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

+ **W.P.(C) 1606/2016**

MR. TARUN OBEROI

..... Petitioner

Represented by: Mr.Rakesh Tiku, Sr.Adv.
instructed by Mr.Vivek Sibal,
Ms.Pooja M.Saigal,
Ms.Nivedita Bhaskar, Advs.

versus

**THE BOARD FOR INDUSTRIAL
AND FINANCIAL RECONSTRUCTION & ORS Respondent**
Represented by:

**CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA**

ORDER
25.02.2016

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CM 6986/2016

Exemption allowed subject to just exceptions.

W.P.(C) 1606/2016 & CM 6985/2016 (stay)

1. The mandate of Sub-Section (1) of Section 22 of SICA, 1985 is that after a reference concerning claim by an industrial company of being sick is registered under Section 15, legal proceedings against said industrial company cannot be proceeded with except with the consent of BIFR, or as the case may be, AAIFR. Therefore, the legal position would be that once a reference is registered, pending consideration whether the company is sick and a scheme for rehabilitation can be sanctioned, legal proceedings against the company automatically get stayed.
2. If a party desires to continue with the proceedings, consent of either

BIFR or AAIFR as the case may be has to be obtained.

3. Impugned order dated October 06, 2015 passed by BIFR, without recording any reasons and much less specific to any creditor, has simply recorded that in view of the objection raised by the lenders on the maintainability of the reference the Bench has decided not to extend the protection under Section 22 (1) of SICA 1985 till the next date of hearing.

4. Learned senior counsel for the petitioner states that BIFR cannot undo the legislative mandate by removing protective umbrella granted by the legislature. BIFR/AAIFR can at best, in individual cases, recording reasons, decide that legal proceedings may continue.

5. The position of law urged by learned senior counsel for the petitioner is without exception and we see no scope of even entertaining an argument to the contrary.

6. However, we are of the opinion that we need not issue any notice to the respondents on account of the fact that the impugned part of the order dated October 06, 2015 reads as under:-

“In view of objections raised by the lenders on the maintainability of the reference, the Bench decided not to extend the protection under Section 22(1) of SICA, till the next date of hearing”

7. The order is negatively worded. It records that the protective umbrella granted by Section 22(1) of SICA 1985 would not be extended till the next date of hearing. It means that the removal of the protective umbrella granted by the Statute was limited to the point of time i.e. the next date of hearing before BIFR which was November 10, 2015.

8. We note that by said date BIFR could not sit on account of lack of quorum. It is therefore apparent that the negatively worded order, removing

the protective umbrella but limited to the next date of hearing, was not further extended and therefore the doctrine of eclipse would require it to be held that the body causing the eclipse being removed from the orbit has resulted in the protective umbrella shining in its brightness.

9. The position therefore would be that with effect from November 10, 2015 the mandate of Sub-Section (1) of Section 22 of SICA 1985 would come into play vis-a-vis the petitioner and therefore no legal proceedings instituted can continue.

10. The petition and application are disposed of noting the legal position above with further finding that the affect of the impugned order does not trouble the petitioner any more.

11. Dasti under the signature of Court Master.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

FEBRUARY 25, 2016

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