

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

+ RFA No. 788/2005 and CM No. 16225/2005 and 3419/2009

Judgment delivered on: 16.04.2012

M/s Haryana Steel & Alloys Ltd. Appellant
Through: Mr. Anil Grover, Adv.

versus

M/s Transport Corporation of India Respondent
Through: Mr. T.A. Francis, Adv.

**CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR**

KAILASH GAMBHIR, J.

1. By this appeal filed under Section 96 of the Code of Civil Procedure, 1908 the appellant seeks to challenge the judgment and decree dated 3rd February, 2005 passed by the Court of learned Additional District Judge, Tis Hazari Courts Delhi whereby decreing the suit for recovery of Rs. 5,20,529/- filed by the respondent under Order XXXVII of CPC was decreed in favour of the respondent and against the appellant.

2. The main grievance raised by the appellant in the present appeal is that the recovery suit filed by the respondent was barred by the provisions of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as SICA) as no permission was sought by them under Section 22(1) of the Act before filing the said recovery suit. It is also the case of the appellant that in the leave to defend application filed by the appellant in response to the summons for judgment issued by the learned Trial Court in the said summary suit, one of the main objections, besides others, was that the appellant company was registered with the BIFR at serial No. 389/99 and, therefore, the said proceedings of the summary suit were liable to be stayed in terms of Section 22 of Sick Industrial Companies (Special Provisions) Act, 1985. It is further the case of the appellant that on 11.6.2002, BIFR had rejected the reference made by the appellant company and against the said order, the appellant had filed an appeal (appeal No. 200/2002) but despite the fact that the appellant had placed on record the entire record of the said appeal before the learned Trial Court, yet the learned Trial Court ignored the pendency of the appeal before

AAIFR and wrongly dismissed the leave to defend application preferred by the appellant, ultimately decreeing the summary suit filed by the respondent.

3. Arguing for the appellant, Mr. Anil Grover, learned counsel submitted that the learned Trial Judge had ignored the mandate of Section 22 of Sick Industrial Companies (Special Provisions) Act, 1985, which clearly provides that where in respect of an industrial company, an inquiry under Section 16 is pending or any scheme referred to under Section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under Section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 or any other law no suit for recovery of money would lie against such a company. Counsel also submitted that if the jurisdiction of the civil Court was ousted in terms of the provisions of Section 22 of the said Act, then, any judgment rendered by it would be *coram non judice*. The contention raised by the counsel for the appellant was that the said judgment and decree dated 3.2.2005 under challenge in the

present appeal is a nullity as the learned Trial Court lacked the inherent jurisdiction to try and entertain the said suit in the absence of the said mandatory permission granted under Section 22. Counsel also submitted that once registration is made under Section 15 of Sick Industrial Companies (Special Provisions) Act, 1985 then the provisions of Section 22 will immediately come into play and the position will not be different where even the appeal filed by such company is pending consideration under Section 25 of the said Act before AAIFR. Counsel also submitted that in fact on 1.12.2005, AAIFR had allowed the appeal No. 200/2002 filed by the appellant and gave direction to BIFR for fresh consideration of the reference No. 389/99 along with two subsequent references filed by the appellant company. Counsel further submitted that BIFR had declared the appellant company as sick industrial company in terms of Section 3(1)(o) of SICA vide order dated 19.4.2006. Counsel also submitted that during the pendency of the present appeal, the respondent had approached BIFR to seek permission for the execution of the impugned judgment and decree dated 3rd February, 2005 and the BIFR without considering that the said judgment and decree

became null and void in the absence of the said permission under Section 22 of SICA, illegally allowed the respondent to proceed with the execution proceedings vide orders dated 21st October, 2008. Counsel further submitted that the appellant had filed appeal No. 48/2009 against order dated 21st October, 2008 and vide order dated 26th May, 2009, the AAIFR had stayed the order dated 21st October, 2008 passed by BIFR. Counsel for the appellant placed reliance on Section 26 of SICA, which bars the jurisdiction of the Civil Court in respect of any matter, which the Appellate Authority or the Board is empowered by, or under, the said Act to determine. Counsel also submitted that the winding up petition filed by the appellant company is now pending consideration before the company Court at High Court of Punjab and Haryana where the official liquidator has already been appointed in the matter and in view of the appellant company being under liquidation, the respondent is required to approach the official liquidator for the said claim or any other claim against the appellant company. In support of his arguments counsel for the appellant placed reliance on the following judgments:-

1. Bhoruka Textiles Ltd. -vs- Kashmiri Rice Industries, 2009(7) SCC 521.
2. Intercraft Ltd. -vs- Cosmique Global & Anr. 173(2010) DLT 116 (DB)
3. Stichting Doen-Postcode Loterij -vs- Vin Poly Recyclers Pvt. Ltd., 167(2010) DLT 333
4. Tata Motors Ltd. -vs- Pharmaceutical Products of India Ltd., 2008(7) SCC 619
5. Chief Engineer, Hydel Project -vs- Ravinder Nath, 2008(2) SCC 350
6. Dhodha House -vs- S.K. Mangi, 2006(9) SCC 41
7. Harshad Chiman Lal Modi -vs- DLF Universal Ltd., 2005(7) SCC 791

4. The present appeal filed by the appellant was vehemently opposed by Mr. T.A. Francis, learned counsel representing the respondent, who submitted that vide order dated 10th July, 2002 the first reference filed by the appellant company seeking its registration under Section 15 of Sick Industrial Companies (Special Provisions) Act, 1985 was not only dismissed by the BIFR but the same was dismissed with serious strictures passed by the Board against the appellant. Counsel for the appellant particularly invited attention of this Court to para 34 of the order dated 10th July, 2002 wherein the Board made the said observation taking a view that the appellant company had approached the Board with unclean hands and their bona fides

were also suspect. Counsel further submitted that even the second reference filed by the appellant bearing No. 379/02 was also dismissed vide order dated 31st January, 2003. Counsel also submitted that the leave to defend application filed by the appellant in the said summary suit was listed for arguments on 2nd July, 2004, 6th August, 2004, 10th August, 2004, 25th November, 2004, 20th January, 2005 and 3rd February, 2005, but no material was placed on record by the appellant before the Trial Court with regard to the pendency of the appeal No. 200/2002 preferred by the appellant company against the said orders passed by the BIFR except the fact that only a bald statement was made by the appellant with regard to the pendency of the appeal. Counsel also submitted that no application under Section 22 of SICA was separately filed by the appellant before the Trial Court along with the supporting documents. Counsel also submitted that in the absence of any material placed on record, the learned Trial Court rightly did not give any credence to the defence raised by the appellant claiming immunity under Section 22 of SICA. Counsel further submitted that it is only at the time of execution that the

appellant for the first time apprised the executing Court that vide orders dated 19th April, 2006 the appellant company was declared sick. Counsel also submitted that pursuant to the direction given by this Court vide orders dated 21.11.2005, the appellant has already deposited the decretal amount and the same now be directed to be released by this Court in favour of the respondent with the amount of interest accrued thereon.

5. I have heard learned counsel for the parties at considerable length and given my thoughtful consideration to the arguments advanced by them.

6. The respondent is a public limited company which had filed a suit under Order 37 CPC to claim recovery of an amount of Rs.5,20,529/- with pendent lite and future interest @ 24% per annum against the appellant. The main allegation of the respondent was that the appellant had engaged the services of the respondent company for transporting its material to various destinations and consequently bills were raised by the respondent against such transportation charges but no payment was made by the appellant and the respondent thus claimed that

an amount of Rs. 3,89,393/- towards amount of the bills and interest @ 24% per annum from the date of bills and a sum of Rs. 5,20,529/- with pendent lite and future interest @24% per annum became payable by the appellant. Leave to defend application was filed by the appellant and one of the principal objections raised was that the appellant was registered with BIFR against case No.389/99 and since no consent for the filing of the said case was sought by the respondent prior to the filing of the said recovery suit, the said suit was liable to be stayed in terms of section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985. The said leave to defend application filed by the applicant was dismissed by the learned trial court vide orders dated 3.2.2005 as the trial court found that the appellant/defendant had not raised any triable issues requiring adjudication by trial. While dealing with the objection of the appellant relating to stay of the suit in terms of Section 22 of SICA, the learned trial court rejected the said contention of the appellant on the ground that vide order dated 6.9.2003 in case no.432/2002 the BIFR rejected the application of the appellant as the same was filed beyond the stipulated period of sixty days.

The learned trial court further observed that BIFR also found that the appellant had approached the Board with unclean hands and the second reference filed by the appellant before the BIFR also met the same fate. So far as filing of an appeal by the appellant before the BIFR against the said orders is concerned, the learned trial court observed that simply because the appellant/defendant had filed an appeal against the rejection of its reference will not mean that the appeal in terms of section 22 has been accepted. Feeling aggrieved with the said order, the appellant has preferred the present Appeal.

7. Without pressing other grounds raised in the present appeal, the only ground urged by the appellant was that the suit for recovery filed by the respondent/plaintiff was barred by the provision of section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 as no permission of the Board was sought by the respondent/plaintiff before filing the said suit. Before proceeding further in the matter, it will be relevant to reproduce section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 hereunder:-

“22. Suspension of legal proceedings, contracts, etc.”-(1) Where in respect of an industrial company, an inquiry under section 16 is pending or any scheme referred to under section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under section 25 relating to the Companies Act, 1956 (1 of 1956), or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof {and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company} shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority.

(2) Where the management of the sick industrial company is taken over or changed {in pursuance of any scheme sanctioned under section 18}, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or in the memorandum and articles of association of such company or any instrument having effect under the said Act or other law-

(a) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company.

(b) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the Board.

(3) [Where an inquiry under section 16 is pending or any scheme referred to in section 17 is under preparation or during the period] of consideration of any scheme under section 18 or where any such scheme is sanctioned thereunder, for due implementation of the scheme, the Board may by order declare with respect to the sick industrial company concerned that the operation of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force, to which such sick industrial company is a party or which may be applicable to such sick industrial company immediately before the date of such order, shall remain suspended or that all or any of the rights, privileges, obligations and liabilities accruing or arising thereunder before the said date, shall remain suspended or shall be enforceable with such adoptions and in such manner as may be specified by the Board.

Provided that such declaration shall not be made for a period exceeding two years which may be extended by one year at a time so, however, that the total period shall not exceed seven years in the aggregate.

(4) Any declaration made under sub-section (3) with respect to a sick industrial company shall have effect notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law, the memorandum and articles of association of the company or any instrument having effect under the said Act or other law or any agreement or any decree or order of a court, tribunal, officer or other authority or of any submission, settlement or standing order and accordingly:-

(a) any remedy for the enforcement of any right, privilege, obligations and liability suspended or modified by such declaration, and all proceedings relating thereto pending before any court, tribunal, officer or other authority shall remain stayed or be continues subject to such declaration; and

(b) on the declaration ceasing to have effect-

(i) any right, privilege, obligation or liability so remaining suspended or modified, shall become revived and enforceable as if the declaration had never been made; and

(ii) any proceeding so remaining stayed shall be proceeded with subject to the provisions of any law which may then be in force, from the stage which had been reached when the proceedings became stayed.

(5) In computing the period of limitation for the enforcement of any right, privilege, obligation or liability, the period during which it or the remedy for the enforcement thereof remains suspended under this section shall be excluded."

8. A plain and simple reading of the aforesaid provision would clearly show that a suit for recovery is barred where an inquiry under section 16 of the Act is pending. This provision further shows that even where an appeal under Section 25 relating to an

industrial company is pending, then also a suit would be barred except with the consent of the Board or the Appellate Authority, as the case may be. The aforesaid provision clearly mandates that no proceedings *inter alia* for execution, distress or the like against any of the properties of the industrial company or for the appointment of a Receiver in respect thereof and no suit for the recovery of money or for the enforcement of any security against the industrial company shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate authority. The statutory injunction as envisaged in the said provision will not merely operate when an inquiry under Section 16 is pending before the Board, but will operate with equal force where an appeal under Section 25 is pending before the Appellate Authority i.e. AAIFR. It would be apt here to refer in this regard the judgment of the Hon'ble Supreme Court in the case of ***M/s. Rishabh Agro Industries Ltd. vs P.N.B. Capital Services Ltd., (2000)5SCC515*** wherein it was held as under:-

"9. It is true that for invoking the applicability of Section 22 it has to be established that an inquiry under Section 16 is pending or any scheme referred to under Section 17 is under preparation or sanctioned scheme is under implementation or an appeal under Section 25 to an industrial company is pending.

But it cannot be said that despite existence of any of the aforesaid exigencies the provision of Section 22 would not be attracted after the order of winding up of the company is passed. The words "no proceeding for winding up of the industrial company or for execution distress or the like against any of the properties of the industrial company or for the appointment of receiver in respect thereof shall lie or be proceeded with further, leave no doubt in our mind that the effect of the section would be applicable even after the winding up order is passed as no proceeding even thereafter can be proceeded with further under the Companies Act."

9. It would also be relevant here to refer to the Division Bench judgment of this Court in the case of ***Intercraft Limited vs Cosmique Global, 172(2010)DLT116(DB)*** wherein it was held as under:-

"4. According to us, DRAT has fallen into a clear error in relying upon the decision of this Court in the case of Industrial Development Bank (supra) although the decision of the Real Value Appliances Ltd. (Supra) of the Supreme Court was cited before it. The ratio of the decision of the Supreme Court in Real Value Appliances Ltd. (supra) leaves no manner of doubt that once registration is made under Section 15 of SICA, the provision of Section 22 will immediately come into play. It is not necessary that there should be further an enquiry under Section 16 before it can be said that Section 22 comes into play. According to us, this logic will also apply when an appeal is pending under Section 25 before AAIFR. This is for the reason that suppose a sick company succeeds before AAIFR and it is held that the order of BIFR rejecting the reference is invalid and therefore it is directed that a sick company needs to be rehabilitated by formulating a scheme, then, in certain cases there would be futility of such remand orders because unless Section 22 applies after filing of an appeal under Section 25 it is possible that there would be scramble among the creditors to appropriate the assets, whether by getting the decrees or otherwise, of a sick company and that by the time AAIFR sends the matter back to BIFR for formulating and implementing a revival scheme, there may not be available any assets or sufficient assets for revival of the sick company on account of eventuality of Section 22 not applying during the pendency of an appeal against an order rejecting the

registration of a reference by BIFR. In such scenario, if a sick company succeeds in AAIFR, the appeal would yet become infructuous because in the meanwhile all the assets of the sick company would have been lost. We would hasten to add here that in such circumstances it is incumbent upon AAIFR to decide the appeal under Section 25 most expeditiously and without delay to avoid any eventuality of a sick company taking undue advantage of the pending appeal.

*5. In the facts of the present case, it is not disputed that the Recovery Officer when he was proceeding ahead with the auction sale proceedings, an appeal was in fact pending before AAIFR. If that be so, the entire action of the Recovery Officer was clearly hit and was violative of Section 22 of SICA. The operation of Section 22 of SICA is automatic and any action taken in violation of the same by any authority would clearly be void ab initio. The Supreme Court in its recent decision reported as **Bhoruka Textiles Ltd. Vs. Kashmiri Rice Industries, 2009 (7) SCC 521** has held that a decision of a civil court in violation of Section 22 is coram non judice. Any other interpretation, would jeopardise the assets of a sick company if its revival is intended. Accordingly, the auction sale proceedings which took place on 25.1.2005, although on that date an appeal was pending before AAIFR with respect to the petitioner company for registration as a sick company, is liable to be set aside and consequently also the confirmation of the auction sale proceedings in favour of the respondent No.1 herein."*

10. In the background of the aforesaid legal position, the finding of the learned trial court holding that simply because the appellant herein has preferred an appeal against the order of rejection of reference will not mean that the appeal has been accepted and will attract section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 is *ex facie* unfounded, perverse and illegal. The learned trial court has overlooked the

language of the provision itself which clearly takes in its sweep filing of an appeal under section 25 as well to suspend the legal proceedings against a company where consent of the Board or the Appellate Authority is not obtained before filing the suit. The finding of the learned trial court to this extent is thus set aside.

11. However, there is another dimension to the said embargo placed on filing of the suit for recovery against a company when the proceedings are pending under the SICA, which is the necessity of the inclusion of the dues payable by the company to the plaintiff in the scheme formulated before the BIFR. It is a settled legal position that it is not by mere pendency of an enquiry under Section 16 of the said Act or preparation of the scheme thereof being under consideration or even filing of an appeal under section 25 before the appellate authority that by itself would entitle the appellant for the said statutory injunction against the respondent/plaintiff as the benefit of the prohibition or embargo created under section 22 of the Act would come into operation only where the appellant/defendant has disclosed before the Court, that the amounts claimed by the

respondent/plaintiff have been duly shown and disclosed in the scheme formulated and laid before the BIFR. The Apex Court in the case of ***Deputy Commercial Tax Officer and Ors. vs Corromandal Pharmaceuticals and Ors., (1997)10SCC649*** enunciated the law to hold that a cessation of legal proceedings would be justified only if the dues in respect of which adjudication is ongoing is also included in the contemplation of scheme presented by BIFR. The relevant paragraph of the said judgment for better appreciation is reproduced herein:-

"10. On a fair reading of the provisions contained in Chapter III of Act 1/1986 and in particular Sections [15 to 22](#), we are of the opinion that the plea put forward by the Revenue is reasonable and fair in all circumstances of the case. Under the statute, the BIFR is to consider in what way various preventive or remedial measures should be afforded to a sick industrial company. In that behalf, BIFR is enabled to frame an appropriate scheme. To enable the BIFR to do so, certain preliminaries are required to be followed. It starts with the reference to be made by the Board of Directors of the sick company. The BIFR is directed to make appropriate inquiry as provided in Sections [16](#) and [17](#) of the Act. At the conclusion of the inquiry, after notice and opportunity afforded to various persons including the creditors, the BIFR is to prepare a scheme which shall come into force on such date as it may specify in that behalf. It is implementation of the scheme wherein various preventive remedial or other measures, are designed for the sick industrial company, steps by way of giving financial assistance etc. by Government, banks or other institutions, are contemplated. In other words, the scheme is implemented or given effect to, by affording financial assistance by way of loans, advances or guarantees or reliefs or concessions or sacrifices by Government, banks public financial institutions and other authorities. In order to see that the scheme is successfully implemented and no impediment is caused for the successful carrying out of the scheme, the Board is enabled to have a say when the steps for recovery of the amounts or other coercive

proceedings are taken against sick industrial company which, during the relevant time, acts under the guidance/control or supervision of the Board (BIFR). Any step for execution, distress or the like against the properties of the industrial company or other similar steps should not be pursued which will cause delay or impediment in the implementation of the sanctioned scheme. In order to safeguard such state of affairs, an embargo or bar is placed under Section 22 of the Act against any step for execution, distress or the like or other similar proceedings against the company without the consent of the Board or, as the case may be, the appellate authority. The language of Section 22 of the Act is certainly wide. But, in the totality of the circumstances, the safeguard is only against the impediment, that is likely to be caused in the implementation of the scheme. If that be so, only the liability or amounts covered by the scheme will be taken in, by Section 22 of the Act. So, we are of the view that though the language of Section 22 of the Act is of wide import regarding suspension of legal proceedings from the moment an inquiry is started, till after the implementation of the scheme or the disposal of an appeal under Section 25 of the Act, it will be reasonable to hold that the bar or embargo envisaged in Section 22(1) of the Act can apply only to such of those dues reckoned or included in the sanctioned scheme. 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 covered within Section 22 of the Act. Any other construction will be unreasonable and unfair and will lead to a state of affairs enabling the sick industrial unit to collect amounts due to the Revenue and withhold it indefinitely and unreasonably. Such a construction which is unfair, unreasonable and against spirit of the statutes in a business sense, should be avoided."

12. In ***Sirmor Sudburg Auto Ltd. vs Kuldip Singh Lamba, 1997 IVAD(Delhi)364*** this Court following the principles laid down in *Deputy Commercial Officer (Supra)* also held that mere pendency of the enquiry would not suffice unless the claimed dues were included in the sanctioned scheme. Relevant para of the said judgment is reproduced as under:

(12) Still question would arise what the defendant-objector has to show in order to successfully make out a case under Section [22\(1\)](#) of the Act. The question was examined very recently by their Lordships of the Supreme Court in *Deputy Commercial Tax Officer Vs. Corromandal Pharmaceuticals*, 1997 Iii Ad Sc 713. The petitioner company was an assessed to sales tax assessed for the years 1992-93 and 1993-94 by orders dated 3.1.94 and in 1995 respectively. A scheme under Sica was sanctioned by the Bifr on 19.11.90. Recovery proceeding for the sales tax were assailed and stay was sought under Section [22](#) of the Act. The revenue contended that as the arrears of sales tax in question were related to the period after sanctioned scheme was brought under implementation, Section [22](#) of the Act was inapplicable and could apply only in respect of sales tax dues included in the sanctioned scheme. Their Lordships upheld the contention of the revenue and formed an opinion that Section [22\(1\)](#) should be read down. Their Lordships held:- "Instep for execution, distress or the like against the properties of the industrial company other of similar as steps should not be pursued which will cause delay or impediment in the implementation of the sanctioned scheme. In order to safeguard such state of affairs, an embargo, or bar is placed under Section [22](#) of the Act against any step for execution, distress or the like or other similar proceedings against the company without the consent of the Board or, as the case may be, the appellate authority. The language of Section [22](#) of the Act is certainly wide. But, in the totality of the circumstance, the safeguard is only against the impediment, that is likely to be caused in the implementation of the scheme. If that be so, only the liability or amounts covered by the scheme will be taken in, by Section [22](#) of the Act, So, we are of the view that though the language of Section [22](#) of the Act is of wide import regarding suspension of legal proceedings from the moment an inquiry is started, till after the implementation of the scheme or the disposal of an appeal under Section [25](#) of the Act, it will be reasonable to hold that the bar or embargo envisaged in Section [22\(1\)](#) of the Act can apply only to such of those dues reckoned or included in the sanctioned scheme."

"Another construction will be unreasonable and unfair and will lead to a state of affairs enabling the sick industrial unit to collect amounts due to the Revenue and withhold it indefinitely and unreasonably. Such a construction which is unfair, unreasonable and against spirit of the statute in a business sense, should be avoided."

(13) It follows from the law laid down by the Supreme Court in *Corromandal Pharmaceuticals* case (*supra*) that to be entitled to stay of the legal proceedings under Section [22](#) of the Act a mere pendency of the enquiry would not suffice; the dues must be reckoned or

included in the sanctioned scheme. Section [22\(1\)](#) is also not attracted to the dues incurred after the date of the sanctioned scheme.

13. The Hon'ble Division Bench of this Court recently in ***Saketh India Limited vs W.Diamond India Limited*** **2010(119)DRJ190** relying on both the above judgments also reiterated the same view. Relevant para of the said judgment is also reproduced herein:-

"6. Courts, however, have always been alive to the possible mischief that invocation of SICA can lead to. In a nutshell, where the net worth of a company is reduced to a negative, and the amelioration that is sought is for reviving the company rather than winding it up, the recourse to the Act would be legitimate. There is no justifiable reason, therefore, for all legal proceedings to be immediately even held in abeyance, if not dismissed. We are mindful of the fact that Parliament has incorporated an amendment in the Section with effect from 1.2.1994 in these words - "no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company - shall lie or be proceeded with further, except with the consent of the Board, or as the case may be, the Appellate Authority". It appears to us that the phrase "recovery of money" must be construed ejusdem generis and accordingly recovery proceedings in the nature of execution or any other coercive enforcement that has been ordained to be not maintainable. We do not find any logic in holding legal proceedings to be not maintainable, or to be liable to be halted unless, even if the debt sought to be proved in the Complaint has not been admitted. Given the delays presently endemic in the justice delivery system if a creditor is disallowed even from proving the indebtedness of a recalcitrant debtor sick company, it would cause unjustified hardship. Whichever way we look at the matter, there can be no logic in denying legal recourse to a party for proving its debt. In the event that at least the principal amount, or a substantial part of it stands admitted, either in the suit or by means of a mention in the Scheme placed before the BIFR, the aggrieved party must be permitted to prove its claim. In holding so, the only prejudice that we can conceive of is incurring expenditure in legal fees. When this is weighed against the interests of a person claiming that the company is indebted to it, the balance tilts in favour of the latter. A holistic reading of Section [22\(1\)](#) of

SICA makes it manifestly clear that Parliament's intention was to insulate sick companies only against proceedings for winding-up or for execution, or distress or the like or for enforcement of any security or guarantee. In the case in hand, despite several opportunities granted to the Appellant, it has miserably and perhaps deliberately failed to substantiate that the claim mentioned in the Suit has been reflected in the Scheme placed before the BIFR but even more poignantly, that a scheme was, in fact, pending before BIFR. If an Appeal is pending, has BIFR failed to grant or has withdrawn registration under SICA. We see the conduct of the Appellant as nothing more than an abuse of SICA."

14. In the light of the above settled legal position, analyzing the facts of the case at hand, it is manifest that no material was placed on record by the appellant to show that the amount in respect of which the respondent laid its claim in the said recovery suit was reflected in the scheme laid before the BIFR. The only contention raised by the appellant before the trial court as well as before this Court was that the prohibition or embargo as envisaged in Section 22 would come into operation immediately once the defendant brings to the notice of the Court that an inquiry under Section 16 is pending before the Board or an appeal is pending relating to the said inquiry before the Appellate Authority. Having failed to place any such material on record, this Court is of the clear view that the bar or embargo envisaged under Section 22 of the Act will not apply to the facts

of the present case as the appellant cannot take the advantage of the said provision merely because an inquiry under Section 16 was pending before the BIFR or an Appeal under Section 25 against the order of BIFR was pending before the AAIFR.

15. In the light of the above discussion, this court does not find any merit in the present appeal and the same is hereby dismissed. The decretal amount along with interest accrued thereon deposited by the appellant pursuant to the directions of this Court vide order dated 21.11.05 is directed to be released in favour of the respondent.

KAILASH GAMBHIR, J

APRIL 16, 2012