



It is stated that VSL also took over the liabilities of the jute mill amounting to about Rs.422.49 lakhs. The liabilities taken over by VSL included the liabilities to banks and financial institutions such as State Bank of India and Industrial Reconstruction Bank of India (IRBI).

Before the mode of liquidation of liabilities could be finalized, the Agarwallas, who had controlling interest in VSL, transferred their controlling shares to the Bajoria Group.

A compromise proposal was agreed to, in terms whereof the liabilities of the jute division of Fort William Company Ltd. were transferred to VSL. Upon take over of the jute mill, the net worth of VSL stood fully eroded.

The company became sick and was referred to the Board for Industrial and Financial Reconstruction (BIFR) in 1995 under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985, hereinafter referred to as the SICA. The Government of West Bengal was duly represented in the proceedings before the BIFR.

The BIFR appointed State Bank of India as the operating agency to prepare a comprehensive rehabilitation scheme. At the hearing held on 15<sup>th</sup> September, 1999, BIFR directed the Operating Agency to formulate a scheme for rehabilitation of BIFR. Based on the report of the Operating Agency, a draft rehabilitation scheme for rehabilitation of VSL was prepared which inter alia envisaged permission of the Government of West Bengal to

develop and sell surplus land on the basis of the building plan, that has already been sanctioned, to meet the pressing needs of VSL for the purpose of successful implementation of the rehabilitation scheme and the grant of various other reliefs.

The draft scheme was duly circulated to all concerned, including the State of West Bengal for consent under Section 19(2) read with Section 19(1) of SICA, along with the order dated 28<sup>th</sup> December, 1999 of the BIFR.

BIFR by its aforesaid order directed that short particulars of the draft scheme be published in two local dailies and objections/suggestions be invited, which would be heard on 23<sup>rd</sup> March, 2000.

At the hearing before the BIFR, certain modifications were made in the draft scheme, having regard to the objections and/or suggestions made before the BIFR.

At the proceedings held on 30<sup>th</sup> June, 2000, BIFR recorded that the Draft Rehabilitation Scheme circulated vide the order dated 29<sup>th</sup> December, 1999 was acceptable to all concerned.

The BIFR, by its order dated 30<sup>th</sup> June, 2000, sanctioned the scheme as modified, having regard to the fact that all concerned parties had given their consent thereto under Section 19(2) of SICA.

The sanctioned scheme, which was circulated for implementation by all concerned,

vide the aforesaid order, inter alia provided as follows:

"RELIEFS & CONCESSIONS

.....The reliefs and concessions envisaged as under:-

a. State Bank of India

- i).....
- ii).....
- iii).....

b. Government of West Bengal

- i) Permission to develop and to sell surplus land on the basis of the building plan already sanctioned to meet the pressing needs of the Company for the purpose of successful implementation of the rehabilitation scheme.
  - ii) .....
  - iii) .....
- ....."

An appeal being Appeal No.130 of 2003 was filed before the Appellate Authority for Industrial and Financial Reconstruction (AAIFR) against an order dated 31<sup>st</sup> December, 2002 of the BIFR in connection with implementation of the Scheme.

The AAIFR disposed of the said appeal by an order dated 2<sup>nd</sup> May, 2005, the relevant parts whereof are extracted hereinbelow:

"We have considered the submissions and perused the order passed earlier by this Authority. It is abundantly clear that construction on surplus land is in line with the Sanctioned Scheme provided that no funds from manufacturing operations of VSL will be utilized for the said development/construction. We accordingly, give a clarification that this Authority's order dated 20/06/2002 permits VSL to undertake construction on surplus land subject to the condition that no funds earmarked for manufacturing activities will be diverted for the said purpose."

By an order dated 28<sup>th</sup> November, 2004, which is impugned in this writ application, the petitioner has been refused sanction of the building plan. The relevant part of the impugned order is extracted hereinbelow:

".....  
(2) With reference to the Item No.9I), (ii) of our letter mentioned hereinabove No Objection Certificate from D.L. & L.R.O., Howrah under section 6(3) of West Bengal State Acquisition Act, 1953 in view of the Circular being Memo No.6(3)Gen/2461/1(s)/L 2 dated August 25, 2003 issued by the Land and Land Reforms Officer, Howrah and also the No Objection certificate of West Bengal Pollution Control Board has not been submitted within the time framed i.e. November 2, 2004. The said purported non-compliance on your part has been made deliberately although ample opportunity has been given to you.

(3) Be that as it may, in view of the aforesaid non-compliance on your part sanction of the building plan as prayed by you is hereby refused for the want of those documents which you have non-complied with and deliberately has preferred away and has crushed of your responsibility from non-complying the same.

Hence your said plan as applied for is hereby refused from granting sanction under the statutory provision of law and rules thereof and also for the aforesaid non-compliance."

Mr. Dalal Banerjee appearing on behalf of the petitioner submitted that sanction of the building plan ought not to have been refused in view of the orders of BIFR/AIFR referred to above.

Mr. Kallal Bose, appearing on behalf of the State has taken objection to this writ application on the ground of existence of an alternative remedy of appeal under the West Bengal Estates Acquisition Act, 1953.



Mr. Banerjee, Senior Advocate, appearing on behalf of the petitioner, however, rightly submits that the impugned order rejecting the sanction of a building plan is not appealable.

In any case, this writ application, filed in the year 2004, was entertained and directions given for affidavits. Several orders have from time to time been passed. This Court is not inclined to reject the application on the ground of existence of an alternative remedy at this stage.

It is well-established that existence of an alternative remedy does not bar the jurisdiction of the Writ Court to entertain a writ application. In any case, once a writ petition is entertained, affidavits exchanged and the matter is pending for about four years, the Writ Court would not reject the writ application on the sole ground of existence of an alternative remedy of appeal.

The issue is, whether it is now open to the Municipal Corporation, to refuse sanction for a building plan, on the strength of a general direction of the West Bengal Land and Land Reforms Department as conveyed by a departmental circular, notwithstanding the orders of BIFR/AAIFR referred to above.

This Court by an order dated 27<sup>th</sup> June, 2008 directed the learned lawyer appearing on behalf of the State, Mr. Kallol Basu, to produce the Rules of Business of the Government and the necessary orders pertaining to the authority of the

representatives of the Industrial and Reconstruction Department of the Government of West Bengal who have represented the State before the Board for Industrial and Financial Reconstruction, in connection with rehabilitation of VSL.

On instructions, it is submitted that the Department of the Industrial and Reconstruction of the Government of West Bengal has been assigned the task of looking after the matter of sick jute mills including M/s. VSL from September, 2001, upon formal amendment of the Rules of Business relating to the Department as conveyed by the Home (C&E) Department vide order No.332-Home (Cons.) dated 27<sup>th</sup> August, 2001. While the Department had nothing to do prior to 2001, after 2001, the department has been monitoring the matter of revival of VSL. It is, however, not in dispute that a scheme for revival of the jute mills envisaging disposal of its surplus land was circulated by the Board by its order dated 28<sup>th</sup> December, 2000 and this was finally sanctioned by the Board by its order dated 30<sup>th</sup> June, 2000, after getting the consent of all concerned.

The Government was represented before the BIFR prior to September, 2001. It is immaterial which Department represented the Government then. The orders of the BIFR referred to above record the consent of all concerned, that is, those concerned with the reliefs envisaged in the scheme. Reference may be made to the minutes of the proceedings before the BIFR.

In any case, this very Department represented the Government before the Appellate Authority for Industrial & Financial Reconstruction in the appeal referred to above, which was heard on 3<sup>rd</sup> February, 2005 and disposed of on 2<sup>nd</sup> May, 2005.

The Appellate Authority clarified as follows :-

" 9. We have considered the submissions and perused the order passed earlier by this authority. It is abundantly clear that construction on surplus land is in line with the Sanctioned Scheme provided that no funds from manufacturing operations of VSL will be utilized for the said development/construction. We accordingly, give a clarification that this Authority's order dated 20.06.2008 permits VSL to undertake construction on surplus land subject to the condition that no funds earmarked for manufacturing activities will be diverted for the said purpose. "

The order was passed at a time when the Industrial & Reconstruction Department was admittedly supervising proceedings before the BIFR/AAIFR. A copy of the Rules of Business and Annual Administrative Report was also filed by the petitioners. The Government of West Bengal did not object to the order. It was never contended that the Government had not approved of the reliefs envisaged in the scheme.

In view of the clarification from the Government of West Bengal with regard to the authority of the officials of the Industrial and Reconstruction Department, it is apparently clear



that the State had, through its authorized representatives acquiesced and/or agreed to the transfer of surplus land for generation of fund for revival of VSL.

It is thus not open to the State to contend that further permission of any other Department of the State Government is necessary under Section 6(3) of the West Bengal Estates Acquisition Act, 1954. The said Act does not stipulate approval of any particular Department. The provisions of Section 6(3) have effectively been complied with.

The revival scheme envisaged use of the excess land for construction and/or development to generate funds by sale of units.

The BIFR/AAIFR clearly authorized use of the excess land for the purpose of development. Under Section 32(1) of SICA, a scheme made under the SICA is to have effect, notwithstanding any other law except the Acts specified in the said Section.

In the aforesaid circumstances, sanction of a building plan cannot be refused on the ground of requirement of permission from the West Bengal Land and Land Reforms Department.

It need hardly be mentioned that Howrah Municipal Corporation will be entitled to examine the plan to ensure that the same are in accordance with the Building Rules framed by the Howrah Municipal Corporation, conform to pollution laws as also the orders of BIFR/AAIFR.

The writ application is thus disposed of by directing the Howrah Municipal Corporation to consider and take a decision on the building plan in accordance with law and in the light of the observations made above within thirty days from the date of communication of this order.

Let Xerox plain copies of this order, duly countersigned by the Assistant Registrar (Court) be made available to the Advocates-on-record of the parties on their undertaking to apply for and obtain certified copy of this order, failing which this order shall stand vacated.

*Sd/-* INDIRA BANERJEE, J ]<sup>v v</sup>

*Xerox plain copy  
Sikha Khan  
6/1/2009*

**Assistant Registrar (Court)  
High Court, Appellate Side  
Calcutta.**