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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CO.APP.6/2014,
CM APPL.2910, 17026,
17027/2014, 1408 & 6904/2015

LILLIPUT KIDSWEAR LTD.

..... Appellant

Through: Mr. Tanmay Mehta with Ms. Misha Mohta
and Mr. Sachin Midha, Advocates.

versus

CHINA TRUST COMMERCIAL BANK

..... Respondent

Through: Mr. Ashish Makhija, Advocate for Official
Liquidator.

Mr. Nitesh Jain, Advocate for Resp-2.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

28.01.2016

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The present appeal is directed against an order of the Company Court dated 06.01.2014 whereby it admitted the petition for winding up and also appointed a provisional liquidator.

It is brought to the notice of the Court by both the appellant's counsel as well as the counsel appearing for the provisional liquidator, that an important development has occurred, i.e., the lodging of an application under Section 15 of the Sick Industries Companies (Special Provisions) Act, 1985 before the BIFR, and pursuant to its order dated 17.02.2015, an application under Section 15 (1) of the Sick Industries Companies (Special Provisions) Act, 1985 was registered. The decision in *Real Value Appliances Ltd. v. Canara Bank & Ors.*, (1998) 5 SCC 554 - later approved

and applied in *Rishabh Agro Industries Ltd. v. P.N.B.Capital Services Ltd.*, (2000) 5 SCC 515, states that the registration of an application itself amounts to an automatic admission and that the enquiry in terms of Section 16 is deemed to have been commenced at the occurrence of the event. Consequently, the bar to continuation of legal proceedings under Section 22 including company winding up proceedings would be immediately applicable. This view has been endorsed by the latest judgment in *Ghanshyam Sarda v. M/s Shiv Shankar Trading Co. & Ors.* (2015) 1 SCC 298. The effect of provisions of SICA - by virtue of Section 32 is that it overrides all other enactments or provisions which may have a contrary effect including the provisions of the Company Act.

The above position is not disputed by either counsel for the appellant or the official liquidator. In these circumstances, this Court is of the opinion that further examination of the merits of the impugned judgment admitting the winding up petition and appointing the provisional liquidator would be academic. The corollary would be that Board for Industrial and Financial Reconstruction (“BIFR”) which is seized of the application under Section 15, would have powers to deal with all matters including the continuation, modification or otherwise, of the impugned order with respect to the affairs of the company such as its management. This would, needless to say, include the choice to either continue with the provisional liquidator, or the making of such other arrangements as is essential having regard to the given circumstances.

In view of the discussion above, the BIFR is hereby directed to decide the issue of the interim arrangement to be put in place, i.e., whether the provisional liquidator is to be continued, or whether the arrangement directed to be put in place by the impugned order would have to be modified in an appropriate manner given all the circumstances of the case.

This decision shall be taken by it within two months from today.

All rights and submissions of the parties with respect to the contentions they may urge as regards the merits, are kept open. In the event of the reference being rejected or otherwise returned and the appellant being aggrieved by the order of the Single Judge, it is open for it to seek an application to revive the present appeal or having regard to the later changed development, seek remedies in accordance with law. In such event, all rights and contentions to urge the merits of the matter are kept open.

The interim order of 17.04.2014 which has been continued on 12.08.2014 shall govern and bind the parties till the decision of the BIFR, within two months. The grievance, if any, with respect to the order made by the BIFR would have to be considered in terms of the provisions of SICA.

The appeal is disposed of in the above terms.

Order **dasti**.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

JANUARY 28, 2016

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