

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

+ **W.P.(C) No. 9557/2007**

% Reserved on: 12th November, 2010

Pronounced on: 22nd November, 2010

ASSET RECONSTRUCTION CO. INDIA P. LTD. Petitioner

Through: Mr. Rajiv Nayyar, Sr.Adv.
with Anushree Tripathi,
Adv.

VERSUS

SHAMKEN SPINNERS LTD. & ORS. Respondents

Through: Ms. Divya Jain, Adv. for R-
1.
Mr. A.S.Chandihoke, ASG
with Mr. Sachin Datta,
Adv. for R-2/UOI.
Mr. Sandeep Agarwal,
Adv. for R-9.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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

JUDGMENT

VALMIKI J. MEHTA, J

1. The issue in the present case pertains to the interpretation to the 2nd proviso to Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). In order to appreciate the issue, it would

be necessary to reproduce the entire sub-section 1 of Section 15 and the same reads as under:-

“15. Reference to Board.-(1) When an industrial company has become a sick industrial company, the Board of Directors of the company, shall, within sixty days from the date of finalisation of the duly audited accounts of the company for the financial year as at the end of which the company has become a sick industrial company, make a reference to the Board for determination of the measures which shall be adopted with respect to the company:

Provided that if the Board of Directors had sufficient reasons even before such finalisation to form the opinion that the company had become a sick industrial company, the Board of Directors shall, within sixty days after it has formed such opinion, make a reference to the Board for the determination of the measures which shall be adopted with respect to the company:

Provided further that no reference shall be made to the Board for Industrial and Financial Reconstruction after the commencement of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, where financial assets have been acquired by any securitisation company or reconstruction company under sub-section (1) of section 5 of that Act:

Provided also that on or after the commencement of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, where a reference is pending before the Board for Industrial and Financial Reconstruction, such reference shall abate if the secured creditors, representing not less than three-fourth in value of the amount outstanding against financial assistance disbursed to the borrower of such secured creditors, have taken any measures to recover their secured debt under sub-section (4) of section 13 of that Act.”

2. A reading of the 2nd and 3rd provisos shows that there is a literal difference in the requirement of 2nd and 3rd provisos. Whereas in the 3rd proviso, there is a requirement of the will of 75% and above of the secured creditors to cause abatement of a reference under SICA, there is no such requirement of any minimum percentage of the debt to be purchased by a securitization company or an asset reconstruction company registered under the Securitization and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002 (SARFAESI Act).

3. By the impugned order, Appellate Authority for Industrial and Financial Reconstruction (“AAIFR”) has held that in the 2nd proviso to Section 15, the requirement of 75% or more of the financial assets to be purchased by a securitization company or an asset reconstruction company is very much implicit, meaning thereby, unless and until an asset reconstruction company or a securitization company purchases 75% or more of the secured financial assets of a sick company, there does not arise the question of applicability of the second proviso to Section 15(1) of the SICA. The relevant observations of AAIFR are contained in paras 15 to 18 of the impugned order dated 29.11.2007 and the same read as under:-

“15. We have examined the averments made by the companies and the counsels for ARCIL and Banks and Fls. The 2nd proviso envisages a context where the financial assets have been acquired by any securitisation/reconstruction company prior to the filing of

the reference. On the contrary, the 3rd proviso envisages instances where majority (not less than three-fourth) of the secured creditor (s) of a sick industrial company, whose reference is pending with the BIFR have taken an action under Section 13(4) of the said Act primarily with an object of realization of its outstanding dues. While the former is merely a method for acquisition of rights or interest in financial asset, the latter is the route for enforcement of security interest.

16. SICA has been enacted with the object of timely detection of sick and potentially sick companies owning industrial undertakings with a view to explore avenues for the speedy determination of the measures to ensure the expeditious revival of the company. It needs to be noted that the wordings of the second proviso are clear and it states that “where financial assets have been acquired” certain consequences will follow. Since the word “assets” has been used in the plural, then, by the same principles of judicial interpretation referred to above, it follows that the consequences will not occur if a single financial asset out of the many such assets possessed by the company is acquired by an asset reconstruction company.

17. The question that we are now required to answer is how the word “assets” is to be interpreted; whether the word “assets” in plural refers to all the assets of the company or to some of them. In our opinion there is an element of flexibility in the construction of the second proviso. Had it been the legislative intention to refer to all the assets of the company, the same would have been made specific in the proviso itself by stating “where all financial assets of the company” which is not the case here. There is no doubt that if all the financial assets of the company are acquired then the second proviso would automatically and immediately come into force. However, the question we ask ourselves is when all financial assets have not been acquired, how much acquisition must take place so that the second proviso is satisfied. For a guidance on this question we have relied upon the third proviso of Section 15(1) of SICA which refers to 75% of the value of outstanding debt. Given the aforestated context

we are of the opinion that we should interpret the 2nd and 3rd provision to section 15(1) of SICA harmoniously and hold that the second proviso can be invoked when at least 75% of value of the financial assets of a company has been acquired by an asset reconstruction company. This also implies that; (i) when for any reason a company has a single financial asset and the same is acquired, then the proviso will operate; and (ii) when a company owns more than one industrial unit and all the financial assets qua only one such unit is acquired then the proviso will not operate.

18. It needs to be remembered that the SICA is a beneficial legislation for ensuring the revival of a sick industrial company. A sick industrial company cannot be simply prevented from filing its reference merely because some of the financial assets of a sick industrial company have been acquired by an Asset Reconstruction Company. The percentage of the financial assets acquired has not been prescribed and as such, there is a requirement to harmonise the provisions entailed in the 2nd and 3rd proviso of SICA as also to interpret the true import of the provisions of SICA and SARFAESI as also the insertion of 2nd and 3rd provision to Section 15(1) of SICA. On examination of the provisions entailed in SICA, we are of the considered view that only if 75 per cent of the financial assets of a sick industrial company have been acquired by an ARC/Securitisation Company, the company becomes a non-suitor to file any further reference. We may, however, further clarify that SICA nowhere entails that pursuant to the acquisition of the financial assets, a company is not entitled to file any further reference. On the contrary, section 5(4) of the SARFAESI Act clearly stipulates that acquisition of the physical assets in terms of Section 5(1) of the SARFAESI Act does not result in the abatement of the pending proceedings. As such, even if 100% of the financial assets of a sick industrial company are acquired by any ARC/Securitisation company pursuant to the filing of the reference, the reference of the company shall not be abated/rejected as non-maintainable until the securitisation company takes an action under section 13(4) of the SARFAESI Act, thereby

causing the abatement of the reference. It also needs to be noted that an acquisition can take place at any stage in the life of a sick company. If an acquisition takes place when the reference is under consideration, then the asset reconstruction company merely replaces a bank(s) FI(s) and it makes no difference to the reference and its prognosis (unless of course third proviso is invoked). It is also not unknown that sick companies have arrived at OTS with asset reconstruction companies during the pendency of a reference and revival schemes have been formulated on that basis.”

4. The basic contention on behalf of the petitioner is that there should be literal construction of the 2nd proviso i.e., since there is no requirement of any minimum percentage of the financial assets to be purchased by an asset reconstruction company or a securitization company, therefore, even if, any percentage of assets, whether secured or unsecured of a sick company are purchased by an asset reconstruction company or securitization company then, there cannot be reference under SICA. It is contended that there is no reason to depart from the golden rule of literal construction. The Union of India, who was impleaded as a party in the present case by an order of a Division Bench of this court dated 12.2.2009, has supported the stand of the writ petitioner. On the other hand, the stand of the respondent no.1/sick company is that although, there is no requirement of any percentage under the 2nd proviso in Section 15(1) of SICA on a literal interpretation, however, it is quite clear that the said proviso will only operate if 75% or more of the secured financial assets of a sick

company are purchased by an asset reconstruction company or securitization company. It has been argued on behalf of the respondent no.1 that when a literal construction leads to absurdity, such literal construction must be avoided. It has been further argued that the intention of the legislature that there is a requirement of an asset reconstruction company or a securitization company of having to purchase 75% or more of secured financial assets of a sick company before the second proviso of Section 15(1) of SICA operates becomes clear by the amendments proposed to the Companies Act, 1956 by the Bills of the years 2002 & 2004.

5. In our opinion, the interpretation given by us to the 3rd proviso to Section 15(1) of SICA in the case of ***Oman Industrial Bank S.A.O.G. Vs. Appellate Authority for Industrial and Financial Reconstruction 2010 (169) DLT 618: 2010 (5) AD (Del.) 566***, would have a great bearing on the interpretation to the second proviso to Section 15(1). In the case of Oman Industrial Bank, we have held that a minority secured creditor i.e., a secured creditor having less than 75% of the secured asset of a sick company, cannot cause abatement of a pending reference before Board for Industrial and Financial Reconstruction (BIFR) by refusing to grant financial concessions to a sick company which the Board proposes to give in terms of a sanctioned scheme. Paras 9 and 11 of the said judgment are relevant and the same read as under:

“9. There is yet another reason why we cannot accept the arguments as urged on behalf of the petitioner that a single creditor can prevent BIFR in bringing about a scheme which envisages reduction in the dues payable by the sick company to its secured creditors. This additional reason is the amendment which has been brought about to SICA by Section 41 and schedule of the Act 54 of 2002 which amended Section 15 of SICA after promulgation of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. As a result of this amendment, a third proviso has been brought about in sub Section (1) of Section 15 that the secured creditors who represent not less than 3/4th in the value of the amount outstanding against financial assistance disbursed to the sick company can bring about an abatement of proceedings pending before BIFR. This proviso reads as under:

“Provided also that on or after the commencement of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, where a reference is pending before the Board for Industrial and Financial Reconstruction, such reference shall abate if the secured creditors, representing not less than three-fourth in value of the amount outstanding against financial assistance disbursed to the borrower of such secured creditors, have taken any measures to recover their secured debt under sub-section(4) of section 13 of that Act.”

A plain reading of this proviso added by the Act 54 of 2002 shows that the consent of at least 3/4th of the secured creditors is necessary for the proceedings before BIFR to abate. This proviso further brings into focus the legislative intent that a minority creditor cannot frustrate the proceedings before BIFR for rehabilitation and revival of the sick industrial company. The Legislature has thought it fit that at least 75% of the secured creditors must join hands to bring about an abatement to the proceedings before BIFR. If that be so, it cannot be understood as to how one secured creditor can in fact bring about an abatement of the proceedings before BIFR because giving of financial concessions by reducing the dues payable by a sick industrial company is always the heart and basic structure of any scheme for revival and rehabilitation of a sick industrial company. After all, if no financial concession in the form of reduction of dues payable by a sick company to its creditors is given, then, what will be the use of other measures under Section 18 such as change of management

or sale/lease of assets of a sick company and so on. None of these other measures would in themselves help in rehabilitation and revival of the sick industrial company and which measures could have been adopted by the sick company without being a sick company governed by SICA. It is for this reason that the Legislature has advisedly and intentionally used the expression "one or more" as found in Section 18, and which aspect we have already adverted to above that the Board may take one or more measures i.e. it is not confined only to one measure of refusing financial assistance by means of concession to a sick industrial company. Revival of a sick industrial company is a complex process involving discussions with secured creditors, other creditors, labour and other personnel employed with the company, dues of the revenue authorities and so on. If such complex procedure can be frustrated and set at naught by a single secured creditor, then, what is the purpose and use of enactment of SICA.

11. There are two other aspects which we must note in support of the interpretation which we seek to give to Section 19(4) of the Act. The first aspect is that even when a company is not sick and proceedings are resorted to by the company under Section 391 to Section 394 of the Companies Act, 1956 to bring about a composition and settlement with its creditors, it is the majority of the secured creditors who do prevail, meaning thereby minority secured creditors cannot frustrate a scheme which is propounded by the majority of the secured creditors. If a minority secured creditor cannot frustrate a scheme of composition under Section 391 to Section 394 of the Companies Act, 1956, there is no reason why a minority shareholder should be able to frustrate the revival and rehabilitation of a sick industrial company by refusing to accept a reduced amount and a statutory settlement which is brought about by approval of a rehabilitation scheme by BIFR as per the proposal of the operating agency and arrived at after duly considering the suggestions and objections of all the concerned stake holders including the creditors under Section 18(3)(b) of the SICA. SICA after all is for imposition of a valid statutory settlement which forms part of a sanctioned scheme. The second aspect is that by virtue of Section 529-A of the Companies Act, the dues of the workers are to be treated as equal to the dues payable to a secured creditor. Therefore, dues of even one of the workers can be in a manner of speaking be said to be the dues claimed by a secured creditor, but can it be

contended that one worker can frustrate a rehabilitation and revival scheme as proposed by BIFR after duly taking into consideration the views, suggestions, objections and contentions of the majority of the workmen? Surely not. Therefore, in our opinion, a minority creditor or any minority group cannot frustrate the majority by putting a spoke in the wheel by objecting to the sanction of a rehabilitation and revival scheme of a sick industrial company so as to cause the frustration in the object of revival of a sick company.”

6. In view of **Oman Industrial Bank**, since a minority secured creditor cannot frustrate the revival of a sick company, it would in our opinion be necessary that the requirement must similarly exist for an asset reconstruction company or a securitization company for taking the benefit of the 2nd proviso to Section 15(1) to purchase at least 75% or more of the secured assets of a sick company. If a minority secured creditor having secured assets even just less than 75% of financial assets cannot frustrate revival of a sick company (even if he holds upto 74% of the secured assets) then how can any and every secured/unsecured creditor having much much less than 74% of the secured assets frustrate the revival of a sick company by preventing a reference being filed. Any other interpretation will lead to a gross absurdity. For example, a securitisation company or an asset reconstruction company may purchase a debt of Re.1 or Rs.100 or Rs.1,000 or 0.1% or 0.01% or 0.001% of the debt, whether secured or unsecured, of a company and then claim that there cannot be reference made by a sick company under SICA. Be it noted that a debt which is purchased by a securitization company or an asset

reconstruction company of an amount of Re.1 etc., in fact need not even be a secured debt but it can be an unsecured debt if a literal construction is adapted of the 2nd proviso to Section 15(1) i.e., asset reconstruction company or a securitization company if it purchases an unsecured debt of even Re.1 of a sick company, then, it can on a literal interpretation of the 2nd proviso seek to claim the benefit of the said proviso to Section 15(1) and prevent revival and rehabilitation of a sick industrial company. Surely, that cannot be the intention of the Legislature. In fact, the intention of the Legislature is just opposite because in the Companies Act which is proposed to be amended to bring about an amalgam between the functions of BIFR, Company Law Board and the Civil Court dealing with winding up proceedings under the Companies Act, it has been specifically provided that there cannot be prevented a reference to BIFR unless 75% or more of the secured creditors of a sick company propose to take action under Section 13(4) of the SARFAESI Act. The provisions similar to the provisos of Section 15(1) of the present SICA are to be found in the provisos to proposed Section 424A in the proposed amended Companies Act, 1956 and the said provisos read as under:

“Provided also that in case any reference had been made before the Tribunal and a scheme for revival and rehabilitation submitted before the commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Ordinance, 2004, such reference shall abate if the secured creditors representing three-fourth in value of the amount outstanding against financial assistance disbursed to the borrower have taken measures to recover

their secured debt under sub-section (4) of section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002):

Provided also that no reference shall be made under this section if the secured creditors representing three-fourths in value of amount outstanding against financial assistance disbursed to the borrower have taken measures to recover their secured debts under sub-section (4) of section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.”

(Inserted by Act 30 of 2004)

7. That when a literal construction leads to absurdity, the Courts must avoid such interpretational absurdity as held by the Supreme Court in its judgments reported as ***Hameedia Hardware Stores Vs. B. Mohan Lal Sowcar AIR 1988 SC 1060*** and ***Entertainment Network (India) Ltd. Vs. Super Cassettes Industries Limited (2008) 13 SCC 30***. Surely, the objects of enacting statute and the intention of the Legislature are most relevant. It is, therefore, sometimes said that the golden rule is that there is no golden rule. The intention while enacting the Act is therefore ordinarily to be taken as superseding various other factors. The intention of the Legislature of course has to be seen from various facts and circumstances such as Parliamentary debates, statements of objects and reasons, report of the Law Commission of India, the amending provisions and the related provisions and so on.

The observations of the Supreme Court in the case of **Kehar Singh & others Vs. State (Delhi Administration) 1988 (3) SCC**

609 in this regard are apposite and which read as under:-

“**231.** During the last several years, the ‘golden rule’ has been given a go-by. We now look for the ‘intention’ of the legislature or the ‘purpose’ of the statute. First, we examine the words of the statute. If the words are precise and cover the situation in hand, we do not go further. We expound those words in the natural and ordinary sense of the words. But, if the words are ambiguous, uncertain or any doubt arises as to the terms employed, we deem it as our paramount duty to put upon the language of the legislature rational meaning. We then examine every word, every section and every provision. We examine the Act as a whole. We examine the necessity which gave rise to the Act. We look at the mischiefs which the legislature intended to redress. We look at the whole situation and not just one-to-one relation. We will not consider any provision out of the framework of the statute. We will not view the provisions as abstract principles separated from the motive force behind. We will consider the provisions in the circumstances to which they owe their origin. We will consider the provisions to ensure coherence and consistency within the law as a whole and to avoid undesirable consequences.”

One also can refer to the decisions of the Supreme Court reported as **National Insurance Co. Ltd. Vs. Laxmi Narain Dhut (2007) 3 SCC 700** and **Surjit Singh Vs. Mahanagar Telephone Nigam Limited (2009) 16 SCC 722**, which also lay down the same ratio as in the case of **Kehar Singh (supra)**. Para 27 of **National Insurance Co. Ltd.** and paras 21 and 22 of **Surjit Singh’s** case read as under:

“27. “Golden rule” of interpretation of statutes is that statutes are to be interpreted according to grammatical and ordinary sense of the word in grammatical or literal meaning unmindful of consequence of such interpretation. It was the predominant method of reading statutes. More often than not, such grammatical and literal interpretation leads to unjust results which the legislature never intended. The golden rule of giving undue importance to grammatical and literal meaning of late gave place to “rule of legislative intent”. The world over, the principle of interpretation according to the legislative intent is accepted to be more logical.”

“21. In the case of a wife who is a housewife and is economically dependent on her husband, obviously the telephone bills in connection with the line in her name are being paid by her husband and not by herself. Hence, we have to adopt a purposive construction in this case and not go by the literal rule of interpretation.

22. Though, no doubt, ordinarily the literal rule should be applied while interpreting a statute or statutory rule, but the literal rule is not always the only rule of interpretation of a provision in a statute, and in exceptional cases the literal rule can be departed from. As observed in the Constitution Bench decision of this Court in *R.L. Arora V. State of U.P.* (AIR pp. 1236-37, para 9)

“9. Further, a literal interpretation is not always the only interpretation of a provision in a statute and the court has to look at the setting in which the words are used and the circumstances in which the law came to be passed to decide whether there is something implicit behind the words actually used which would control the literal meaning of the words used in a provision of the statute. It is permissible to control the wide language used in a statute if that is possible by the setting in which the words are used *and the intention of the law-making body* which may be apparent from the circumstances in

which the particular provision came to be made.”
(emphasis supplied)

Hence it follows that to interpret a statute one has to sometimes consider the context in which it has been made and the purpose and object which it seeks to achieve. A too literal interpretation may sometimes frustrate the very object of the statute, and such an approach should be eschewed by the court.”

Thus, the so called golden rule of literal construction has to give way for a purposive interpretation of the statute.

8. In our opinion, a literal interpretation of the 2nd proviso to Section 15(1) not requiring atleast 75% of the secured debt to be purchased by an asset reconstruction company or a securitization company will also defeat the objects of SICA being to prevent unemployment and loss of revenue to the state exchequer and other ills which arise from the closure of an industry. Also, if we adopt the interpretation that a purchaser of a very minuscule amount of a debt of a sick company can frustrate the revival of a sick company then the same will result in an avoidable stalemate and which will arise because the secured creditor would be able to prevent a reference for revival and rehabilitation of a sick company but he would not be able to pursue his remedy under the SARFAESI Act because he would not have the cut off percentage of 75% as required by Section 13 (9) of the SARFAESI Act. To the extent possible, different provisions of Acts which are cognate and allied Acts must be interpreted harmoniously with each other and the object of the

legislature will have to be understood by reading of all the special statutes taken together.

9. The learned Additional Solicitor General, appearing on behalf of the Union of India, has sought to contend that on account of the provisions of the SARFAESI Act, and more particularly Section 9 which requires the asset reconstruction company and the securitization company to have regard to the guidelines framed by the Reserve Bank of India, since guidelines have been framed by the Reserve Bank of India in a guidance note which does not require that there should be included a requirement of 75% or more of the purchase assets by an assets reconstruction or securitisation company there should be a literal interpretation of the 2nd proviso to Section 15(1). Following paragraphs of the written arguments filed on behalf of the Union of India states this position :-

“13. For the purposes of SARFAESI Act, the Reserve Bank of India has issued “The Securitisation Companies (Reserve Bank) Guidelines and Directions, 2003.

14. In exercise of the powers conferred therein, the Reserve Bank of India has also framed Guidelines and Direction to Securitisation Companies and Reconstruction Companies relating to registration and other matters like ‘acquisition of financial assets’, prudential norms relating to income recognition, classification of assets, provisioning, accounting standards, capital adequacy, measures for asset reconstruction and deployment of funds.

15. The Reserve Bank has evolved a set of instructions which are required to be complied with by all Securitisation Companies or Reconstruction Companies so that the process of asset reconstruction

proceeds on smooth and sound lines. In that 'Guidance Note' it is provided that:-

(1) Acquisition of Financial Assets

(i) Every securitization company or reconstruction company is required to evolve Assets Acquisition Policy which shall provide that the transactions take place in a transparent manner and at a fair price in a well informed market, and the transactions are executed at arm's length in exercise of due diligence;

(ii) The share of financial assets to be acquired from the bank /FI should be appropriately and objectively worked out keeping in view the provisions in the Act requiring consent of secured creditors holding not less 75% of the amount outstanding to a borrower for the purpose of enforcement of security interest.

(iii) For easy and faster realisability, all the financial assets due from a single debtor to various banks/FI may be considered for acquisition. Similarly, financial assets having linkage to the same collateral may be considered for acquisition to ensure relatively faster and easy realization.

16. RBI has also come out with Guidelines for change or takeover of the Management of the Business of the Borrower by Securitisation Companies and Reconstruction Companies. In that guidelines it has been provides as under:-

"Clause 4:-

"(a) A SC/RC may effect change in or take over the management of the business of the borrower, where the amount due to it from the borrower is not less than 25% of the total assets owned by the borrowed; and

(b) Where the borrower is financed by more than one secured creditor (including SC/RC), secured creditors (including SC/Rc) holding not less than 75% of the outstanding security receipts agree to such action."

17. Therefore, it is respectfully submitted that adequate safeguards have been provided by the 'Reserve Bank of India' by way of 'Guidance Note'."

10. The guidance notes of the Reserve Bank of India on behalf of the Union of India also provide as under:-

"The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002' had come into effect from June 21, 2002. In exercise of the powers conferred therein, the Bank has framed Guidelines and Directions to Securitisation Companies and Reconstruction Companies relating to registration and other matters like acquisition of financial assets, prudential norms relating to income recognition, classification of assets, provisioning, accounting standards, capital adequacy, measures for asset reconstruction and deployment of funds.

2. The Bank has evolved a set of instructions which are required to be complied with by all Securitisation Companies or Reconstruction Companies so that the process of asset reconstruction proceeds on smooth and sound lines. In addition, the Bank has evolved guidance note based on guidelines issued on various matters, gist of which is given below for the guidance of securitization companies or reconstruction companies. The words and expressions used in these notes shall have the same meaning as in the Act.

Reliance has also been placed upon the preamble to the Securitization Companies and Reconstruction Companies (Reserve Bank) Guidelines and Directions, 2003, which read as under:-

"The Reserve Bank of India, having considered it necessary in the public interest, and being satisfied that, for the purpose of enabling the Reserve Bank to regulate the financial system to the advantage of the country and to prevent the affairs of any Securitization Company or Reconstruction Company from being conducted in a manner detrimental to the

interest of investors or in any manner prejudicial to the interest of such Securitisation Company or Reconstruction Company, it is necessary to issue the guidelines and directions relating to registration, measures of asset reconstruction, functions of the company, prudential norms, acquisition of financial assets and matters related thereto, as set out below hereby, in exercise of the powers conferred by Sections 3, 9, 10 and 12 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, issues to every Securitisation Company or Reconstruction Company, the guidelines and directions hereinafter specified.”

11. We are left unimpressed by the arguments on behalf of the Union of India as in our opinion, they run counter to the schemes of the SARFAESI Act and SICA. We have already given above our reasons as to the absurdity which will result if the requirements of 75% of the secured assets are not to be purchased by an asset reconstruction company or a securitization company and in spite thereof to claim benefit of the 2nd proviso to Section 15(1) of SICA. We only want to add that guidelines issued by the Reserve Bank of India reproduced above and relied upon, do not in any manner support the interpretation as is sought to be put forth by the learned Additional Solicitor General of India and on the contrary in fact indicate the requirement of 75% of the secured assets to be purchased by an asset reconstruction company or securitisation company.

12. In view of the above, our conclusion therefore is that undoubtedly, a literal interpretation of the 2nd proviso to Section 15(1) of the SICA does not require any minimum percentage of the secured

assets to be purchased by an asset reconstruction company or a securitization company acting under the SARFAESI Act, however, the literal interpretation results in an absurdity and a stalemate which can and should be avoided by requiring in the 2nd proviso to Section 15(1) that the asset reconstruction company or the securitisation company must purchase at least 75% or more of the secured assets of a Sick Industrial Company before it can claim to bring into effect the second proviso to Section 15(1).

13. In view of the above, the writ petition is dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J.

NOVEMBER 22, 2010
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SANJAY KISHAN KAUL, J.