867; Parliamentary Proceedings (Protection of Publication) Act 1956 and explicitly described the word "Newspaper". The company claimed that from the expression of Newspaper it clearly emerges that the following are the essential requirement for publication to fall under the definition of "Newspaper" – it must be printed; it must be issued periodically; it must contain news and comments on news; such news must be public. "Printing" is an activity or a process and not a product or end in itself. The final product shall only be an outcome of the process or activity of printing and may be in form of a newspaper printing, book printing, printing of labels, pamphlets, printed carton, printed posters etc. It is further submitted that as per the Item-38 of the First Schedule to IDR Act, 1951 and in specific sub-clause(5) of Item 38 the activity of printing is clearly covered i.e. "Printing, including litho printing industry". Thus, it is clear that any industry which is engaged in the business of Printing (whether be it books, paper, newspaper, journals, magazines etc) shall qualify to be an eligible industry under the First Schedule to IDR Act. The company also referred to judgments dated 02.08.1999 of Hon'ble Delhi High Court in the matter of Commissioner of Income Tax Vs Hindustan Times Ltd, wherein, it was held that the printing and publication of a newspaper is also an industrial undertaking. Similarly, there is another judgment of Hon'ble Delhi High Court in the matter of CIT Vs M/ s Delhi Press Patra Prakashan Ltd, wherein again the Court has held

that printing activity carried out in an industrial undertaking would amount to manufacturing.

6.5 The Bench observed that major objections on the validity of Registration of company's reference before BIFR are on these grounds :

- (a) The company is not a "scheduled industry" as per the definition given in Section 3(1)(n) of SICA, which is a pre-condition for registration as sick industrial company in BIFR.
- (b) The Company is registered with the Registrar of Newspaper of India, Govt. of India under the Press and Registration of Books Act, 1867 and is in the business of Publication of Newspaper.
- (c) The company is not in the business of Printing, but instead it is in the business of Publication of "Newspaper".
- (d) The company has filed the present reference on the basis of Provisional Accounts for the Financial Year 2012-2013, and not on audited accounts as per Section 15(1) of SICA.

6.6 Hon'ble High Court of Delhi vide its order dated 03.02.2014 has directed BIFR Bench to consider the validity of Registration. As per the Counsel of the company, it is a Printing Industry under Item 38(5) of IDR Act, 1951, however, the company is into Publication of Newspaper and Periodicals, which is not covered under SICA. Printing is only an intermediate process for Publications of Newspaper and Periodicals. As per provisions of Section 3(1)(o) of SICA read with Section 3(1)(e), 3(1)(f) and 3(1)(n) of SICA only those Industrial Company are eligible for registration in BIFR, which are "Scheduled Industry" specified for the time being in the First Schedule to the Industries (Development and Regulation) Act, 1951 (IDRA). The First Schedule of IDR Act, 1951 does not specify "Newspaper" as an industry. As per Col.3(d) of the Form-A, the company has enclosed the copy of Certification of Registration issued by the Registrar of Newspaper for India, Govt. of India under the Press and Registration of Books Act, 1867. Even, the company has not submitted Certificate issued by the Secretariat for Industrial Assistance (SIA), Department of Industrial Policy &

Promotion, Govt. of India indicating industrial status of the company, item of manufacture, number and date of registration under IDR Act, 1951. Accordingly, considering all these facts, the Bench is of the opinion that Registration of the company's reference dated 17.09.2013 before BIFR, is not valid.

6.7 Registrar, BIFR to forward a copy of this Order to Hon'ble High Court of Delhi, in compliance of their Order dated 03.02.2014.

Let a copy of this order be circulated to all concerned.

(J.P.DUA)
MEMBER

(S.C.SINHA)
MEMBER