

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

+ EX.P.2/2008 & EA 54/2008

M/S RITES LTD. .... Decree Holder

Through : Mr. Anil Seth, Advocate

versus

M/S BIHAR SPONGE IRON LTD. .... Judgement Debtor

Through : Mr. Rajiv Sawhney, Sr. Advocate with  
Ms. Malini Sud, Mr. Deepak Khurana, Mr. Kuber  
Dewan, Advocates

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

**Mr. Justice S. Ravindra Bhat**

**EA No.54/2008**

1. Heard learned counsel for the parties. The decree holder seeks execution of a decree of this Court dated 19<sup>th</sup> January, 2005 for a sum of Rs.1,41,28,854/- along with interest.
2. The judgment debtor objects to maintainability of these proceedings through an application, EA 54/2008. The judgment debtor contends that the company was declared as a sick Industrial company under Sick Industries

Companies (Special Provisions) Act, 1985 (hereinafter referred to as the 'SICA'), and that an operating agency was appointed. The applicant/judgment debtor has placed on record a summary record of proceedings of hearing and scheme sanctioned by the Board for Industrial and Financial Re-construction (BIFR), on 29.07.2004. The counsel for judgment debtor also contends that proceedings are still on and have not been terminated and as per the mandate of Section 22 the present execution is not maintainable.

3. Learned counsel for the decree holder contests the proposition of the judgment debtor. He relied upon the decision of the Supreme Court in Deputy Commercial Tax Officer and Others Vs. Corromandal Pharmaceuticals and Others, AIR 1997 Supreme Court 2027, and the decision of the learned Single Judge of this Court in U.P. State Spinning Co. Ltd. Vs. T.T. Limited & Anr. 141 (2007) DLT 83 and Cement Corporation of India Ltd. & Ors. Vs. M.P. Joseph, 111 (2004) DLT 120. It is therefore contended that so long as the debt in question is not included in the scheme or is not within the contemplation of the Board, the decree holder or the person entitled to execute the decree, is at liberty to seek its enforcement in accordance with law.

4. Counsel particularly relied on the fact that the scheme here was sanctioned before the decree was issued by this Court. He also submitted that the scheme, through para 16, states that liabilities not disclosed in the

rehabilitation scheme would be the personal responsibility of the promoters and met with by the Company. Similarly, reliance was placed on Clause 8.6 (xviii) to say that all current dues, arising after the date of scheme, would be the liability of the company.

5. Learned counsel for the judgment debtor, on the other hand contended that the plain words of Section 22 constitute a bar on the maintainability of the present suit, as far as the proceedings before BIFR are pending. He also submitted that in the *Corromondel* case, the only proposition which emerged that amounts like sales tax, etc. which the Sick Industrial Company is capable and obliged to collect after the date of the sanctioned scheme belonged to the Revenue. In the subsequent judgment of the Supreme Court in *Tata Davy Ltd. v. State of Orissa and Ors.*, (1997) 6 SCC 669, in para 13 the court explained *Corromondal* as follows:

*“The Corromondal Pharmaceuticals judgment dealt with a sick industrial company which was unable to collect amounts like sales tax after the date of the sanctioned scheme. This Court said: ‘Such amounts like sales tax, etc., which the sick industrial company is enabled to collect after the date of the sanctioned scheme legitimately belonging to the Revenue, cannot be and could not have been intended to be and could not have been intended to be covered within Section 22 of the Act.’ It added that the issue that had arisen before it had not arisen in the case of Vallabh Glass Works. It did not appear there from or from any other decision of this Court or of the High Courts ‘that in any one of them, the liability of the sick dealt with therein itself arose, for the first time after the date of sanctioned scheme. At any rate, in none of those cases, a situation arose whereby the sick industrial unit was enabled to collect tax due to the Revenue from the customers after the ‘sanctioned scheme’ but the sick unit simply folded its hands and declined to pay it over to the Revenue, for which proceedings for recovery had to be taken’. Clearly, the facts in*

*the Corromandal Pharmaceuticals case differ from the facts of the Vallabh Glass Works case and those before us. The reference to the Corromandal Pharmaceuticals case is, therefore, inapposite."*

6. The object of Section 22 of SICA precluding institution of a suit for the recovery of money, or exemption of a decree is apparently to keep in abeyance legal proceedings, contracts etc. which have the effect of impeding revival of the sick company or adding to its liabilities. The condition, regarding stay of suits for recovery, of money or exemption was introduced by an amendment Act in 1994. It has to be harmoniously interpreted to advance such an object. This understanding is strengthened by two subsequent decisions of the Supreme Court, in *Real Value Appliances Ltd. v. Canara Bank* [1998] 5 SCC 554 where it was held that the inquiry under Section 16 of the SICA

*"must be treated as having commenced as soon as the registration of the reference is completed after scrutiny and that from that time, action against the company's assets must remain stayed as stated in Section 22 till final decision is taken by the BIFR".*

That ruling was affirmed in *Rishabh Agro Industries Ltd. v. P.N.B. Capital Services Ltd.* [2000] 5 SCC 515; it was clarified that Section 22 would be attracted even after a winding up order is issued.

7. This position was further explained by the Supreme Court recently in its judgments reported as *Jai Engineering Vs. Industrial Facilitation Council and Another* (2006) 8 SCC 677. In that case the Court considered the *Corromandal Pharmaceuticals case* (supra) as well as the other judgments and further held that the provisions of Section 22 mandates that no proceeding for execution, distress or the like against any of the properties of the industrial company and no suit for recovery of money or for the enforcement of any security shall lie against an industrial company nor can

be proceeded further without leave of the Board. Interestingly the Court noticed the over-riding nature of the provisions of the SICA by referring to Section 32 which contains a non obstante clause.

8. The Court is of the opinion that close reading of Corromondal Pharmaceuticals case (supra) and Tata Davy Limited Vs. State of Orissa and Others, (1997) 6 SCC 669 as well as the other decisions of the Supreme Court have nowhere restricted the ambit of Section 22, which was amended in 1994. Had Parliament intended that only debts which were to be noted in the scheme are covered by Section 22, such intention would have been manifested in clearer terms. Even from a policy perspective, the contention canvassed here cannot be accepted. The intention of Section 22 is to confer exclusive jurisdiction and control, on the Board, over all the assets and liabilities of the sick company, which exists during the reference and might arise in other proceedings. If as is argued on behalf of the decree holder, certain creditors, either before the formulation of the scheme, or thereafter are allowed to “stand out” on the ground that their debt is not included in the scheme and finds no mention it would lead to anomalous situations, as such creditors can take hold of valuable assets, and properties which would render the entire object of Section of SICA meaningless. This conclusion in no way can be different, if some conditions in the scheme exclude “current dues” (a term not defined in the scheme or the Act) or seek to impose liability arising after the date of the scheme, on the promoters. The mandate

of section 22 cannot be whittled down through such condition; the BIFR has to apply its mind and grant approval, for continuation of the proceeding, wherever warranted. Clearly, it has not been done here.

9. For the above reasons, the Court is of the opinion that the objections raised by the judgment debtor are substantial. The execution is therefore not maintainable. It is accordingly disposed of. It is open to the decree holder to approach the Board for appropriate sanction/approval under Section 22, and in the light of its orders, seek revival of these proceedings.

The application EA No.54/2008 is allowed in the above terms. The interim order is hereby vacated. Ex.P.2/2008 is disposed of in the above terms.

**S. RAVINDRA BHAT,J**

**SEPTEMBER 24, 2008**