

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 29.10.2013

+ **W.P.(C) 1424/2011 & CM No. 3043/2011**

M/s. S.H. ASSOCIATES

....Petitioner

versus

**RAJASTHAN FINANCIAL CORPORATION LTD.
AND ORS.**

.... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Pallav Saxena.

For the Respondents : Mr Shyam Moorjani for R-1.

Mr Nikhil Jain for R-2.

Mr Suresh Dutt Dobhal for R-3.

AND

+ **W.P.(C) 2294/2011& CM No. 4891/2011**

IFCI LIMITED

.... Petitioner

versus

**RAJASTHAN FINANCIAL CORPORATION LTD.
AND ORS.**

.... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Suresh Dutt Dobhal.

For the Respondents : Mr Shyam Moorjani for R-1.

Mr Nikhil Jain for R-4.

Mr Pallav Saxena for R-6.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. These writ petitions have been filed challenging the order dated 20.12.2010 passed by the Debts Recovery Appellate Tribunal (hereinafter referred to as the 'Appellate Tribunal') in Appeal no. 200/2010 which in turn was filed impugning the order dated 16.03.2010 passed by the Debt Recovery Tribunal-I, Delhi (hereinafter referred to as 'DRT-I') in Appeal no. 29/2009 disposing of the appeal against an interim order dated 20.05.2009 passed by the Recovery Officer in R.C. No.53/2004. The petitioner in W.P.(C) No.1424/2011 is the auction purchaser who has been successful in the auction conducted by the Recovery Officer to satisfy the recovery certificate issued for recovery of dues owed to IFCI Limited (formerly known as the Industrial Financial Corporation of India Ltd.). The writ petition being W.P.(C) No.2294/2011 filed by IFCI limited also impugns the order dated 20.12.2010 (hereinafter referred to as the 'impugned judgment') passed by the Appellate Tribunal on similar grounds as those urged in W.P.(C) No.1424/2011. As the subject matter of both the writ petitions is the same, they have been taken up together.

2. The controversy involved in the present writ petitions relates to whether, despite an earlier order issued by the Board for Industrial and Financial Reconstruction directing the sale of the assets of Rajasthan Glyoxal Limited (hereinafter referred to as the 'respondent company') under the provisions of Section 20(4) of the Sick Industrial Companies (Special Provisions) Act, 1985, the Recovery Officer could auction the property of

the respondent company in execution of the Recovery Certificate issued by the DRT-I.

3. The respondent company became a sick company within the meaning of Section 3(1)(o) of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as the 'SICA'). Consequently, the Board for Industrial and Financial Reconstruction (hereinafter referred to as the 'BIFR') registered a reference under Section 15 of SICA as case no. 90 of 1989.

4. The BIFR, after making enquiry, arrived at the conclusion that the net-worth of the respondent company was not likely to exceed its accumulated losses within a reasonable time and the respondent company was thus not likely to become commercially viable. Accordingly, the BIFR recorded its opinion, that it was just and equitable to wind up the respondent company, in an order dated 09.02.1994 passed in case no. 90/1989. The BIFR further passed directions under Section 20(4) of SICA directing that the assets of the respondent company be sold and the proceeds thereof be deposited with the High Court. The relevant extract of the said order dated 09.02.1994 is quoted below:-

“12. Thus, in the light of the proceedings of 16.11.1993 and subsequent developments that have been recorded we find it just and equitable that the sick industrial company i.e. Rajasthan Glyoxal Ltd. should be wound up. This opinion be forwarded to the concerned High Court for necessary action, according to law. Copies of all proceedings in BIFR would also form an enclosure to the same.

13. Further, the Bench directs that under sub-section 4 of the Section 20 of the Act the assets of the company should be sold by RIICO and RFC jointly in consultation with SBBJ and the proceeds thereof deposited in the High Court to be used as specified in SICA. For this purpose, the RIICO and RFC in consultation with SBBJ should evaluate the assets of the company within a period of one month and fix the reserve price. Thereafter, within one week a suitable advertisement should be released inviting offers for sale of the company as a going concern (without liabilities) on as is where is basis, by 26th March, 1994. Necessary assistance may be taken from National Environment Engineering Research Institute (NEERI)/Deptt. of Environment, for expert technical advice in regard to handling/disposal of hazardous chemicals. The Bench directed for appointment of a Sales Committee comprising of the representatives of SBBJ, RIICO, RFC and IFCI who should evaluate the offers received in response to the requisite advertisement, in relation to the reserve price and send its complete report for further directions of the Bench. The Special Director appointed on the Board of the company is hereby discharged.”

5. Respondent nos. 1 and 2 were directed to evaluate the assets of the respondent company in consultation with respondent no. 4 within one month from 09.02.1994 and further advertisement inviting offers for sale of the respondent company as a going concern without liabilities, on as is where is basis, were directed to be issued by 26.03.1994. However, the said directions were not complied with. Rajasthan State Industrial Development & Investment Corporation Ltd. (hereinafter referred to as the ‘RIICO’) has asserted that assets of the respondent company were advertised in February 1995, November 1995 and in November 1998, however, it is not disputed that the sale process was not pursued.

6. RIICO approached the BIFR in 1998 seeking certain modifications in the conditions for sale of assets of the respondent company as directed earlier and pursuant thereto, BIFR passed an order dated 30.04.1998 the operative part of which reads as under:-

“2. We have carefully considered the submissions made by the RIICO and the other material on record and particularly kept in view the fact that hazardous chemicals are stored in the plant and which are causing ill effects in the surroundings and disposal of the assets has thus acquired urgency. We, therefore, direct that the RIICO should complete the process of the sale of assets at the earliest possible. The RIICO is permitted to receive payment of sale consideration in instalments 25% cash down and balance 75% in next five years in 20 equal quarterly instalments. However, in order to ensure timely payment of the sale consideration the following condition may be incorporated.

The purchaser shall furnish bank guarantee or such collateral guarantee, as may be considered satisfactory, to ensure full and timely payment of consideration for the assets purchased.

3. We also direct that sale proceeds should be forwarded to the concerned High Court for distribution in accordance with the provisions of Companies Act, 1956. It is made clear that no pre-emptive or other right of RFC or RIICO to realise their dues under Section 29 of the SFC Act 1951 exist in this situation. Similarly the RIICO is also not permitted to incorporate any condition regarding responsibility of the intending purchaser for the payment of the dues of different government departments/ agencies including RSEB and IP & I division of RIICO related to land separately.

4. The following further conditions for sale are also approved by the Bench:-

a) Any expenses on account of registration of sale

deeds/agreement shall be borne by the purchaser;

- b) The purchaser shall obtain permission from the Rajasthan State Pollution Control Board in connection with the running of the unit sold.”

7. On 18.11.1998, IFCI Limited filed an Original Application under Section 19 of the Recovery of Debts Due to Banks & Financial Institutions Act, 1993 (hereinafter referred to as the ‘RDDDB Act’) being O.A. No.398/1998 titled as ‘Industrial Finance Corporation of India Ltd v. M/s Rajasthan Glyoxal Ltd & Ors.’ before the DRT-I for recovery of a sum of ₹3,67,33,515.38/- alongwith *pendente lite* interest. RIICO, Rajasthan Financial Corporation (hereinafter referred to as the ‘RFC’) and State Bank of Bikaner and Jaipur (hereinafter referred to as the ‘SBBJ’) were also arrayed as parties before the DRT-I.

8. It is stated that the plant and machinery as well as the Mumbai office of the respondent company were sold in the year 1999. It is contended that the sale proceeds of the said assets were not deposited with the Official Liquidator attached with the Rajasthan High Court as on making enquiries with the Official Liquidator, RIICO was informed, by a letter dated 15.10.1999, that a winding up order in respect of the respondent company had not been received at the office of the Official Liquidator.

9. RIICO, RFC and SBBJ filed their written statements, before the DRT-I in OA 398/1998, stating the details of the financial assistance extended by the said parties to the respondent company and also pointed out that the BIFR had passed an order recording its opinion that it is just and equitable to wind up the respondent company and had further directed

the sale of its assets. It was thus, contended that the winding up of the respondent company had commenced. The DRT-I passed a final order dated 01.04.2004 allowing the Original Application and issued a Recovery Certificate.

10. In so far as the contention of SBBJ, RFC and RIICO with regard to BIFR having commenced winding up of the respondent company was concerned, the DRT-I noted that the BIFR had directed sale of the assets of the respondent company. However, as there was no stay with regard to recovery proceedings, the recovery certificate could be issued. The DRT-I further observed that the question that would arise in the event of winding up of the respondent company would not be with regard to the sale of the assets but with regard to the distribution of the sale proceeds. The DRT-I also directed that the sale proceeds of the mortgaged properties of respondent company to be distributed between IFCI Ltd., SBBJ, RFC & RIICO on *pari passu* basis in accordance with rules and as per their respective agreements. Thus, the DRT-I did not accept the objections raised by SBBJ, RFC and RICCO and proceeded to issue the recovery certificate. The relevant extract of the said decision of the DRT-I is as under:-

“So far as the defence taken by defendants no. 3 to 5 are concerned, they are only proforma parties and no reliefs have been prayed against them. Defendant no. 3 has stated in its written statement that BIFR has recommended winding up of defendant no. 1 company. BIFR has also directed to sell the assets of defendant no. 1 and also to deposit the sale proceeds in the Hon’ble High Court of Rajasthan. In my view, there is no stay of the recovery proceedings against the defendants and this Tribunal can pass a final decree and issue recovery certificate even if BIFR has recommended winding up of

defendant no. 1. The only question that would arise would be with regard to the distribution of sale proceeds which will be distributed by the Official Liquidator amongst the proforma defendants and applicant financial institution on pari passu basis in accordance with rules.”

11. Pursuant to the Recovery Certificate issued by the DRT-I, recovery proceedings (R.C. No.53/2004) commenced before the Recovery Officer for recovery of the dues as stated in the recovery certificate.

12. IFCI Ltd. got the mortgaged land and building of the respondent company evaluated from an independent valuer. The land and building situated at Plot No. A-198 & A-199, Mewar Industrial Area, Udaipur, Rajasthan (hereinafter referred to as the ‘said property’) was valued at ₹110.11 lakh and the same was fixed as the reserve price by the Recovery Officer. The advertisements for a public auction of the said property were duly issued and the public auction was scheduled to be held on 11.02.2008. On becoming aware of the advertisements, RFC addressed a letter dated 28.01.2008 to the Debt Recovery Officer requesting that their claim by way of first charge for an amount of ₹3,53,12,084 (as on 01.12.2007) with future interest be registered. The Debt Recovery Officer was further requested to remit the amount due to RFC from the sale proceeds.

13. The auction for the said property was held on 11.02.2008 as scheduled. The bid submitted by the petitioner/auction purchaser for a sum of ₹1.60 crores was accepted as the highest bid and the petitioner was declared as a successful auction purchaser.

14. RFC addressed another letter dated 11.02.2008 once again reiterating its claim of the amount due from the respondent company. The letter also stated that RFC had requested help from the Officer of DRT as well as of the IFCI Limited in conducting the auction but did not receive a satisfactory response. RFC also requested for a confirmation of registration of their claim as well as information regarding the final outcome of the auction held on 11.02.2008.

15. RFC filed its objection on 10.03.2008, *inter-alia*, praying that the auction be set aside. The principal grievance stated by RFC was that they were not given notices with regard to the proceedings being conducted by the Recovery Officer. RFC further complained that they had not received a satisfactory response to their offer of assistance to the Court Auctioneer. The RFC raised no objection with regard to the jurisdiction of the Recovery Officer to conduct the proceedings pursuant to the recovery certificate. Subsequently, on 08.09.2008, RFC filed an amended objection wherein an objection was raised with regard to jurisdiction of the Recovery Officer to put the said property to auction. It was contended that the said property was in the custody of BIFR and had been entrusted to RIICO and, therefore, the same was not available for attachment or sale in proceedings being conducted by the Recovery Officer. The objections raised by RFC with regard to the jurisdiction of the Recovery Officer were rejected by an order dated 20.05.2009. The Recovery Officer held that the matter regarding directions issued by BIFR had been discussed in the order passed by the DRT-I and the Recovery Officer could not sit in appeal against the order

passed by the Presiding Officer, DRT-I and that he had to operate within the ambit and the contours laid down by the Presiding Officer, DRT-I.

16. Aggrieved by the interim order dated 20.05.2009 passed by the Recovery Officer, RFC preferred an appeal (Appeal No.29/2009) under Section 30(1) of the RDDB Act before the Debt Recovery Tribunal. The said appeal was rejected by the DRT-I by an order dated 16.03.2010 whereby it was held that there was no stay with regard to the sale of the mortgaged properties and the said issue had been considered by the DRT-I in its earlier order dated 01.04.2004. The DRT-I held that the order dated 01.04.2004 and the recovery certificate had attained finality as the same had not been appealed against and thus, the issues considered therein could not be re-agitated.

17. The RFC filed a further appeal (Appeal No.200/2010) before the Appellate Tribunal challenging the order dated 16.03.2010 passed by the DRT-I.

18. In the meantime, on 19.03.2010, the Recovery Officer confirmed the sale in favour of the petitioner/auction purchaser by rejecting the objections raised by RFC and RIICO. The said order was assailed by RFC by filing another appeal before the DRT-I. RFC also filed a petition before the Appellate Tribunal for transfer of its appeal to another bench which was allowed by the Appellate Tribunal by an order dated 21.09.2010 and the appeal filed by RFC against the order passed by the Recovery Officer disposing off the objections of RFC/RIICO and confirming the sale in favour of the petitioner was transferred to Debt Recovery Tribunal –II,

Delhi for decision on all issues except the issue of jurisdiction which was at the material time pending consideration before the Appellate Tribunal.

19. The Appellate Tribunal allowed the appeal (Appeal No.200/2010) preferred by RFC against the order dated 16.03.2010 by the impugned judgment dated 20.12.2010 wherein the Appellate Tribunal held that the Recovery Officer had no jurisdiction to auction the said property. The Appellate Tribunal further granted liberty to the petitioner to approach the High Court for sanctioning of the sale and in the meanwhile directed that money deposited by the petitioner be returned alongwith interest @ 9%.

20. It is contended on behalf of the petitioner that the decision dated 01.04.2004 passed by the DRT-I had become final as no appeal had been preferred by RFC against the said order. That order having attained finality, the proceedings conducted by the Recovery Officer could not be challenged. It is further contended that RFC had accepted the order dated 01.04.2004 and had, in fact, requested that its claims be registered by the Recovery Officer. The objection as to the jurisdiction of the Recovery Officer was taken for the first time by way of an amended objection filed on 08.09.2008 in the recovery proceedings. The petitioner further contended that the RDDB was a later Act and thus, its provisions would override the provisions of SICA. Both the SICA and the RDDB Act were special Acts and both these Acts contained provisions which gave an overriding effect to the provisions of the respective Acts. While, Section 32(1) of SICA expressly provided that the provisions of SICA would have an overriding effect notwithstanding anything inconsistent therewith contained in any other law except (Foreign Exchange Regulation Act, 1973

and Urban Land Selling and Regulation Act, 1976), Section 34(1) of RDDB Act also provided that the provisions of RDDB Act would have the effect notwithstanding anything inconsistent therewith contained in any other law. In support of this contention, the learned counsel for the petitioner relied upon the reasoning of Justice Thakker in his opinion in the case of **KSL & Industries Ltd. v. Arihant Threads Ltd. Ors.**: (2008) 9 SCC 763.

21. Mr Shyam Moorjani, the learned counsel appearing for RFC contended that the order and the recovery certificate dated 01.04.2004 passed by the DRT-I were without jurisdiction as the same were in conflict with the orders passed by the BIFR under Section 20(4) of SICA. It was contended that the provisions of SICA have an overriding effect and thus, the DRT did not have the jurisdiction to proceed with regard to recovery of dues by sale of mortgaged properties. It was contended that even though RFC had participated in the proceedings and had not challenged either the order dated 01.04.2004 or the recovery certificate, nonetheless, the same being without jurisdiction were a nullity and the said objection could be raised at any stage and even in collateral proceedings. In support of his contention, the learned counsel has placed reliance on the decisions of the Supreme Court in **Dr. Jagmittar Sain Bhagat v. Dir. Health Services, Haryana and Ors.**: 2013 (9) SCALE 103 and in **Sarwan Kumar & Anr. v. Madan Lal Aggarwal**: (2003) 4 SCC 147.

22. The learned counsel appearing for RFC also drew our attention to Section 34(2) of the RDDB Act, wherein it had been expressly provided that the provisions of the RDDB Act were in addition to and not in

derogation of SICA. It was thus, contended on behalf of the RFC that the provisions of RDDB Act would not override the provisions of SICA.

23. We have heard the learned counsel for the parties at length.

24. The question to be considered is whether DRT-I lacked the jurisdiction to undertake recovery proceedings initiated by IFCI Ltd. The other aspect that also requires consideration is whether RFC could object to the sale of the said property in the proceedings conducted before the Recovery Officer, which were admittedly being conducted in accordance with the final order dated 01.04.2004 and the recovery certificate issued by the DRT-I, after having accepted the said order and not having preferred any appeal against the same.

25. The provisions of Section 32 of SICA and Section 34 of RDDB Act are relevant and are reproduced as under:-

“32. Effect of the Act on other laws. – (1) The provisions of this Act and of any rules or schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law except the provisions of the Foreign Exchange Regulation Act, 1973 (46 of 1973) and the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976) for the time being in force or in the Memorandum or Articles of Association of an industrial company or in any other instrument having effect by virtue of any law other than this Act.

(2) Where there has been under any scheme under this Act an amalgamation of a sick industrial company with another company, the provisions of Section 72A of the Income-tax Act,

1961 (43 of 1961), shall, subject to the modifications that the power of the Central Government under that section may be exercised by the Board without any recommendation by the specified authority referred to in that section, apply in relation to such amalgamation as they apply in relation to the amalgamation of a company owning an industrial undertaking with another company.”

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“34. Act to have over-riding effect. – (1) Save as provided under sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

(2) The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial Corporations Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984), the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and the Small Industries Development Bank of India Act, 1989 (39 of 1989).”

26. It is apparent from the said provisions that both the two statutes namely the SICA and the RDDB Act contain a *non obstante* clause which gives the provisions of the respective Acts overriding effect over other laws. In cases of conflict between the provisions of two statutes which employ *non obstante* clauses which cannot be resolved by harmonious construction, the question as to which of the statutes should be given

primacy would have to be adjudged on various considerations. It is well settled that one of the principles by which such conflict can be resolved is that a special statute would override the provisions of a general statute. In several cases, the Courts have also accepted later enactments as overriding the earlier statutes on the principle that the legislature is presumed to be conscious of the provisions of the earlier statutes and thus, providing for a *non obstante* clause in later enactments ought to be interpreted as overriding the earlier enactments. In addition to the aforesaid principles, the Courts would also endeavour to resolve the conflict between two statutes so as to ensure that the objects of both the conflicting statutes are given effect to. In this context, it is relevant to note that SICA has been enacted in public interest with the object of securing timely detection of sick/potentially sick companies owning industrial undertakings and to take expeditious preventive and ameliorative measures with respect to such companies to avoid industrial sickness. The policy of SICA is to ensure that the productive assets of the country are protected and preserved in public interest. The policy of the RDDB Act is to provide for expeditious adjudication and recovery of debts dues to banks and financial institutions in order to ensure that public funds are not unduly blocked in litigation.

27. In our view, the question whether an order passed under Section 20(4) of SICA would denude the jurisdiction of the DRT to proceed with the recovery of debts due to banks in cases where the BIFR had already recorded its opinion that the sick company cannot be rehabilitated and it is just and equitable to wind up the sick company, would have to be

considered keeping in view the policy underlying the two statutes and the object for which the two statutes were enacted.

28. SICA has been enacted in larger public interest to secure the principles as specified in Article 39 of the Constitution of India. Section 15 of SICA provides for making a reference to the BIFR in respect of an industrial company that has become sick. The reference is made for the purpose of determining the measures to be adopted in respect of the sick industrial company. Section 16 of SICA provides for making an inquiry into the affairs of a sick industrial company on a reference being made under Section 15. On completion of the inquiry as contemplated under Section 16 of SICA, the BIFR has the power to make a suitable order. In the event, the BIFR comes to a conclusion that it is not practicable for a sick company to make its net worth exceed its accumulated losses within a reasonable time and that it is expedient in public interest to adopt all or any of the measures as specified in Section 18 in relation to such a company then in such case the BIFR, in terms of Section 17(3) of SICA, is required to appoint an operating agency to prepare a scheme for rehabilitation of the company which provides for such measures as may be specified by the BIFR. Section 18 provides for preparation and sanction of a scheme. Section 19 specifies that a scheme may provide for financial assistance to any sick company by way of reliefs and concessions by the Central Government, State Governments, Banks, Public Financial Institutions or other Authorities. In the event, the scheme provides for such financial assistance, the same is required to be circulated to the concerned Government, bank, financial institution or other authority required to

provide financial assistance for their consent. However, if such consent is refused or the scheme is objected by the concerned Government, bank, financial institution or other authority within the specified period, then in such event, the BIFR has to adopt other measures for rehabilitation of the company or pass an order recording its opinion to wind up the company under Section 20 of SICA. SICA has been enacted in public interest to prevent and cure sickness in Industry and its provisions undoubtedly have to be interpreted in a manner so as to give full effect to achieve its objectives

29. The provisions of Section 20 of SICA are relevant and are reproduced as under:

“20. Winding up of sick industrial company.— (1)

Where the Board, after making inquiry under section 16 and after consideration of all the relevant facts and circumstances and after giving an opportunity of being heard to all concerned parties, is of opinion that the sick industrial company is not likely to make its net worth exceed the accumulated losses within a reasonable time while meeting all its financial obligations and that the company as a result thereof is not likely to become viable in future and that it is just and equitable that the company should be wound up, it may record and forward its opinion to the concerned High Court.

(2) The High Court shall, on the basis of the opinion of the Board, order winding up of the sick industrial company and may proceed and cause to proceed with the winding up of the sick industrial company in accordance with the provisions of the Companies Act, 1956 (1 of 1956).

(3) For the purpose of winding up of the sick industrial company, the High Court may appoint any officer of the operating agency, if the operating agency gives its consent, as

the liquidator of the sick industrial company and the officer so appointed shall for the purposes of the winding up of the sick industrial company be deemed to be, and have all the powers of, the official liquidator under the Companies Act, 1956 (1 of 1956).

(4) Notwithstanding anything contained in sub-section (2) or sub-section (3), the Board may cause to be sold the assets of the sick industrial company in such manner as it may deem fit and forward the sale proceeds to the High Court for orders for distribution in accordance with the provisions of section 529A, and other provisions of the Companies Act, 1956 (1 of 1956).”

30. It is apparent that an order under Section 20(4) of the SICA is only for the purposes of expeditious liquidation of a company where the BIFR has come to a conclusion that it is not possible to rehabilitate the company within a reasonable period of time. Thus, an order under section 20(4) of SICA does not serve the principal object of SICA of taking expeditious steps for preventing and curing sickness in industries and is an order in aid of the winding up proceedings under the Companies Act, 1956. The express language of the relevant sections as well as the scheme of SICA also indicates that an order under Section 20 of SICA can be passed only when the BIFR has made suitable inquiry and has come to a conclusion that it is not possible for a sick company to make its net worth positive within a reasonable period of time. In other words, the BIFR after due inquiry has already come to a conclusion that a suitable scheme under Section 18 of SICA is not feasible and thus, the sick company ought to be wound up. The sale of assets directed under Section 20(4) of SICA are in the nature of liquidation of the company, which would proceed as per the Companies Act 1956, to pay the dues to various creditors.

31. It is also relevant to refer to Section 34(2) of the RDDB Act which specifically provides that the provisions of the RDDB Act are in addition to and not in derogation of SICA. The same has to be interpreted to mean that the provisions of RDDB Act cannot be resorted to in conflict with the exercise of rehabilitation of a sick company as contemplated under SICA. However, where the proceedings under SICA have already culminated in an order recording that it is just and equitable to wind up the company then in such circumstance, the next step is for liquidation of the company which has to be conducted under the directions of the High Court in accordance with the provisions of the Companies Act. Although BIFR has been granted the power of directing the sale of assets of a company, the same is only in aid of meeting the claims of creditors in the winding up proceedings and accordingly the BIFR is required to forward the sale proceeds to the concerned High Court for distribution of the proceeds in accordance with Section 529A and other provisions of the Companies Act to meet the claims of various creditors. The provisions of SICA are not concerned with adjudication or recovery of debts. Thus once an order under Section 20 of SICA has been passed and, consequently, the process to rehabilitate a sick company under SICA has been conclusively abandoned there could be no rationale in not giving effect to the provisions of RDDB Act to enable banks and financial institutions to recover their dues.

32. The RDDB Act occupies a field which is completely different from SICA, and its underlying object is expeditious adjudication and recovery of debts due to banks and financial institutions. In so far as proceedings for recovery of dues to banks and financial institutions is concerned, the

provisions of the RDDB act would have to be given an unrestricted effect. In **Sarwan Singh v. Kasturi Lal**: (1977) 1 SCC 750, the Supreme Court observed as under:-

“20. When two or more laws operate in the same field and each contains a non-obstante clause stating that its provisions will override those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration”

In the present case also, the question of conflict between the order passed by the BIFR and the proceedings conducted by the DRT would have to be resolved keeping in view the underlying object and policy of the two statutes.

33. The question whether the provisions of the Companies Act, 1956 or the provisions of RDDB Act would have primacy is no longer *res integra* in light of the decision of the Supreme Court in the case of **Allahabad Bank v. Canara Bank and Anr.**: (2000) 4 SCC 406. In the said case, the Supreme Court has, *inter-alia*, framed the following questions:-

“(1) Whether in respect of proceedings under the RDB Act at the stage of *adjudication* for the money due to the banks or financial institutions and at the stage of *execution* for recovery of monies under the RDB Act, the Tribunal and the Recovery Officers are conferred exclusive jurisdiction in their respective spheres?

(2) Whether for initiation of various proceedings by the banks and financial institutions under the RDB Act, leave of the Company Court is necessary under Section 537 *before* a winding-up order is passed against the company or before

provisional liquidator is appointed under Section 446(1) and whether the Company Court can pass orders of stay of proceedings before the Tribunal, in exercise of powers under Section 442?”

The Supreme Court has answered the abovesaid questions in the following manner:-

“25. the *adjudication* of liability and the *recovery* of the amount by *execution* of the *certificate* are respectively within the exclusive jurisdiction of the Tribunal and the Recovery Officer and no other court or authority much less the civil court or the Company Court can go into the said questions relating to the liability and the recovery except as provided in the Act.

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50. we hold that at the stage of *adjudication* under Section 17 and *execution* of the certificate under Section 25 etc. the provisions of the RDB Act, 1993 confer exclusive jurisdiction on the Tribunal and the Recovery Officer in respect of debts payable to banks and financial institutions....”

34. In view of the decision in the case of *Allahabad Bank (supra)*, the DRT would have exclusive jurisdiction with regard to adjudication and recovery of dues to banks and financial institutions. Keeping in view the principal object of the two statutes, it is obvious that in so far as the adjudication and recovery of dues is concerned, the provisions of RDDB Act must be given effect unless the same are barred. In the present case, SICA admittedly does not proscribe any proceedings against a sick company in respect of which the BIFR has already come to a conclusion that it is just and equitable for it to be wound up.

35. There is no specific bar with regard to the initiation of or continuance of a recovery proceeding in cases of sick companies where BIFR has concluded its inquiry and formed an opinion that it is just and equitable to wind up the sick company. In circumstances, where the legislature has considered it necessary, a specific bar has been enacted in SICA against initiation or continuance of certain proceedings. Section 22(1) of SICA expressly provides that no proceedings for winding up of the company or for execution or distress against any of the properties of the company or for enforcement of any security against an industrial company would lie or be proceed with in cases where an inquiry under Section 16 is pending or where a scheme referred under Section 17 of SICA is under preparation or consideration or a sanctioned scheme is under implementation. The provisions of Section 22(1) of SICA read as under:-

“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 an industrial company is pending, then, notwithstanding anything contained in 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.”

36. In the present case, it is not necessary for us to examine the controversy whether recovery proceeding under the RDDB Act is a suit or akin to a suit and as such, by virtue of section 22(1) of SICA, cannot be initiated or proceeded without the permission of the BIFR. Admittedly, section 22(1) of SICA is not applicable in the present case as neither an inquiry under Section 16 is pending nor a rehabilitation scheme is under preparation. There is neither any sanctioned scheme that is being implemented nor is any appeal, under Section 25 of SICA, pending before the Appellate Authority for Industrial and Financial Reconstruction. Thus, there is no specific bar for initiation of proceedings or continuation of such proceedings under RDDB Act. It is apparent that at the relevant stages of proceedings under SICA, that is, at the stage of inquiry, preparation of a scheme and implementation of a sanctioned scheme, where the legislature wanted to bar recovery or distress proceedings against assets of an industrial company, an express provision to that effect was enacted. In the event, an order under section 20(4) of SICA was read as prohibiting recovery proceedings under the RDDB Act, the same would amount to extending the bar under Section 22(1) of SICA even at the stage where BIFR, after completing its inquiry, has come to a conclusion that it is not feasible to rehabilitate the sick company. This, in our view, is not warranted. It would not be apposite to restrict the operation of RDDB Act in cases where no proceedings under SICA for rehabilitation of the company are pending.

37. In the case of *KSL & Industries Ltd.* (*supra*), Justice Thakker has expressed an opinion that the provisions of RDDB Act would prevail over SICA so far as recovery of public revenue is concerned. However, this view has not been concurred with by Justice Altamas Kabir (as he then was) and in view of the difference of opinion with regard to the interpretation of Section 34 of the RDDB Act, the said matter has been directed to be placed before the Chief Justice of India for taking an appropriate action. Thus, there is no authoritative pronouncement by the Supreme Court on the question whether the recovery proceedings under the provisions of RDDB Act could continue in view of the specific bar of section 22(1) of SCIA and whether the provisions of RDDB Act or SICA would prevail in the event of conflict between the two statutes. However, in the present case, indisputably the specific bar in section 22(1) of SICA is not applicable. No proceedings under SICA in respect of the respondent company are pending. Absent any specific bar and given that SICA is not concerned with recovery of amounts due to banks/financial institutions, the proceedings under the RDDB Act cannot be stultified. Thus, in our view, the recovery proceedings and the auction conducted pursuant thereto are not without jurisdiction and the Appellate Tribunal erred in holding so.

38. There is yet another aspect that needs to be considered and that is whether it is open for RFC to challenge the recovery proceedings after the order dated 01.04.2004 passed by the DRT-I had attained finality. Although, RFC had contended before the DRT-I in O.A. No.398/98 that the BIFR has already directed winding up proceedings in respect of the respondent company, the said objections raised by RFC were not accepted

by DRT-I and the recovery certificate was issued. RFC had accepted the said decision of the DRT-I and had not filed an appeal against the same. The said decision having attained finality, it would not be open for RFC to contend that the said decision is erroneous. This is not a case where the DRT lacks inherent jurisdiction. Thus, the said order having attained finality, the proceedings initiated pursuant thereto cannot be permitted to be challenged by RFC.

39. The decisions cited on behalf of the counsel for the RFC in support of the contention that the issue as to jurisdiction could be raised at any stage of the proceeding has no application in the present case as this is not a case where the DRT lacks inherent jurisdiction. On the contrary, the DRT had been established under the RDDB Act for recovery of dues for banks and financial institutions and thus, has the jurisdiction to adjudicate and recover the debts due to banks and financial institutions. In the case of **Dr. Jagmittar Sain Bhagat** (*supra*), the District Consumer Disputes Redressal Forum entertained a complaint by a Government employee with regard to recovery of penal rent from his retirement benefits, however, the complaint was dismissed on merits. The appeal against the decision of the District Forum was dismissed by the State Commission holding that the District Forum had no jurisdiction to entertain a complaint since the complainant was not a consumer. It is in this context that the Supreme Court held that the Consumer Reddressal Forums having been established under the Consumer Protection Act, 1986 could not derive any jurisdiction to entertain a complaint of a Government servant in respect of his retirement benefits as he did not fall within the definition of a consumer. In that case,

the entire proceedings were without jurisdiction as there was no inherent jurisdiction in the Consumer Forums to entertain a complaint. In the present case, there is no dispute that the DRT does not lack the jurisdiction to entertain recovery of debts or has acted outside the RDDB Act. Similarly, in the case of *Sarwan Kumar and Anr. (supra)*, the issue related to the jurisdiction of a Civil Court in cases which were covered by the Delhi Rent Control Act, 1958 where the exclusive jurisdiction had been vested with the rent controller appointed under the Delhi Rent Control Act, 1958 and Section 50 of the said Act specifically barred the jurisdiction of a Civil Court to entertain any suit or proceeding relating to eviction of a tenant from a premises covered under the Delhi Rent Control Act. In the present case, we are unable to accept that the jurisdiction of the DRT under the RDDB Act has been taken away by the order passed by the BIFR under section 20(4) of SICA.

40. Thus, in our view, the present petitions are liable to be allowed. The proceedings conducted by the Recovery Officer pursuant to final order dated 01.04.2004 and the Recovery Certificate issued by the Debt Recovery Tribunal-I, Delhi are not without jurisdiction. Accordingly, the impugned order dated 20.12.2010 passed by the Appellate Tribunal is set aside. All applications stand disposed of. The parties are left to bear their own costs.

VIBHU BAKHRU, J

BADAR DURREZ AHMED, J

OCTOBER 29, 2013

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