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

\+ **W.P.(C) 9061/2016**

GUJARAT STATE FINANCIAL CORPORATION ..... Petitioner

Through: Mr.Shubhranshu Padhi with Mr.S.M.Gohil and Mr.Rakshit Jain, Advocates.

versus

THE MANGING DIRECTOR, M/S SHREE RUBBER INDUSTRIAL LTD. & ORS ..... Respondents

Through: Mr.Buddy A.Ranganadhan with Mr.Vishvender Tomar, Advocates for R3.
Mr.Amit Bansal, Sr.Standing Counsel with Mr.Aman Rewaria and Ms.Vipasha Mishra, Advocates for R8.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **28.08.2019**

1. At the outset it is pointed out that the State Bank of Hyderabad i.e. Respondent No.3 no longer exists as such as it has now merged with the State Bank of India.

2. The Gujarat State Financial Corporation ('GSFC') has filed the present writ petition challenging the orders dated 30th October 2006 passed by the

Board for Industries and Financial Reconstruction ('BIFR') in case No.13 of 2006 and the order dated 7th December 2015 of the Appellate Authority for Industrial Financial Reconstruction ('AAIFR') dismissing Appeal No.124 of 2014 and affirming the above order of the BIFR.

3. The facts in brief are that the Petitioner along with Gujarat Industrial and Investment Corporation ('GIIC') jointly financed Shree Rubber Industries Ltd. ('SRIL') (Respondent No.2 herein). The financial assistance extended by GSFC and GIIC were secured by a *pari passu* charge on land, building, plant and machinery in their favour. The financial assistance was further secured when collateral securities were created over assets in Mumbai by way of pledging of equity shares of SRIL.

4. On 31st March 2005 SRIL filed a reference before the BIFR claiming to be a sick company and as such seeking protection under the provisions of the Sick Industrial Companies Act, 1985 ('SICA').

5. On 17th October 2006 the Petitioner objected to the above reference. The BIFR nevertheless on 30th October 2006 declared SRIL as a sick company. When the Petitioner then approached the AAIFR, by an order dated 4th September 2008 the matter was remanded to the BIFR to determine the issue afresh. On 2nd September 2009 the BIFR again passed an order declaring SRIL to be a sick company. Directions were issued on 23rd December 2010 by BIFR for change of management of SRIL.

6. On 5th July 2011 GIIC gave consent to GSFC to initiate action under the

SARFEASI Act. Accordingly, on 10th August 2011 the Petitioner with the consent of GIIC issued a notice to Respondent No.1 under Section 13(2) of the SARFEASI Act. The Respondent failed to make any attempt at settling the dues of the Petitioner and even failed to appear before the BIFR on 11th April 2012 and 16th May 2012. After lapse of a year GSFC took possession of the secured assets of the company on 23rd August 2012 invoking Section 13(4) of the SARFEASI Act. This was also informed to the BIFR by the Petitioner.

7. At this stage SRIL offered to settle the dues of GSFC under a One Time Settlement ('OTS') Scheme. SRIL also sought extension of time for settlement of the dues. In the meanwhile, on 13th January 2014, GSFC wrote to BIFR seeking abatement of the reference primarily on the ground that action had been initiated by GSFC under Sections 13(2) and 13(4) of the SARFEASI Act. Nevertheless the BIFR proceeded to pass an order dated 23rd January 2014 directing winding up of the company. Being aggrieved with the above order, the Petitioner filed Appeal No. 124 of 2014 in AAIFR. The AAIFR vide impugned order dated 7th December 2015 held the appeal not to be maintainable as only the affected party i.e. the Respondent could have filed an appeal before AAIFR.

8. It is now plain that third proviso to Section 15(1) of the SICA if after the commencement of the SARFEASI Act a reference under SICA is pending before the BIFR such reference would abate if the secured creditors representing not less than ¾ in value of the amount outstanding have taken any measures to recover their secured debt under Section 13(4) of the Act

(in the present case it is not in dispute that the Petitioner has invoked Sections 13(2) and 13(4) of the SARFEASI Act). It may be noted that both GSFC and GIIC represent more than 90% of the creditors of Respondent No.1. This then automatically means that the proceedings before the BIFR had to abate.

9. In that view of the matter, the impugned orders of the BIFR and AAIFR are hereby set aside. The writ petition is allowed in the above terms but in the circumstances no order as to costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 28, 2019/ tr