

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL ORDINARY CIVIL JURISDICTION**

**COMPANY PETITION NO.136 OF 2014
WITH
COMPANY APPLICATION NO.932 OF 2015**

M/s Ashok Commercial Enterprises ... Petitioner
Versus
Parekh Aluminex Ltd. ... Respondent

**WITH
COMPANY PETITION NO.592 OF 2013**

Ravina Exports Pvt. Ltd. ... Petitioner
Versus
Parekh Aluminex Ltd. ... Respondent

**WITH
COMPANY PETITION NO.441 OF 2014
WITH
COMPANY APPLICATION NO.194 OF 2015**

SICOM Ltd. ... Petitioner
Versus
Parekh Aluminex Ltd. ... Respondent

**WITH
COMPANY APPLICATION NO.442 OF 2015
IN
COMPANY PETITION NO.441 OF 2014**

Parekh Aluminex Ltd. ... Applicant
Versus
SICOM Ltd. ... Respondent

**WITH
COMPANY PETITION NO.496 OF 2014**

Mr. Janak Herkishen Vaswani ... Petitioner
Versus
M/s Parekh Aluminex Ltd. ... Respondent

**WITH
COMPANY PETITION NO.497 OF 2014**

Mrs. Renuka Herkishen Vaswani	...	Petitioner
Versus		
M/s Parekh Aluminex Ltd.	...	Respondent

**WITH
COMPANY PETITION NO.498 OF 2014**

Mr. Ravi Herkishen Vaswani	...	Petitioner
Versus		
M/s Parekh Aluminex Ltd.	...	Respondent

**WITH
COMPANY APPLICATION (L) NO.885 OF 2015
IN
COMPANY PETITION NO.498 OF 2014**

Mr. Ashok C. Babu	...	Applicant
Versus		
M/s Parekh Aluminex Ltd.	...	Respondent

**WITH
COMPANY APPLICATION (L) NO.886 OF 2015
IN
COMPANY PETITION NO.497 OF 2014**

Mr. Ashok C. Babu	...	Applicant
Versus		
M/s Parekh Aluminex Ltd.	...	Respondent

**WITH
COMPANY APPLICATION (L) NO.887 OF 2015
IN
COMPANY PETITION NO.136 OF 2014**

Mr. Ashok C. Babu	...	Applicant
Versus		
M/s Parekh Aluminex Ltd.	...	Respondent

**WITH
COMPANY APPLICATION (L) NO.888 OF 2015
IN
COMPANY PETITION NO.441 OF 2014**

Mr. Ashok C. Babu ... Applicant
Versus
M/s Parekh Aluminex Ltd. ... Respondent

**WITH
COMPANY APPLICATION (L) NO.889 OF 2015
IN
COMPANY PETITION NO.592 OF 2013**

Mr. Ashok C. Babu ... Applicant
Versus
M/s Parekh Aluminex Ltd. ... Respondent

**WITH
COMPANY APPLICATION (L) NO.890 OF 2015
IN
COMPANY PETITION NO.496 OF 2014**

Mr. Ashok C. Babu ... Applicant
Versus
M/s Parekh Aluminex Ltd. ... Respondent

**WITH
COMPANY PETITION NO.504 OF 2016**

Kotak Mahindra Bank Ltd. ... Petitioner
Versus
M/s Parekh Aluminex Ltd. ... Respondent

**WITH
COMPANY APPLICATION (L) NO.529 OF 2016
IN
COMPANY PETITION NO.136 OF 2014**

Ajitsingh G. Khimji And Others ... Applicants
Versus
M/s Parekh Aluminex Ltd. ... Respondent

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Mr. J.P. Sen, Senior Counsel a/w Mr. Sandeep Parikh, Mr. Abhishek Sawant, Mr. Amit Pradhan and Ms. Trupti Talati i/b M/s Subhash Pradhan & Co., for the Petitioner in CP/136/2014.

Mr. Hemant Prabhulkar i/b Jurisconsultus for the Petitioner in CP/441/2014 and CP/444/2014.

Mr. Rohit Gupta a/w Mr. Nikhil Rajani i/b V. Deshpande And Co., for the

Petitioner in CP/504/2016.

Mr. Zal Andhyarujina a/w Mr. Simil Purohit, Mr. Punit Damodar and Ms. Nikita Vardhan i/b Kanga & Co., for the Respondent-company.

Mr. Darius Khambata, Senior Advocate a/w Mr. Rohaan Cama and Mr. Shanay Shah and Ms. Sujata More i/b Desai Desai Carrimjee and Mulla for the Applicant in CAL/529/2016.

Mr. Amit Ali Sheikh a/w Mr. Punit Kachalia i/b I V Merchant and Co., for the Applicant in CAL/885/2015, 887/2015, 888/2015 and 890/2015.

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CORAM : S.C.GUPTE, J.

DATE : 21 NOVEMBER 2016.

P.C. :

1. This application raises an important question as to when can an inquiry within the meaning of Section 16(1) of the Sick Industrial Companies Act be said to have commenced, when BIFR receives information relating to a sick industrial company within the meaning of Section 16(1)(b) of the Act, so as to trigger the stay of proceedings against the industrial company under Section 22 of that Act.

2. Company Application (L) No.529 of 2016 is taken out by shareholders of the Respondent-company, which is sought to be wound up in the present petition. These shareholders between them hold 14.76% paid up share capital of the Respondent-company. It is their case that the net worth of the company has completely eroded and it has become a sick industrial company, liable to be reconstructed by the Board for Industrial & Financial Reconstruction ("BIFR") under the Sick Industrial Companies Act, 1985 ("SICA"). The Applicants have, accordingly, submitted information to BIFR for an inquiry under Section 16(1)(b) of SICA. It is their case that BIFR having received this information and in fact, having allotted a miscellaneous petition number thereto, an inquiry is deemed to

have commenced within the meaning of the Explanation to Section 16(3) of SICA and that, in the premises, the present proceedings for winding up of the Respondent-company cannot be proceeded with except with the consent of BIFR, in accordance with Section 22 of SICA. The application, accordingly, prays for an order that the hearing of the company petition be deferred until after the conclusion of the inquiry pending before BIFR.

3 This application is taken out in Company Petition No.136 of 2014. In this petition, the Petitioner's claim arises on a short term loan aggregating to Rs.67 Crore given by the Petitioner to the Respondent for its business. The Respondent had issued various cheques aggregating to Rs.67 Crores towards repayment of this loan. The cheques were dishonoured on presentation for payment due to lack of funds. The company petition is filed on the basis of this debt. The Petitioner had simultaneously filed a summary suit for recovery of these dues. On a summons for judgment in that suit, this Court granted conditional leave to the Respondent to defend the suit subject to deposit of principal amount of Rs.67 Crores in this Court. The Respondent carried this order in appeal, which came to be rejected by a Division Bench of this Court. An SLP filed by the Respondent from that rejection was dismissed by the Supreme Court. The Petitioner has thereupon applied for a decree under the provision of Order 47 Rule 27 of the Civil Procedure Code 1908 for failure of the Respondent to deposit the amount. In the premises, there is factually no defence to the Petitioner's debt and the consequent inability of the Respondent to pay that debt. Besides this Petitioner, there are several other creditors of the Respondent-company, who have filed their own winding up petitions against the Respondent. In the premises, there is a case for taking up the petitions

expeditiously for admission. It is, however, the case of the Applicants before this Court that by reason of the pendency of the miscellaneous petition of the Applicants before BIFR for an inquiry under Section 16(1) of SICA, the provision of stay of proceedings under Section 22 of SICA is triggered.

4 The facts of the case, which are necessary to be considered for the purpose of the Company Application, may be briefly stated thus :

The Applicants claim to have filed their miscellaneous petition purportedly conveying information as to the financial condition of the Respondent-company to BIFR on 19 December 2015. Pursuant to this miscellaneous petition, a further communication was filed by the Applicant on 25 December 2015 before BIFR, furnishing additional information/documents, including a provisional account of the Respondent-company for the financial year ended 30 September 2013 and a provisional balance sheet of the same period. After filing this miscellaneous petition and further communication, the Applicants intervened in the present company petition and claimed that considering the pendency of the miscellaneous petition before BIFR, the hearing of the petition had to be stayed. By its order dated 7 March 2016, this Court (per Shriram J.) rejected the plea, holding that an inquiry under Section 16(1) (b) for the purpose of Section 22 of SICA could be deemed to have commenced not only when the information is physically received, but on receipt of such information, the Secretary or the Registrar of the Board, as the case may be, causes to be endorsed on the information the date on which it is filed or received in the office of the Board and if on scrutiny, the

information is found to be in order, it is registered and assigned a serial number and submitted to the Chairman for being assigned to a Bench for inquiry. Being aggrieved by this order, the Applicants preferred an appeal, being Appeal No.470 of 2016, before a Division Bench of this Court. That appeal has since been pending. In the meantime, without prejudice to the Applicants' rights and contentions in the pending appeal, the Applicants mentioned the matter before the Registrar of BIFR on 27 May 2016 and requested for an inquiry and further steps in the matter. On 3 June 2016, the Applicants received a letter from BIFR communicating to them that the petition filed by the Applicants was numbered as Misc. Petition No.3 (P-14)/BC/2015. The letter also called upon the Applicants to provide certain further documents/clarification. In response, the Applicants claim to have addressed a communication to BIFR on 15 June 2016 annexing therewith the requisite documents/clarification for further necessary action. In the premises, without prejudice to their rights to challenge the order of the Company Court dated 7 March 2015, it is submitted by the Applicants that the Applicants' miscellaneous petition having now been numbered by BIFR, and further documents/clarifications called for on the basis thereof by BIFR (and submitted by them), an inquiry under Section 16 of SICA is deemed to have commenced and that, accordingly, the present company petitions cannot be proceeded with by virtue of the bar under Section of 22 of SICA.

5 There is one more set of facts which needs to be mentioned here, which may have a bearing on the controversy. By a deed of conveyance dated 29 June 2013, Yes Bank, a secured creditor of the Respondent-company, assigned financial assets/debts of the Respondent in favour of a Securitisation and Asset Reconstruction Company, namely, Reliance Asset

Reconstruction Company Limited. The assignee, Reliance Asset Reconstruction Company Limited, tenders an affidavit in support of this transaction. On the basis of this assignment, it is claimed by the Petitioner and other creditors that in the face of acquisition of financial assets of the company by a Securitisation or Reconstruction Company under sub-section (1) of Section 5 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act") after the commencement of that Act, no inquiry into the sickness of the Respondent-company can be made or proceeded with. It is submitted that once any debt of the Company (who claims to be a sick industrial company) is so assigned to a Securitisation or Reconstruction Company, there is a complete bar for filing of a reference before BIFR under Section 15(1) of SICA or making of an inquiry into the sickness of the Company and that accordingly, the purported inquiry cannot be proceeded with before BIFR and the bar under Section 22 of SICA cannot be applied to the proceedings of these petitions.

6 It is submitted by Mr. Khambhata, learned Senior Counsel for the Applicants, as also Mr. Andhyarujina, learned Counsel for the Respondent-company, that an inquiry within the meaning of Section 16 of SICA may commence not only upon receipt of a reference under Section 15 but also under clause (b) of sub-section (1) of Section 16 upon receipt of information with respect to the industrial company or upon the Board's own knowledge as to the financial condition of the company. It is submitted that for the purpose of Section 16, an inquiry is deemed to have commenced in the latter case when the Board receives any information or acquires knowledge within the meaning of clause (b) of sub-section (1) of

Section 16. It is submitted that the Applicants having submitted the requisite information, in the form of their miscellaneous petition before the Board, and the Board having received it and assigned a number to it, and simultaneously called upon the Applicants to submit further documents/information necessary for the purpose of an inquiry, such inquiry under Section 16 is deemed to have commenced and that, in the premises, no legal proceedings including proceedings for winding up of the company can be proceeded with by reason of the provisions of stay in Section 22 of SICA. Learned Counsel rely upon the cases of **Real Value Appliances Ltd Vs. Canara Bank**¹ and **M/s Rishabh Agro Industries Ltd Vs. P.N.B. Capital Services Ltd.**² in support of their submissions. On the other hand, it is submitted by learned Counsel for the Petitioner led by Mr. Sen that the information submitted by the Applicants in the form of the miscellaneous petition is still at the scrutiny stage notwithstanding that a number is assigned to the miscellaneous petition by the Registry of BIFR. The matter is not yet ripe to come to the Chairman of the Board for being placed before the members for an inquiry within the meaning of Section 16 of SICA. Secondly, it is submitted that the financial assets of the company having been acquired by a securitization company, namely, Reliance Asset Construction Company Limited, the present inquiry cannot be lie or be proceeded with. Learned Counsel rely on the second and third proviso to Section 15 (1) of SICA in this behalf. In answer, it is submitted by Mr. Khambata and Mr. Andhyarujina, that the provisio to Section 15(1) is merely an exception to the main provision under Section 15 of SICA and bars only a reference with respect to the industrial company under Section 15. It is submitted that there is no bar for an inquiry under clause (b) of

1 (1985) 5 Supreme Court Cases 554

2 AIR 2000 Supreme Court 1583

Section 16(1) of SICA upon information received in respect of such company or upon the Board's own knowledge as to the financial condition of the company.

7 At the outset, with a view to see if an inquiry under Section 16(1) of SICA has commenced so as to entitle the industrial company to the benefit of Section 22 of SICA, we may note the scheme of Sections 15 and 16 of SICA. Section 15 of SICA makes a provision for reference to BIFR in respect of an industrial company, which has become sick. The relevant provision is noted below :

“15. Reference to Board.—

(1) Where 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) Without prejudice to the provisions of sub-section (1), the Central Government or the Reserve Bank or a State Government or a public financial institution or a State level institution or a scheduled bank may, if it has sufficient reasons to believe that any industrial company has become, for the purposes of this Act, a sick industrial company, make a reference in respect of such company to the Board for determination of the measures which may be adopted with respect to such company: Provided that a reference shall not be made under this sub-section in respect of any industrial company by—

(a) the Government of any State unless all or any of the industrial undertakings belonging to such company are situated in such State;

(b) a public financial institution or a State level institution or a scheduled bank unless it has, by reason of any financial assistance or obligation rendered by it, or undertaken by it, with respect to, such company, an interest in such company.”

Section 16 of SICA, which makes provisions for an inquiry by BIFR into the working of the sick industrial company upon a reference being made to it under Section 15 or upon information received by it in respect of such company or upon its own knowledge as to the financial condition of the company, provides as follows :

“16. INQUIRY INTO WORKING OF SICK INDUSTRIAL COMPANIES.

(1) The Board may make such inquiry as it may deem fit for determining whether any industrial company has become a sick industrial company-

(a) upon receipt of a reference with respect to such company under section 15; or

(b) upon information received with respect to such company or upon its own knowledge as to the financial condition of the company.

(2) The Board may, if it deems necessary or expedient so to do for the expeditious disposal of an inquiry under sub-section (1), require by order any operating agency to enquire into and make a report with respect to such matter as may be specified in the order.

(3) The Board or, as the case may be the operating agency shall complete its inquiry as expeditiously as possible and endeavour shall be made to complete the inquiry within sixty days from the commencement of the inquiry.

Explanation:- For the purposes of this sub section, an inquiry shall be deemed to have commenced upon the receipt by the Board of any reference or information or upon its own knowledge reduced to writing by the Board.

(4) Where the Board deems it fit to make an inquiry or to cause an inquiry to be made into any industrial company under sub-section (1) or, as the case may be, under sub-section (2), it may appoint one or more persons to be a special director or special directors of the company for safeguarding the financial and other interests of the company or in the public interest.

(4A) The Board may issue such directions to a special director appointed under sub-section (4) as it may deem necessary or expedient for proper discharge of his duties.

(5) The appointment of a special director referred to in sub-section (4) shall be valid and effective notwithstanding anything to the contrary contained in the Companies Act, 1956 (1 of 1956) or in any other law for the time being in force or in the memorandum and articles of association or any other instrument

relating to the industrial company, and any provision regarding share qualification, age limit, number of directorships, removal from office of directors and such like conditions contained in any such law or instrument aforesaid, shall not apply to any director appointed by the Board.

(6) Any special director appointed under sub-section (4) shall -

(a) hold office during, the pleasure of the Board and may be removed or substituted by any person by order in writing by the Board;

(b) not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the discharge of his duties as a director or anything in relation thereto;

(c) not be liable to retirement by rotation and shall not be taken into account for computing the number of directors liable to such retirement;

(d) not be liable to be prosecuted under any law for anything, done or omitted to be done in good faith in the discharge of his duties in relation to the sick industrial company.”

In an inquiry under Section 16, the Board is empowered to consider the practicability of the net worth of the sick industrial company being made positive within a reasonable time *inter alia* by preparation of a scheme providing for various measures for reconstruction of that company. To that end, several provisions are made in SICA, such as preparation and sanction of schemes (Section 18), arrangement for continuing operations, etc., during inquiry (Section 19-A) etc. Commencement of an inquiry under Section 16 entails a stay of all recovery or winding up proceedings against the industrial company (Section 22).

8 A question, which kept troubling the Courts for some time, was,

what was the exact point of time at which an inquiry under Section 16(1) commences so as to trigger the provisions of suspension of legal proceedings under Section 22 of SICA. The question, in so far as a reference under Section 15(1) is concerned, is finally put to rest by the Supreme Court in the case of **Real Value Appliances** (supra). The Supreme Court in that case held that after the reference made to the Board under Section 15 of SICA is scrutinized and found to be in order and registered by the Registrar of the Board, it is mandatory for BIFR to conduct an inquiry into the sickness of the industrial company. Accordingly, an inquiry is deemed to have commenced immediately upon the registration of the reference after the scrutiny. It is from that time that all actions for winding up of the company or against its assets or suits for recovery of monies against the company are stayed under Section 22. What this also means is that between the date of physical filing of the reference under Section 15(1) or 15(2) and its registration post scrutiny, there is no scope to claim pendency of an inquiry under Section 16(1). The proceedings before the Registrar, Secretary or Chairman of Board, as the case may be, at the stage of a pre-registration scrutiny, in other words, are not in the nature of an inquiry under Section 16(1). They are a precursor to such inquiry.

9 That was in the case of a reference made to BIFR under Section 15 of SICA, on which an inquiry under Section 16(1)(a) is made. There is now certainty as to the point of time at which an inquiry under Section 16(1)(a) is said to commence on such reference. But what is the position of an inquiry which is made under Section 16(1)(b) upon receipt of information with respect to the industrial company. At what stage does such inquiry

commence? Does it commence as soon as “any” information is received with respect to such Company? Does there have to be any scrutiny? Is there any stage at which the matter can be said to be ripe for being sent to the members of the Bench for an inquiry? These are questions which we need to grapple with in the present application.

10 On these points, there is no decided case brought to my notice by Counsel except the decision of my brother, Shriram J, in this very matter, which, as I have noted above, is in appeal before the Division Bench. Shriram J, in his order dated 7th March 2016, has held that “an enquiry under Section 16(1)(b), for the provisions of Section 22 to be triggered, will be deemed to have commenced *“upon information received with respect to such company”* only after the information is received, on receipt of which, the Secretary or the Registrar, as the case may be, shall cause to be endorsed on the information the date on which it is filed or received in the office of the Board and if on scrutiny, the information is found to be in order, it shall be registered, assigned a serial number and submitted to the Chairman or assigned to a bench. Simultaneously, remaining information/documents required, if any, should be called for from the informant. Only on the date these are done, the inquiry is deemed to have commenced, not merely when the office of BIFR receives and puts an inward stamp or acknowledgement.” In our case, some information is indeed physically received by the office of the Board and even a miscellaneous petition number is assigned to it and also simultaneously, further information/documents are called for. The question is, on these facts, can it be said that the stage of an inquiry, as mentioned by Shriram J, is reached.

11 The key to this question is to be found in the judgment of the Supreme Court in **Real Value Appliances** (supra). Though in this case the Supreme Court has laid down the law pertaining to commencement of an inquiry under Section 16(1)(a), that is to say, upon receipt of a reference under Section 15 and after considering, particularly, the Regulations framed under SICA for receipt and registration of such reference and posting of the same for an inquiry before the Bench, the rationale employed by the Court for arriving at its conclusion is nonetheless relevant even for the purposes of an inquiry commenced under Section 16(1)(b) upon information received with respect to the industrial company.

12 At the outset, it bears mention that any inquiry under Section 16 (and other provisions of SICA that follow it), whether under clause (a) of sub-section (1), i.e. upon receipt of a reference, or under clause (b) of sub-section (1), i.e. upon receipt of information, is necessarily an inquiry into the sickness of the industrial company and measures necessary to make its net worth positive within a reasonable time. In that sense, the inquiry is of the same nature and its content is the same. There is no reason then why the content or state of readiness of a reference before it can be inquired into should not be the same as the content or state of readiness of the information for initiating an inquiry, at least in principle, if not in every detail. As much as a reference under Section 15, even information received under Section 16(1)(b) must bear the same scrutiny, at least substantially, before it can be said to be ripe for an inquiry into the sickness of the industrial company. Secondly, it needs to be noted that though a reference may be said to be so ripe after it is registered, for that is what is recognized as the starting point of an inquiry by **Real Value Appliances**, we may not

attach too much importance to the factum of registration *per se*. If we do that, we are left with a void, for in the case of an inquiry under Section 16(1)(b), there is no prescribed procedure for registration of an inquiry when such information is received. Yet, it stands to reason that it cannot be that any and every information received by the Board with respect to an industrial company must lead to the commencement of an inquiry, however incomplete that information may be to enable the Board to undertake an inquiry into the sickness of the company. If we hold otherwise, decidedly unjust consequences are bound to follow. Just with a view to get the benefit of Section 22 and that too by bypassing the rigours of the information and particulars of a reference under Section 15, unscrupulous promoters may simply forward “some” information and claim that an inquiry has commenced upon receipt of that information by the Board. We must, therefore, go by what is the essence of the starting point of the inquiry implied by the Supreme Court in **Real Value Appliances**. The essence is not registration of the reference or, for that matter, assignment of a number to it. The essence is **completion of the scrutiny**, so that an inquiry can commence. Registration of a reference is a convenient pointer to that completion. It merely signifies that the scrutiny is complete and the matter is now ripe to be placed before the members of the Board for an inquiry. The scrutiny is handled by the officers of the Board, such as the Registrar or the Secretary; the inquiry, on the other hand, is conducted by the Chairman and the members of the Board. Whilst the former scrutinize the reference, at times even by calling for further information or documents, there is no inquiry pending. It is only after that scrutiny is complete and the reference is found to be in order that the matter can be said to be ripe for an inquiry by the Chairman and members of the Board.

It is at that point of time that the reference is registered.

13 The principles of law, thus, being firmly put in place, let us now seek the guidance of the existing provisions of law for appreciating the nature and content of a pre-registration scrutiny of a reference or information. Regulations framed under SICA, namely, the Board for Industrial and Financial Reconstruction Regulations, 1987 (“Regulations”) make detailed provisions concerning filing of a reference and its scrutiny by the officers of the Board. Regulation 19 deals with the procedural aspects of registration of the reference. A reference under Section 15(1) is required to be made in Form-A, whilst a reference under Section 15(2) is required to be made in Form-B. (There are other similar forms prescribed for Government companies for making of a reference.) The forms contain important information concerning the financial condition of the company, namely, its registration or licence under the Industries (Development and Regulation) Act, 1951, nature of its business, shareholding pattern, promoters, management, its capital structure, free reserves, accumulated losses, etc. These are to be submitted in accordance with the latest balance sheets and relevant AGM minutes, etc. The financial position may be indicated as per the provisional balance sheets available for the last two years, in case the accounts are not audited. Other important information to be submitted pertains to the staff and labour employed by the industrial company, dues owed by it to various banks as on a recent date to be specified by the informant as also to other lenders/foreign financial institutions/collaborators, contingent liabilities, investments, statutory liabilities, fixed deposits, sundry creditors, debtors, capacity utilization, working capital etc. for the period of five years and sources for financing various cash

losses. Besides, the informant must reveal the reasons for sickness, as also merits of various measures including cost of the scheme of rehabilitation, reliefs and concessions sought, promoters' contributions etc. The officers of the Board, namely, the Registrar or the Secretary of the Board, as the case may be, ensure that these details and documents are furnished in full measure so that an inquiry within the meaning of Section 16 of SICA can be taken up and only thereafter register the reference so that it can be placed before the Chairman for being assigned to a Bench for conducting an inquiry under Section 16 of SICA. If a reference is defective, its registration is declined by the Secretary of the Board or, as the case may be, by the Registrar. An appeal against the order of the Registrar declining to register the reference lies before the Secretary, whereas an appeal against the order of the Secretary lies before the Chairman. These provisions are contained in Regulations 19(4) and 19(8) of the BIFR Regulations. The scheme of these Regulations indicates the nature and content of the information, which must find place in the reference, so as to make it complete and in order, so that it could be registered. As I have noted above, that is also broadly the nature and content of the information, at least in principle, before its receipt can be treated as complete within the meaning of Section 16(1)(b).

14 If one has regard to the information submitted by the Applicants and the particulars/documents called for by the Registrar of the Board in his letter dated 3 June 2016, it is quite apparent that the matter is at the scrutiny stage and has not travelled beyond that stage. The documents which are yet to be submitted, and therefore, called for, are the basic particulars or information which anyway ought to form part of an

application in Form A or B to be submitted when a reference is made under Section 15(1) or 15(2) of SICA. As in the case of a reference under Section 15(1) or 15(2), even in case of information under Section 16(1)(b), unless and until these basic particulars or documents are submitted to the Board, it cannot be said that the receipt of information to the Board is complete within the meaning of Section 16(1)(b) or that an inquiry is deemed to have commenced under the Explanation to Sub-section (3) of Section 16.

15 Mr. Khambata and Mr. Andhyarujina submit that the miscellaneous petition is assigned a number and simultaneously further information and documents are called for from the Applicants. They liken this situation to the registration of a reference under Section 15 and simultaneous requisitioning of further information and documents within the meaning of Regulation 19(6). It is submitted that even according to the Company Court's order dated 7th March 2016, after scrutiny, when the Board registers the information, an inquiry is deemed to have commenced. What this submission misses is that a mere assignment of a number to the miscellaneous petition cannot be said to be registration of the information with a view to commence an inquiry. As we have seen above, what is crucial for commencement of any inquiry, whether upon reference under Section 15(1) or 15(2) or upon receipt of information under Section 16(1)(b) of SICA, is that the reference or the information, as the case may be, has to be found in order and complete and ripe to be forwarded to the Chairman of the Board for having the same placed before an appropriate Bench for conducting an inquiry. If one has regard to the miscellaneous petition of the Applicants, the very prayer in it is for registering the case

and placing the matter before the appropriate Bench of the Board for initiating an inquiry into the sickness of the Respondent-company in accordance with the provisions of Section 16(1)(b) of SICA “*read with judgment of Delhi High Court in the matter of Xlo India Ltd.*” In the case of **XLO India**, the Court directed the BIFR to consider the acceptability or otherwise of the purported information as conveyed by the applicant and the subsequent relevant correspondence in pursuance to that information and decide “*whether action under Section 16(1)(b) is called for*”. In other words, the case of **XLO India Limited** directed BIFR to complete the scrutiny and decide whether any inquiry under Section 16(1)(b) is called for after considering the acceptability of the purported information. The judgment of **XLO India Limited** was produced as an annexure to the information submitted by the Applicants in the form of the miscellaneous petition. The miscellaneous petition, in other words, prayed for registering of the Applicants' case and placing the matter before the appropriate Bench of the Board for initiation of an inquiry. That is the final relief claimed in the miscellaneous petition. Upon granting of that relief, an inquiry was expected to commence. If that be the case, the fact that such miscellaneous petition is numbered cannot signify the commencement of the inquiry itself. It is merely a matter of administrative convenience for the Registrar to assign a number to the miscellaneous petition. That does not mean that the case is registered for an inquiry under Section 16.

16 The fact that some further information and documents are called for by the Registrar of the Board is also neither here and nor there. Information and documents can be called for both at the scrutiny stage and the post-scrutiny or post-registration stage. The case of **Real Value**

Appliances makes it clear that in so far as the documents or particulars which are provided for under the second part of Regulation 19(6) are concerned, the same are relatable to Chapter III and IV, which deal with inquiries under Section 16, and not with the reference under Section 15, which forms part of Chapter II. As in the case of a reference under Section 15, so in case of information received under Section 16(1)(b), the documents and information required during the course of scrutiny will be on the lines of documents and informations which are part of the reference and which are covered by Chapter II, whereas post-registration of a case, if further documents and information are called for, those are relatable to Chapters III and IV concerning the actual inquiry under Section 16. As I have noted above, the documents and information called for by the Registry by its letter dated 3 March 2016 are nothing, but documents relatable to scrutiny, that is to say, documents and information relatable to Chapter II and not documents or information relatable to Chapters III and IV. These are not documents which are referred to in the second part of Regulation 19(6). These are pre-registration or scrutiny related documents.

17 In the premises, I am of the considered view that the information received from the Applicant in the form of the miscellaneous petition, though the petition itself is assigned a number, is not yet complete for being registered as a case or being forwarded to the Chairman of the Board for placing before the appropriate Bench for an inquiry. There is no question, accordingly, of commencement of an inquiry within the meaning of Section 16(1). There is no case, accordingly, for application of the provisions of Section 22 concerning suspension or stay of legal

proceedings. The hearing of the company petitions need not, therefore, be stayed.

18 Considering the fact that the information submitted by the Applicant is not yet complete, I do not deem it necessary to consider the question of applicability of the second proviso to Section 15(1) of SICA in this particular case. That question involves important issues concerning the interpretation of Sections 15 and 16 of SICA in the light of the proviso. Whether the proviso ought be restricted only to the provisions of Section 15 as an exception to the main provision contained in Section 15(1) of SICA, or whether there is a case for applying it to inquiries generally under Section 16 of SICA, whether there is any lacuna or *casus omissus* on the part of the legislature in so far as this exception is concerned and whether such *casus omissus* needs to be filled in by the Court or whether the matter must be left to the legislature to decide, are issues which would need extensive and elaborate discussion. Though the aspect of reading of a proviso in a restrictive manner was urged by Counsel on both sides, no submissions were made on the entitlement of the Court to supply *casus omissus* in the present case. In any event, since I have ruled against the Applicants, on the ground that there is no receipt of information as yet within the meaning of Section 16(1)(b) of SICA, I need not decide this question. As and when the information is complete, it will be for the Board to decide whether an inquiry can be taken up in the face of the second proviso to Section 15(1) of SICA. This the Board may in its wisdom decide either at the stage of scrutiny or in the course of the inquiry. That is a matter for the Board to decide. It is sufficient for our purpose to hold that the information is not yet complete within the meaning of Section 16(1)(b)

of SICA and there is no question of the Board conducting any inquiry within the meaning of Section 16 of SICA at this stage. Section 22 is, accordingly, not triggered and there is no question of this Court staying its hands in so far as the company petitions are concerned.

19 In the premises, Company Application (L) No.529 of 2016 is dismissed. No order as to costs.

20 All petitions to now come up on board for admission on 13 December 2016.

(S.C. GUPTE, J.)