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

% Judgment Delivered on: March 10, 2017

\+ **W.P.(C) 87/2017 & CM APPLN.No.2232/2017**

M/S. GUPTA SYNTHETICS LTD. ..... Petitioner
Through Mr. Somesh Tiwari and Mr. Pulkit, Advocates.

versus

UNION OF INDIA ..... Respondent
Through Mr. Arun Kumar, Advocate for Respondent No.1.
Mr. Abhishek Anand, Advocate for IDBI.
Ms. Sonal Jain and Mr. S. Jauhari, Advocates for Respondents 10 & 11.
Mr. Sahil, Advocate for respondent No.12.

CORAM:
HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

ORDER

INDIRA BANERJEE, J

1. In this writ petition, the petitioner has challenged an order dated 26.10.2016 passed by the Appellate Authority for Industrial Financial Reconstruction, hereinafter referred to as AAIFR, in

Appeal No.19/2015, whereby the AAIFR has upheld an order of the Board for Industrial and Financial Construction, hereinafter referred to as BIFR, abating the pending reference of the petitioner.

2. The petitioner, a company incorporated under the Companies Act 1956, is engaged in the business of manufacture of textiles. The petitioner started incurring losses and its losses eroded its network, whereupon the petitioner filed a reference before the BIFR under Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, hereinafter referred to as the SICA. The reference of the petitioner was registered as BIFR Case No.17/2012.

3. By an order dated 29.05.2013, the BIFR declared that the petitioner was sick and appointed IDBI as Operating Agency to prepare a scheme for rehabilitation of the petitioner.

4. On 14.12.2013, the petitioner submitted a Draft Rehabilitation Scheme to IDBI, which was examined by IDBI. After

examining the Draft Rehabilitation Scheme, IDBI submitted the same to the BIFR. By an order dated 02.01.2014, BIFR directed IDBI to rectify the defects and deficiencies in the Draft Rehabilitation Scheme.

5. Thereafter, by a letter dated 08.05.2014, IDBI informed the BIFR that all the lenders had unanimously agreed that the Draft Rehabilitation Scheme was not acceptable.

6. Thereafter by an order dated 11.06.2014, BIFR directed the petitioner to settle the dues of its secured creditors and submit a report to IDBI, failing which BIFR would initiate action under the SICA.

7. On 30.10.2014 IDBI initiated action against the petitioner under Section 13 (4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, hereinafter referred to as SARFAESI Act, on behalf of all the secured creditors and took over symbolic possession of the secured assets of the petitioner.

8. It is the case of the petitioner that IDBI could not establish that it enjoyed the support of secured creditors the aggregate value of whose secured debts was 100% or even 75% of the total value of the debts to secured creditors.

9. According to the petitioner, no 'panchnama' was prepared of the assets, which had been taken over by the IDBI. The petitioner continued to use and operate assets, particularly, the manufacturing facilities.

10. Section 17(1) of the SARFAESI Act provides a right of appeal against the illegal action under Section 13(4) of the said Act.

11. Any person aggrieved by an action under Section 13(4) of the SARFAESI Act can apply to the Debt Recovery Tribunal, having jurisdiction, under Section 17(1) of the SARFAESI Act. An appeal from an order of the DRT under Section 17(1) lies to the Debt Recovery Appellate Tribunal under Section 18 of the SARFAESI Act.

12. If the petitioner was aggrieved by the action of IDBI under Section 13(4) of the SARFAESI Act, their remedy lay under Sections 17 and 18 of the said Act. Intervention of this Court is not warranted under Article 226 of the Constitution of India.

13. On 10.03.2015, IDBI filed a Miscellaneous Application being M.A. No.122/2015, seeking abatement of the reference in terms of the proviso to Section 15(1) of the SICA.

14. The petitioner submits that IDBI's documents filed before the BIFR and the AAIFR did not show that IDBI had authorisation of more than 3/4th of the total secured lenders of the petitioner, as per the mandate of Section 13 (4) of the SARFAESI Act.

15. On behalf of the petitioner it was submitted that M/s. Edelweiss ARC, which had acquired the debt of M/s Oriental Bank of Commerce representing 24.20% of the total secured debt had neither issued any notice under Section 13(2) of the SARFAESI Act, nor given its consent prior to 13.10.2014.

16. It was further stated that another secured creditor ING Vysya Bank representing 22.43% of the secured debt gave its consent within three days of the issue of Section 13(2) notice. The said consent dated 10.10.2014 was conditional. If the secured debts of these three banks are taken up, then the remaining secured creditors would constitute less than 75% of the total secured debt, which is the requirement under Section 13(4) of the SARFAESI Act.

17. However, the BIFR by its order dated 01.07.2015, wrongly abated the reference of the petitioner and passed the following order:-

> *"IDBI being a sole secured creditor and holds 100% of secured debts of the company had taken action under section 13(4) of SARFAESI Act, on 10.02.2014 and had also taken action under section 13(4) on 10.04.2014 and had also taken possession of the assets of the company charged to the bank. Accordingly, the bench came to the conclusion that the reference case no.17/2012 M/s. gupta Synthetics stands abated in terms of third proviso of sub-section (1) of section 15 of SICA, 1985."*

18. The petitioner filed an appeal against the said order dated 01.07.2015 in the learned AAIFR being Appeal No.19/2015, inter alia contending that IDBI did not have authorisation of 100% or even 75% of the secured creditors. The learned AAIFR, however, rejected the appeal of the petitioner and upheld the order of the BIFR.

19. In this writ petition, the petitioner has challenged the said impugned order of the AAIFR on various grounds. The petitioner has prayed for a writ of certiorari quashing the impugned order dated 26.10.2016 passed by the AAIFR in Appeal No.19/2015, for restoration of the reference of the petitioner being Case No.17/2012 before the BIFR and other consequential reliefs.

20. The writ petition was filed on 30.11.2016. In the meanwhile, a Gazette Notification No.2794 dated 28.11.2016 was issued, enforcing the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 w.e.f. 01.12.2016. With

the enforcement of the said Repeal Act of 2003, the AAIFR and BIFR stand dissolved, and all proceedings of whatever nature pending before the AAIFR or BIFR under the SICA stand abated.

21. Since AAIFR and BIFR stand dissolved and all proceedings stand abated w.e.f. 01.12.2016, this writ petition is infructuous and adjudication of the question of legality of the appellate order would be nothing but an exercise in futility.

22. By reason of provisions of the 2003 Repeal Act, a Company in respect of which any appeal or reference or enquiry stand abated, might make reference to the National Company Law Tribunal under the Insolvency and Bankruptcy Code 2016, within 180 days from the commencement of the Insolvency and Bankruptcy Code 2016.

23. If, as contended by the petitioner, there is any infirmity in the order impugned by reason of the same being based on the action taken by the IDBI under Section 13(4) of the SARFAESI Act,

which action was according to the petitioner illegal, the petitioner should have challenged the action under Section 17 and 18 of the SARFAESI Act and obtained appropriate orders.

24. Writ petition is, therefore, dismissed.

INDIRA BANERJEE, J

ANIL KUMAR CHAWLA, J

March 10, 2017/n