



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on:02.06.2023

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**W.P.(C) 1110/2017 and CM Nos. 5097/2017, 5098/2017,
20995/2017, 28957/2017 & 32689/2017**

NEHAL T. BHIMJYANI

..... Petitioner

versus

UNION OF INDIA AND ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner

: Mr. Jaideep Gupta, Senior Advocate and Mr. Jayant Mehta, Senior Advocate with Mr. Akshay Sahay, Ms. Shradha Narayan & Ms. Rudrakshi Dev, Advocates.

For the Respondents

: Ms. Monika Arora, CGSC with Mr. Shivam Raghuwanshi & Mr. Yash Tyagi, Advocates for R-1.

Mr. Vivek Sibal, Senior Advocate with Mr. Rahul Sharma & Mr. Ayush Bhatia, Advs. for R-2.

Mr. Arvind Kumar, Mr. Ankit Kumar Vats and Mr. Rajeev Tripathi, Advocates for R-3.

Mr. Alok Dhir, Ms. Varsha Banerjee, Mr. Gaurav Singh, Ms. Karishma Malani and Mr. A.N. Mishra, Advocates for R-4.

Mr. Arun Aggarwal and Mr. Shivam Saini, Advocates for R-4.

Mr. Sanjay Bhatt and Ms. Apoorva Chawdhary, Advocates for R-5.

Ms. Shivangi Kumar, Advocate for R-6.

Mr. Arjun Harkauli, Ms. Neha Verma and Mr. Prateek Garg, Advocates for R-18.



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HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

VIBHU BAKHRU, J

Introduction

1. The petitioner had, pursuant to a public notice dated 27.03.2014, submitted its bid for purchase of a residential property described as “Duplex located at 10/B and 11/B, IL Palazzo CHS Ltd., 10th and 11th Floor, Little Gibbs Road, Malabar Hill, Mumbai having a built-up area of 5100 sq. feet” (hereafter ‘**the property**’). The petitioner’s bid for an aggregate amount of ₹27.30 crores was accepted by the Asset Sale Committee (hereafter ‘**the ASC**’) constituted in terms of the guidelines issued by the Board of Industrial and Financial Reconstruction (hereafter ‘**the BIFR**’) for sale of the non-productive assets of the respondent no.2 company (M/s Saurashtra Cement Ltd – hereafter ‘**SCL**’).

2. The petitioner also made a part payment of a sum of ₹10.37 crores *albeit* belatedly and in tranches. However, SCL (through ASC) terminated the contract for sale of the property in favour of the petitioner and forfeited the part payment made by the petitioner. The ASC then proceeded to sell the property to respondent no.4 (M/s Malabar Coastal Holdings LLP – hereafter ‘**MCHL**’) at a price marginally higher than the bid by the petitioner.



3. The petitioner claims that the ASC had acted in a fraudulent manner with a view to favour MCHL. It had subverted a public sale by concluding a private transaction with MCHL. The unproductive assets of SCL (including the property) were directed to be sold by the BIFR for implementation of the scheme sanctioned under the Sick Industrial Companies (Special Provisions) Act, 1985 (hereafter '**the SICA**'). The petitioner had, accordingly, sought recourse before the Appellate Authority for Industrial and Financial Reconstruction (hereafter '**the AAIFR**') as well as before the BIFR. However, all proceedings before the said authorities stood abated with the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 (hereafter '**the Repeal Act**') coming into force from 01.12.2016. The petitioner claims that the abatement of the proceedings has rendered the petitioner remediless. In the aforesaid context, the petitioner challenges the amendment of Section 4(b) of the Repeal Act as *ultra vires* the Constitution of India on the ground that the repeal of the SICA has left her remediless in respect of the grievance against the actions taken by the ASC.

4. The petitioner, accordingly, also prays that the abatement of the proceedings pending before the concerned authorities (MA No.45/2016 in Appeal No. 60/2015 pending before the AAIFR and MA Nos.541/2014, 470/2015 and 53/2016 in Case No.9/2006 pending before the BIFR) be declared as illegal.

5. In addition, the petitioner impugns a letter dated 20.02.2015 issued by the Secretary of the BIFR conveying the BIFR's consent for the ASC to proceed with the sale of the assets of SCL and all the steps



taken by the ASC for sale of the assets of SCL pursuant to the said letter. The petitioner claims that the said letter was procured and was issued with the ulterior object to assist the ASC and MCHL (respondent no.4) in their fraudulent act, for cancelling the sale transaction of the petitioner and for selling the property to MCHL. Further, the petitioner also prays that directions be issued to respondent no.3 (Palazzo Co-operative Housing Society Ltd.) to issue its no objection certificate (hereafter 'NOC') for sale of the property to the petitioner with further directions to SCL to conclude the sale of the property in favour of the petitioner. In the alternative, the petitioner also prays that the Repeal Act be declared as unconstitutional; the Government of India be directed to provide a remedy for adjudication of the subject disputes; and that the directions be issued to the respondents for refunding the amount of ₹10,37,00,000/- (Rupees ten crores thirty-seven lacs), paid by the petitioner as a part consideration for the property.

6. The respondent disputes the allegations made by the petitioner. Respondent no.5 (hereafter '**the IFCI**') – whose nominee had chaired the ASC – SCL, and MCHL dispute the allegations of any fraud. They also contest the jurisdiction of this Court to entertain this petition as the cause of action has not arisen within the territorial jurisdiction of this Court. They contend out that the property is located in Mumbai; the ASC had held all its meetings for the sale of the property in Mumbai; SCL has its registered office in Gujarat and a corporate office in Mumbai; the principal office of MCHL is also located in Mumbai; and



the deed of conveyance of the property in favour of MCHL was executed and registered in Mumbai.

7. In the aforesaid context, the principal questions that falls for consideration of this Court are: whether this Court has the jurisdiction to entertain the present petition, if the aforesaid question is answered in the affirmative, whether the Court should exercise its jurisdiction to address the reliefs sought by the petitioner?

The Facts

8. SCL filed a reference under Section 15(1) of the SICA before the BIFR, which was registered as ***Case No. 9/2006*** captioned ***M/s Saurashtra Cements Ltd.*** The BIFR took up the said reference on 21.09.2006 and declared SCL to be a sick company within the meaning of Section 3(1)(o) of the SICA. The IFCI was appointed as the Operating Agency (hereafter '**the OA**') under Section 17(3) of the SICA and was directed to prepare a revival scheme for SCL, if feasible. Thereafter, on 06.10.2006, the BIFR, on an application filed by SCL, directed Saraswat Co-operative Bank Ltd. (one of the secured creditors of SCL) not to take any coercive action against SCL for realizing its dues by sale of its security interest, including the property, without seeking prior permission of the BIFR under Section 22 of the SICA and/or the consent of 75% of the secured creditors in value.

9. There is no dispute that the sale and further encumbrance of the property was restrained by the BIFR.



10. The BIFR sanctioned a revival scheme on 14.03.2013 (hereafter '**the Sanctioned Scheme**') which, *inter alia*, entailed the sale of non-productive assets of SCL through the ASC, to be constituted in accordance with the guidelines issued by the BIFR. The total cost for revival of SCL under the Sanctioned Scheme was stated as ₹305.73 crores, which was required to be funded to the extent of ₹34.73 crores by the sale of non-productive assets, including the property. SCL and its promoters were restrained under Section 22A of the SICA from disposing of, selling, or alienating any fixed or current assets without the consent of secured creditors and the BIFR. However, it was clarified that the current assets could be drawn down to the extent required for day-to-day operations and with the further direction to maintain proper accounts. In terms of the Sanctioned Scheme, SCL was directed to form the ASC, as per the guidelines of the BIFR, to sell non-productive assets to part finance the Sanctioned Scheme.

11. The ASC comprised of sixteen members and included the secured creditors of SCL and the BIFR's nominee director on the Board of SCL. The IFCI – which was earlier appointed as the OA for making the revival package, and subsequently the monitoring agency (MA) of the Sanctioned Scheme – was the chair of the ASC.

12. On 27.03.2014, SCL issued the public notice inviting offers for purchase of residential flats in Mumbai on "*as is where is*" basis. The notice was in respect of three lots. Lot 1 and Lot 2 property (flat no. 10/B and flat no. 11/B, IL Palazzo CHS Ltd.) comprised the property. The bids were to be submitted to the IFCI and it was specified that the



ASC could reject the bid without assigning any reason. The tender documents for submitting the bid set out the terms and conditions as well as the payment schedule.

13. Pursuant to the notice inviting bids, the petitioner submitted a bid for a sum of ₹13,65,00,000/- for each of the lots (that is, Lot 1 and Lot 2) comprising of the property. She also made an earnest money deposit (EMD) of ₹68,25,000/- for each of the lots, aggregating to a sum of ₹1,36,50,000/-.

14. The petitioner, *inter alia*, also certified that if she failed to pay the amounts in the manner as specified in the Letter of Acceptance (hereafter '**the LOA**'), the EMD and any further installment paid by her shall stand absolutely forfeited.

15. The petitioner's bid was found to be the highest and the IFCI issued the LOA, calling upon the petitioner to pay the remaining amount in terms of the tender documents – pay an amount ₹13,64,00,000/- (₹6,82,00,000/- for Lot 1 and ₹6,82,00,000/- for Lot 2) within 15 days of the LOA and the remaining 45% of the bid amount aggregating ₹12,28,50,000/- (₹6,14,25,000/-x2) within thirty days of the LOA. Importantly, the LOA also expressly provides that the acceptance would be effective only on receipt of 50% of the bid amount excluding the amount already deposited within 15 days from the date of the receipt of the LOA and the sale would be confirmed after receipt of the entire bid amount.



16. The petitioner acknowledged the LOA by her letter dated 24.05.2014 and sought further thirty days' additional time to deposit the amount. She also stated that she was willing to pay interest at the rate of 15% per annum for the extended period. This was followed by another letter dated 30.05.2014 under cover of which the petitioner forwarded a payment of ₹2 crores by two cheques drawn on Axis Bank Ltd. She also stated that she would make further payment shortly. Thereafter, by a letter dated 09.06.2014, the petitioner forwarded two cheques dated 12.06.2014 for a sum of ₹2 crores.

17. Although the petitioner had failed to make the payments in terms of the LOA, the ASC considered the petitioner's request for a further time of thirty days for making the payments and, by a letter dated 16.06.2014, communicated the revised schedule for making the payments. By that time, the petitioner had already paid a sum of ₹5,36,50,000/- (including the EMD). In terms of the said schedule, the petitioner was required to pay ₹5,00,00,000/- on or before 20.06.2014; ₹4,65,00,000/- on or before 30.06.2014; and the balance amount of ₹12,28,50,000/- on or before 15.07.2014. In addition, the petitioner was required to also pay interest for the delayed payment.

18. The petitioner failed to make the payment as per the revised schedule as well. By a letter dated 20.06.2014, the petitioner requested further time to make the payment. She enclosed three post-dated cheques dated 30.06.2014, aggregating to ₹5,00,00,000/- and an additional cheque for a sum of ₹6,16,438/- on account of interest at the rate of 15% per annum for the period from 01.06.2014 to 30.06.2014.



She also requested the ASC to send the draft of the sale deed and communicate the formalities that were required to be complied with for effecting the transaction.

19. The IFCI responded by an e-mail sent on the same date (that is, 20.06.2014) declining to accept partial postdated cheques.

20. Thereafter, the meeting of the ASC was convened on 09.07.2014. The petitioner was represented by her brother, Mr. Anshul Bhimjyani in the said meeting. He sought further time to make the entire payment by 30.09.2014. This offer was rejected by the ASC and the petitioner was asked to make the balance payment latest by 15.08.2014. The petitioner (through her brother) expressed her inability to make the payment and sought further time to furnish a proposal. The ASC decided to meet again on 14.07.2014 to discuss the revised proposal. At the meeting of the ASC held on 14.07.2014, the petitioner (through her brother) offered to make a payment of ₹3,00,00,000/- on 17.07.2014, ₹2 crores on 24.07.2014 and the balance amount on 30.09.2014. This proposal was rejected by the ASC. However, the ASC also suggested that if the petitioner desired further time to make the payments, she should arrange a bank guarantee for the balance amount or give some property as a collateral security for the comfort of the ASC. The Minutes of the Meeting indicate that during the proceedings, the petitioner further improved the offer by agreeing to pay an additional amount of ₹5,00,00,000/- by 05.08.2014 and also offered to submit post-dated cheques for the balance amount of ₹11,93,00,000/- before 15.08.2014. She also sought time to submit a proposal for



providing a bank guarantee as collateral. The ASC did not accept the same but agreed to consider the proposal for extension of time until 30.09.2014, on submission of the bank guarantee.

21. Immediately after the meeting, the petitioner's brother (Mr. Anshul Bhimjyani) sent a letter enclosing a post-dated cheque bearing the date of 05.08.2014 for a sum of ₹5,00,50,000/-. He also forwarded papers in relation to two properties that could be offered as collateral instead of a bank guarantee.

22. The members of the ASC again met on 22.08.2014. In the meanwhile, two of the cheques aggregating ₹5,00,00,000/- (that is, ₹3,00,00,000/- plus ₹2,00,00,000/-) furnished by the petitioner were honoured. However, the cheque for a sum of ₹5,00,50,000/- dated 05.08.2014, which was presented on 08.08.2014, was dishonoured on presentation. Thereafter, by an e-mail dated 11.08.2014, the petitioner (through her brother) requested for a draft sale agreement and other related documents.

23. In the meeting dated 22.08.2014, the petitioner (through her brother) stated that the petitioner was willing to pay the balance amount but prior to the same, would require copies of the relevant documents regarding the property. The ASC decided that SCL would arrange the relevant documents namely, (a) draft sale agreement, (b) copy of the agreement between Sandoz India and the developers, Engineers Estates Ltd., (c) copy of all annexures including layout of flats and parking details, (d) copy of Occupation Certificate of the flats / building, (e)



conditional NOC for transfer of flats in favour of Ms. Nehal T. Bhimjyani, (f) no dues certificate from Society, and, (g) copy of Litigation / Orders with the tenant. It was decided that immediately on receipt of the documents, the petitioner (through her brother) would make the payment of the entire outstanding amount together with interest, after which the process of registration and transfer of the properties will be commenced. It was also decided that if some of the documents were not available or there was any discrepancy, the adjudication of the documents for payment of the stamp duty would be carried out immediately and the petitioner would pay the entire amount immediately upon adjudication.

24. Thereafter, by an e-mail dated 01.10.2014 sent to Anshul Bhimjyani, SCL informed the petitioner that the agreement between Sandoz India and Engineers Estates Ltd (the developer) was not available and therefore the documents would have to be adjudicated and registered without the original agreement between Engineers Estates Ltd. and Sandoz India. SCL also forwarded scanned copies of other documents. SCL further stated that a conditional NOC would be given by society (the respondent no.3) after their meeting on 09.10.2014 but the said document was not necessary for adjudication.

25. Thereafter, by a communication dated 16.10.2014, respondent no.3 declined SCL's request for a conditional NOC for transfer of the property. According to respondent no.3, SCL was required to follow the procedure of providing the members of the society with a preemptive right of refusal with the final price. The procedure entailed



the seller (in this case SCL) informing respondent no. 3 after the final price for a transaction was fixed with the non-member. Respondent no.3 society is to thereafter circulate the same to other members of the society, who are entitled to buy the property at the finalized price, within a reasonable period (ten days). If no member comes forward to buy the property, the same would then be sold to a non-member as proposed.

26. The petitioner claims that thereafter, SCL introduced MCHL (respondent no.4), a member of the respondent no.3 society, as a purchaser and MCHL opened an escrow account for a sum of ₹30 crores. This is disputed by MCHL. It denies that it had opened an escrow account and deposited a sum of ₹30 crores in the said account as contended by the petitioner.

27. On 13.10.2014, the petitioner forwarded a physical copy of the draft sale agreement in respect of the property. Thereafter, on 22.10.2014, SCL forwarded a revised sale agreement to the petitioner, *inter alia*, deleting the clause relating to the NOC from respondent no.3. On 30.10.2014, the petitioner sought further documents from SCL for arranging financing facility from the bank.

28. The ASC held a meeting on 13.11.2014 and 14.11.2014. The ASC was of the view that the petitioner was delaying the transaction on one pretext or the other. It had not come forward for adjudication or registration of the documents and had not made the payment of 50% of the bid amount. The ASC also sought a legal opinion on the process to



be followed in conformity with the guidelines issued by the BIFR. The ASC decided that the adjudication of the documents for payment of the stamp duty should be carried out immediately and that the petitioner ought to be given two days' time to make the entire payment and proceed with the registration, failing which, the ASC would take action in accordance with law.

29. The petitioner states that she became aware that respondent no.3 society had declined to issue a conditional NOC and the decision of the ASC, on 18.11.2014.

30. The sale documents were adjudicated for the purpose of stamp duty. On 25.11.2014, SCL called upon the petitioner to pay the stamp duty of ₹1,36,50,000/- and the balance amount of ₹16,93,00,000/- plus interest of ₹1,30,41,370/-, failing which, the transaction was threatened to be cancelled.

31. The petitioner did not make the aforesaid payment. The petitioner states that on 27.11.2014, she met with the officials of SCL and was informed that the draft sale deed sent for adjudication required certain specific changes, which had been agreed upon by SCL. Thereafter, by an e-mail dated 02.12.2014, the petitioner informed SCL that her bank had approved the amended documents and that the payment would be made within three to four days of the documents being adjudicated by the Registrar.

32. The ASC of SCL held another meeting on 02.12.2014 and unanimously decided that no further time was required to be granted to



the petitioner. The ASC also noted that in terms of the letter dated 25.11.2014, sent by SCL to the petitioner, the transaction would stand cancelled if the balance payment was not made by 5 P.M on 27.11.2014. The ASC decided to thereafter, cancel the bid and forfeit the EMD. The ASC also decided to give members of the respondent no.3 an option to purchase the property at a price higher than the reserve price.

33. Thereafter on 04.12.2014, SCL sent a letter to the petitioner cancelling the sale of the property and forfeiting the EMD as well as the amount of ₹9,00,50,000/- paid by the petitioner towards part consideration of the property.

34. SCL also sent a letter dated 04.12.2014, informing respondent no.3 that the petitioner had offered to purchase the property at ₹27.30 crores, which was the final price, however, the said sale was cancelled. SCL requested respondent no.3 to inform its members of its intention to sell the property so as to enable them to exercise the preemptive rights.

35. In the meanwhile, MCHL had already sent a letter dated 07.11.2014, offering to purchase the property. SCL sent a letter dated 05.12.2014 to MCHL, declining its offer but further informing MCHL that it had already informed respondent no.3 of its intention to sell the property and MCHL could follow the procedure for exercising its preemptive right if it desired to purchase the property.



36. Respondent no.3 society circulated a letter to all its members informing them of SCL's intention to sell the property on an "*as is where is basis*".

37. Prior to that on 08.12.2014, the nominee Director of the BIFR (respondent no.7) sent a letter to the BIFR informing the BIFR that MCHL, an existing member of respondent no.3, had become aware of the proposed sale and had submitted an offer for purchase of the property at ₹28 crores, which was higher than the offer made by the petitioner (original bidder). He informed the BIFR of the ASC's decision to ask respondent no.3 to seek bids from the existing members in case they were interested and if no bids are received, then to proceed further by inviting fresh bids by publishing another notice.

38. On 16.12.2014, the Secretary, BIFR sent a letter to the IFCI stating, *inter alia*, that the sale of the property was in gross violation of the Asset Sale Guidelines issued by the BIFR and further directing the IFCI to immediately stop all action for the sale of the property.

39. On 12.12.2014, the petitioner filed an application before the BIFR (being MA No.541/2014 in Case No. 9/2006) seeking specific performance of the transaction for sale of the property and questioning the decision of the ASC to cancel the sale. The said application was taken up for hearing on 05.01.2015, however, the BIFR did not pass any order on the said date. The petitioner claims that on the said date, the representative of SCL had made a statement informing the BIFR of the letter dated 15.12.2014 sent by the Secretary, BIFR.



40. Thereafter on 21.01.2015, the Secretary, BIFR issued a letter to the IFCI, *inter alia*, stating that the Asset Sale Guidelines did not visualize acceptance of a single bid or a restricted bid and any doubt and ambiguity in this regard was required to be brought to the notice of the BIFR. SCL replied to the petitioner's application (MA No.541/2014) on 04.02.2015.

41. On 06.02.2015, the IFCI sent a letter to the BIFR, *inter alia*, stating its stand that the ASC had been duly constituted and the procedure set out by the BIFR for sale of the asset had been followed diligently. It enclosed therewith status report on the sale of assets. The IFCI also highlighted that the property was a large one; the occupants of the property had been declared tenants by the Small Causes Court at Bombay against which an appeal of SCL was pending; there were litigations in respect of the property spanning over twenty years; respondent no.3 had a practice of preemptive right of refusal, whereby, it had the right to acquire the flats at a final price; and respondent no.3 had declined to give its NOC for the transfer of its flat to a non-member without affording its members the preemptive right of refusal. The IFCI sought permission of the BIFR to proceed with the sale of the property.

42. The petitioner's application being MA No.541/2014 was heard by the BIFR on 12.02.2015, however, no effective order was passed.

43. Thereafter, on 20.02.2015, the Secretary, BIFR sent a letter stating that the BIFR had no objection to the IFCI proceeding with the



sale of the property. The petitioner impugns the said letter as being without the authority of law.

44. SCL sent a letter dated 24.02.2015 to the IFCI requesting it to expedite the meeting of the ASC, to proceed with the sale of the property.

45. On 03.03.2015, the petitioner informed the IFCI that its banker has issued a cheque of ₹16.65 crores and that the same would be handed over to SCL on completion of the sale. The petitioner also stated that the parties may jointly approach the BIFR for suitable directions. In the meanwhile, SCL also sent a letter to the Secretary, BIFR to issue a direction to the OA to convene a meeting of the ASC.

46. The petitioner states that on 10.10.2015, the sale of the property was concluded in favour of MCHL. The petitioner alleges that the said bidders were intimately related. The ASC negotiated with the said bidders. During the course of negotiations, MCHL increased its bid from ₹27.4 crores to ₹27.5 crores. The demand drafts for the negotiated amount were available with MCHL and were furnished to the ASC. The sale deeds for the property were executed on the next day, that is, 11.03.2015, in favour of MCHL.

47. On 13.03.2015, the petitioner filed an appeal (Appeal No.74/2015) before the AAIFR, *inter alia*, praying that the record of the BIFR may be called for and MA No.541/2014 be decided by the AAIFR. On 16.03.2015, the AAIFR passed an *ad-interim* order, *inter*



alia, directing that “if the sale of the flat in question is not complete, the same will not be completed till the next date of hearing”.

48. The petitioner stated that on becoming aware of the sale deed dated 11.03.2015, she filed an application before the AAIFR for impleadment of MCHL in appeal No.74/2015 and also sought further interim orders. On 13.03.2015, the AAIFR passed an *ad interim* order directing that *status quo* be maintained on the date till the next date of hearing. Thereafter, the petitioner filed an appeal impugning the communication dated 20.02.2015 issued by the then Secretary, BIFR (Appeal No.60/2015).

49. It is stated that in the said proceedings, the AAIFR directed the Secretary, BIFR (respondent no.20) to furnish a report whether the communication was sent pursuant to any order of the BIFR. In compliance with the said directions, the Secretary, BIFR filed a report dated 26.05.2015, *inter alia*, stating that he had sent the communication dated 20.02.2015 pursuant to the directions issued by the Chairman, BIFR.

50. The AAIFR disposed of the appeal (Appeal No.74/2015) by an order dated 24.09.2015, remanding the matter to the BIFR for adjudication of the pending application. The interim order dated 13.03.2015 continued till the disposal of the application. MCHL filed a writ petition (being W.P.(C) No.9965/2015) impugning the order passed by the AAIFR. The said writ petition was disposed of by this



Court by an order dated 20.01.2016 directing BIFR to allow special mentioning.

51. By an order dated 15.01.2016 the AAIFR, *inter alia*, held as under and admitted the appeal:

“It is clear from the above that the aforesaid letter issued by the Secretary, BIFR had not authority or approval of the Bench of the BIFR. It is on the basis of the letter that IFCI (MA) has gone ahead with the sale of the assets and the same is under challenge in this appeal.

In view of the above, we feel that the appeal raises serious issues which need to be looked into.”

52. While the matters were pending before the BIFR and the AAIFR, the Central Government issued a Notification dated 25.11.2016 bringing the Repealing Act in effect. Consequently, the BIFR and the AAIFR stood dissolved with effect from 01.12.2016.

53. In the above circumstance, the first question that arises for consideration is whether this Court has jurisdiction to entertain this petition.

Jurisdiction of this Court to entertain the petition

54. It is contended on behalf of the respondents (SCL, IFCI and MCHL) that this Court does not have the territorial jurisdiction to entertain the present petition. The said respondents contend that the property in question is situated in Mumbai, the registered office of SCL is in Mumbai; the principal office of MCHL is in Mumbai; and the deed



of conveyance for the sale of the property in favour of MCHL was executed and registered in Mumbai. It is contended that the entire cause of action has arisen in Mumbai and therefore, this Court would not have the jurisdiction to entertain the present petition.

55. It is material to note that the petitioner's principal challenge is regarding the constitutional validity of Section 4(b) of the Repeal Act. The Repeal Act is a Central Legislation but, more importantly, the petitioner's challenge to the constitutional validity of the Repeal Act stems from a grievance relating to the abatement of the proceedings before the BIFR and the AAIFR (both the authorities were seated in New Delhi). According to the petitioner, the Repeal Act is unconstitutional as it has left her remediless, being precluded from availing remedies before the BIFR and the AAIFR.

56. The petitioner also impugns a letter dated 20.02.2015, issued by the Secretary, BIFR confirming that "*BIFR has no objection in IFCI (OA) proceeding with the asset sale process*". It is the petitioner's case that the IFCI proceeded to complete the sale of the property in favour of MCHL on receipt of the said approval by the BIFR. However, the BIFR had not approved the sale of the property in favour of MCHL or the asset sale process. According to the petitioner, the said letter is a vital link in the fraud perpetuated with the participation of the IFCI, Secretary, BIFR and MCHL. The said letter is impugned in the present petition.



57. The petitioner had also preferred an appeal before the AAIFR, *inter alia*, impugning the letter dated 20.02.2015 issued by the Secretary, BIFR. The said appeal was admitted by the AAIFR and had been partly heard. The petitioner's case also arises on account of termination of those proceedings as a consequence of the Repeal Act. The proceedings before the AAIFR were being conducted in Delhi. The petitioner had also filed an application before the BIFR seeking specific performance of the contract for sale of the property in her favour and also assailed the decision of the ASC and SCL to cancel the said contract. These proceedings were being conducted in New Delhi.

58. It is, thus, clear that the part of cause of action on which the present petition is founded, arises within the territorial jurisdiction of this Court. It is well settled that the Court would have a jurisdiction to entertain a petition if any part of cause of action had arisen within its territorial jurisdiction (See : ***Kusum Ingots & Alloys Ltd. v. Union of India and Anr.:* (2004) 6 SCC 254**)

59. Thus, we are unable to accept that this Court has no jurisdiction to entertain the present petition.

60. The question whether it is apposite for this Court to entertain the present petition is required to be considered in the context of various settled principles. In the context of the disputes raised in this petition, the following principles are relevant. First that the Court would refrain from entertaining a petition under Articles 226 and 227 of the Constitution of India if it involves a detailed examination of disputed



questions of fact. Second, if the petitioner has an equally efficacious alternate remedy, the Court would not normally entertain a petition under Article 226 of the Constitution of India.

61. We may now proceed to consider various questions raised by the petitioner and whether it is apposite for this Court to consider the same in these proceedings.

62. The petitioner has sought various reliefs as noted at the outset. The questions that fall for consideration of this Court are: (1) whether the Repeal Act is unconstitutional and the abatement of proceedings pending before the AAIFR and the BIFR is illegal and without the authority of law; (2) whether the impugned communication dated 20.02.2015 issued by the Secretary, BIFR is liable to be set aside; (3) whether the actions of the ASC for sale of the property to MCHL is *void ab initio*; (4) whether the petitioner is entitled to specific performance of the agreement for sale of the property in her favour or in the alternative, to a refund of the part consideration of ₹10,37,00,000/- paid to SCL along with interest.

Re: Constitutional validity of the Repeal Act

63. Mr Gupta, learned senior counsel appearing for the petitioner, contended that even though substantive vested rights have been preserved under Clauses (b), (c), (d) and (e) of Sub-section (1) of Section 5 of the Repeal Act; there is no forum provided to avail the remedy for breach of the said rights. He submitted that with the abatement of the proceedings before the BIFR and the AAIFR, the



petitioner is left remediless in respect of her rights. He contended that the Repeal Act falls foul of the sacrosanct principle *ubi jus ibi remedium*, and therefore, violates Articles 14 and 21 of the Constitution of India. He submitted that the abatement of the proceedings before the BIFR and the AAIFR without providing any alternate remedies amounted to negation of the Rule of Law and therefore, the Repeal Act, to the extent that it provided for abatement of the proceedings, was unconstitutional. He referred to the decision of the Constitution Bench of the Supreme Court in ***M. Ismail Faruqui & Ors. v. Union of India & Ors.: (1994) 6 SCC 360*** and contended that a similar provision had been struck down by the Supreme Court in that case on the same principle.

64. He submitted that in the case of ***Public Services Tribunal Bar Association v. State of UP & Anr.: 2003 (4) SCC 104***, the Supreme Court had repelled the contention that the provisions of the Uttar Pradesh Public Services (Tribunal) Act, 1976 was *ultra vires* to Article 14 of the Constitution of India by holding that the remedy in certain cases would be available under Article 226 of the Constitution of India. He submitted that since the petitioner had been rendered remediless, the malady could be addressed by this Court by entertaining the petitioner's grievance and exercising the extraordinary jurisdiction under Article 226 of the Constitution of India. He submitted that the Supreme Court in its final order dated 25.10.2018 in ***M/s Spartek Ceramics India Ltd. v. Union of India and Ors.: Civil Appeal No.7291-7292/2018***, while accepting that the appeals to the National Company Law Appellate



Tribunal (NCLAT) were not maintainable, had restored the writ petitions pending before this Court, which had been disposed of by relegating the petitioner's to avail their alternate remedy before the NCLAT, for disposal. He submitted that even if it is held that the Repeal Act is valid, this Court may consider the petitioner's grievance in this petition.

65. The Repeal Act was enacted on 01.01.2004 but with the provision that it would come in force on the date as notified by the Central Government. It came into effect by virtue of the Notification No. S.O. 3568(E) on 25.11.2016. On the same date, the Central Government also issued a notification [Notification No.S.O. 3569(E)] amending Section 4(b) of the Repeal Act with effect from 01.12.2016.

66. Section 4(b) of the Repeal Act was further amended with addition of two provisos by Notification No.S.O. 1683(E) dated 24.05.2017. Section 4(b) of the Repeal Act reads as under:

“4(b) On such date as may be notified by the Central Government in this behalf, any appeal preferred to the Appellate Authority or any reference made or inquiry pending to or before the Board or any proceeding of whatever nature pending before the Appellate Authority or the Board under the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) shall stand abated:

Provided that a company in respect of which such appeal or reference or inquiry stands abated under this clause may make reference to the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016 within one hundred and eighty days from the commencement of the Insolvency and Bankruptcy Code, 2016 in accordance



with the provisions of the Insolvency and Bankruptcy Code, 2016:

Provided further that no fees shall be payable for making such reference under Insolvency and Bankruptcy Code, 2016 by a company whose appeal or reference or inquiry stands abated under this clause.

Provided also that any scheme sanctioned under sub-section (4) or any scheme under implementation under sub-section (12) of section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall be deemed to be an approved resolution plan under sub-section (1) of section 31 of the Insolvency and Bankruptcy Code, 2016 and the same shall be dealt with, in accordance with the provisions of Part II of the said Code:

Provided also that in case, the statutory period within which an appeal was allowed under the Sick Industrial Companies (Special Provisions) Act, 1985 against an order of the Board had not expired as on the date of notification of this Act, an appeal against any such deemed approved resolution plan may be preferred by any person before National Company Law Appellate Tribunal within ninety days from the date of publication of this order.”

67. It is also relevant to note that Section 3 of the Repeal Act specifically enacts that the SICA is repealed and the AAIFR and the BIFR stand dissolved.

68. The petitioner is essentially aggrieved by the abatement of the proceedings before the AAIFR and the BIFR, as she claims that the forum for adjudication and enforcement of her vested rights is now closed.



69. In *M/s ATV Projects (India) Ltd. v. Union of India & Ors.*: (2017) SCC Online Del 12136, a Co-ordinate Bench of this Court had repelled the challenge to Section 4(b) of the Repeal Act on the ground that it violates Article 14 of the Constitution of India. In that case, the petitioner had contended that the proceedings before the BIFR were at an advanced stage and a scheme was on the verge of being sanctioned. The petitioner contended that in the circumstances, the petitioner's case could not be treated as different from those cases where the schemes were sanctioned and the appeals were pending. The petitioner also contended that it had a right to file an appeal before the AAIFR against an order passed by the BIFR and its vested right was required to be governed by the law as in force on the date when that the right had accrued.

70. This Court did not accept the said contention and found that the classification of cases on the basis where the scheme was sanctioned, did not fall foul of Article 14 of the Constitution of India. Considering the cases where a scheme was sanctioned as a separate class was not arbitrary or discriminatory.

71. In *Ashapura Minechem Ltd. v. Union of India & Ors.*: 2017 SCC Online Del 11784, a Co-ordinate Bench of this Court expressed a similar view. The Court rejected the challenge to Section 4(b) of the Repeal Act on the ground that it violated the equal protection clause under Article 14 of the Constitution of India. This Court found that the classification of cases where draft scheme for reconstruction were sanctioned and cases where the schemes were pending, was based on



intelligible differentia and is non-discriminatory. This Court also held that such classification had a nexus with the objective sought to be served. The Parliament had enacted the Insolvency and Bankruptcy Code, 2016 with a view to consolidate and amend laws relating to re-organisation and insolvency resolution. The Statement of Objects and the reasons of Insolvency and Bankruptcy Code, 2016 clearly indicate that the legislature was of the view that “*the existing framework for insolvency and bankruptcy was inadequate, ineffective and results in undue delay in resolution*” and this was one of the reasons for enacting the Insolvency and Bankruptcy Code, 2016.

72. The SICA was enacted to address sickness in an industry and to provide a rehabilitation process for the industrial companies that could be rehabilitated. The SICA enacted a framework for rehabilitation of the companies that were sick or were potentially sick. It was mandated that reference be made to the BIFR by sick and potentially sick companies. The BIFR thereafter, determined whether it was feasible to rehabilitate a sick company. In cases where the BIFR found that it was not feasible to do so and the company ought to be wound up, the BIFR would record the opinion for winding up of the company under Section 20(1) of the SICA. However, in such cases where it was feasible for rehabilitating a company, BIFR would sanction a revival scheme entailing measures specified under Section 18 of the SICA.

73. Section 22 of the SICA contained the provisions for suspension of legal proceedings where an inquiry under Section 16 of the SICA or any scheme referred to in Section 17 of the SICA was under preparation



or implementation. In terms of Section 16 of the SICA, the BIFR was required to make an inquiry into the working of sick industrial companies. If after the said inquiry, the BIFR was satisfied that the company had become a sick industrial company, it was required to decide whether it was practical for the company to make its net worth positive within a reasonable time. If the BIFR decided that it was not practical for a sick company to do so within a reasonable time and that it is necessary and expedient in public interest to adopt the measures as specified under Section 18 of the SICA, in relation to the said company, it would issue an order to make an appropriate scheme for rehabilitation of the company.

74. During the period when the inquiry was pending & the scheme was being prepared or was being implemented; proceedings against the company by various creditors were suspended by virtue of Section 22 of the SICA. The BIFR was also empowered to issue directions under Section 22A of the SICA for restraining the sick company from disposing of its assets. The object was to ensure that the assets of the industrial company are preserved and are available for its rehabilitation.

75. With the repeal of the SICA, this legislative framework was removed from the statute book. The legislative framework within which insolvency is to be addressed is now housed with the Insolvency and Bankruptcy Code, 2016.

76. The legislative competence of the Parliament to enact the Insolvency and Bankruptcy Code, 2016 or the SICA is not called into



question. The petitioner seeks to challenge the Repeal Act as being violative of Articles 14 and 19 of the Constitution of India. We are unable to accept that the Repeal Act is arbitrary or unreasonable. The petitioner's challenge to Section 4(b) of the Repeal Act is founded on the basis that although certain rights vested with the petitioner are saved, the petitioner is left with no remedy to enforce the same.

77. At this stage, it is relevant to refer to Section 5(1) of the Repeal Act, as according to the petitioner, her vested rights under Clause (b), (c), (d) and (e) of Sub-section 1 of Section 5 of the Repeal Act are saved and remain unaffected, but she has no remedy to enforce the same. Section 5(1) of the Repeal Act is set out below:

“5. Saving.-(1) The repeal by this Act of the repealed enactment shall not:-

- (a) affect any other enactment in which the repealed enactment has been applied, incorporated or referred to;
- (b) affect the previous operation of the repealed enactment or anything duly done or suffered thereunder;
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed enactment;
- (d) affect any order made by the Board for sanction of the schemes;
- (e) affect the validity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred or any remedy or proceeding in



respect thereof or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing;

- (f) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed enactment, affect any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such privilege, forfeiture or punishment may be imposed as if this Act had not been passed;
- (g) affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed or recognized or derived by, in, or from, the repealed enactment;
- (h) revive or restore any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or in force.”

78. In this context, it would be relevant to refer to the rights alluded to by the petitioner and whether remedy to enforce the same has been foreclosed. According to the petitioner, the bids for the property were invited by SCL, in terms of the Sanctioned Scheme. The petitioner had participated in the bidding process and her offer to purchase the property was accepted by the ASC. According to the petitioner, she had



a right to ensure that the sale of the property is conducted in a transparent manner and in accordance with the guidelines issued by the BIFR.

79. In terms of Section 5(1)(e) of the Repeal Act, the repeal does not affect the validity of any right or title acquired.

80. As noted above, the petitioner had participated in the bidding process for purchase of the property. Her offer for purchasing the property at a consideration of ₹27.3 crores was the highest. According to the petitioner, acceptance of her bid had resulted in a binding contract. The petitioner now, essentially, seeks to enforce the said transaction and is aggrieved by the cancellation of the contract of sale of the property in her favour and its subsequent sale to MCHL. It is the petitioner's case that the conduct of the ASC has been fraudulent, and a deep seeded fraud has been perpetuated by the ASC, SCL as well as some of the officials of the BIFR and MCHL.

81. It is at once clear that the petitioner has not been rendered remediless to enforce her rights, if any, by virtue of the Repeal Act. The rights acquired by her are not under the SICA and therefore, the repeal of the Act has not affected her remedy to enforce the same. The contention that since bids for the property were invited pursuant to the Sanctioned Scheme permitting sale of the unproductive assets of SCL, all actions regarding the sale were to be supervised, monitored and remedied by the BIFR is unmerited.



82. The bids were invited by the ASC by a public notice and the petitioner has no grievance regarding the same. The petitioner is aggrieved by cancellation of the transaction and the subsequent sale of the property to MCHL. The ASC was well within its right to cancel the transaction if the terms and conditions of the bid were not complied with. The petitioner claims that the cancellation is fraudulent and illegal. The petitioner's remedies in this regard are not precluded by repeal of SICA. Insofar as the question of further sale is concerned, it is difficult to accept that the petitioner would have any actionable claim if it is held that the cancellation of the transaction with her is valid. The property belongs to SCL, and it has a right to sell the same. The said right as well as the right of the secured creditors to enforce the sale of the said property was truncated by the SICA.

83. In terms of the Section 22A of the SICA, the BIFR was empowered to issue directions to a sick industrial company not to dispose of its assets except with its consent. In terms of Section 22 of the SICA, no proceedings for winding up of the sick industrial company or for execution or distress sale against any of its properties would lie or be proceeded with, except with the consent of the BIFR or the AAIFR or as the case may be. Section 22 and Section 22A of the SICA are relevant and set out below:

“22. Suspension of legal proceedings, contract, etc.

- (1) Where in respect of an industrial company, an inquiry under section 16 is pending or any scheme referred to under section 17 is under preparation or consideration or a sanctioned scheme is under implementation or



where an appeal under section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof [and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company] shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority.

- (2) Where the management of the sick industrial company is taken over or changed [in pursuance of any scheme sanctioned under section 18], notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or in the memorandum and articles of association of such company or any instrument having effect under the said Act or other law—
- (a) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;
 - (b) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the Board.
- (3) Where an inquiry under section 16 is pending or any scheme referred to in section 17 is under preparation or during the period] of consideration of any scheme under section 18 or where any such scheme is sanctioned thereunder, for due implementation of the scheme, the Board may by order declare with respect to the sick industrial company concerned that the operation of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force, to which such



sick industrial company is a party or which may be applicable to such sick industrial company immediately before the date of such order, shall remain suspended or that all or any of the rights, privileges, obligations and liabilities accruing or arising thereunder before the said date, shall remain suspended or shall be enforceable with such adoptions and in such manner as may be specified by the Board:

Provided that such declaration shall not be made for a period exceeding two years which may be extended by one year at a time so, however, that the total period shall not exceed seven years in the aggregate.

- (4) Any declaration made under sub-section (3) with respect to a sick industrial company shall have effect notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law, the memorandum and articles of association of the company or any instrument having effect under the said Act or other law or any agreement or any decree or order of a court, tribunal, officer or other authority or of any submission, settlement or standing order and accordingly, —
- (a) any remedy for the enforcement of any right, privilege, obligation and liability suspended or modified by such declaration, and all proceedings relating thereto pending before any court, tribunal, officer or other authority shall remain stayed or be continued subject to such declaration; and
 - (b) on the declaration ceasing to have effect—
 - (i) any right, privilege, obligation or liability so remaining suspended or modified, shall become revived and enforceable as if the declaration had never been made; and
 - (ii) any proceeding so remaining stayed shall be proceeded with, subject to the provisions of any law which may then be in force, from the stage which had



been reached when the proceedings became stayed.

- (5) In computing the period of limitation for the enforcement of any right, privilege, obligation or liability, the period during which it or the remedy for the enforcement thereof remains suspended under this section shall be excluded.”

“22A. Direction not to dispose of assets. – The Board may, if it is of opinion that any direction is necessary in the interest of the sick industrial company or creditors or shareholders or in the public interest, by order in writing direct the sick industrial company not to dispose of, except with the consent of the Board, any of its assets—

- (a) during the period of preparation or consideration of the scheme under section 18; and
(b) during the period beginning with the recording of opinion by the Board for winding up of the company under sub-section (1) of section 20 and up to commencement of the proceedings relating to the winding up before the concerned High Court.”

84. It is material to note that neither Section 22 nor Section 22A of the SICA provided for an absolute bar or prohibition. Section 22 merely imposed an additional condition of requiring the consent of the BIFR/AAIFR for instituting or continuing proceedings against a sick company. Similarly, Section 22A merely required the sick company (or its creditors) to obtain the BIFR’s consent for the sale of its assets.

85. In *Raheja Universal Limited v. NRC Limited and Ors.: (2012) 45 SCC 148*, the Supreme Court examined the scope of the aforesaid provision and observed as under: -

“45. A bare reading of the above provision shows that Section 22 of SICA 1985 is concerned with the suspension of legal proceedings, execution and distress sale, etc, against the



assets of a sick company while Section 22-A deals with power of the Board to issue directions restraining the disposal of assets of such companies. These two provisions primarily ensure that the scheme prepared by BIFR does not get frustrated because of certain other legal proceedings and to prevent untimely and unwarranted disposal of the assets of the sick industrial company. These sections clearly state certain restrictions which will impact upon the implementation of the scheme as well as on the assets of the company. These sections operate at different stages and in different fields.

46. Section 22(3) of SICA 1985 contemplates that where an inquiry under Section 16 is pending or any scheme referred to in Section 17 is under preparation or during the period of consideration of any scheme under Section 18 or where any such scheme is sanctioned thereunder for due implementation of the scheme, BIFR may, by order, declare that with respect to the sick industrial company concerned, the operation of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force, to which such sick industrial company is a party or which may be applicable to such sick industrial company immediately before the date of such order, shall remain suspended or that all or any of the rights, privileges, obligations or liabilities accruing or arising thereunder before the said date, shall remain suspended or shall be enforceable with such adoptions and in such manner as may be specified by BIFR. This power of BIFR is subject to the proviso which states that the declaration made under this provision shall not be for a period exceeding two years and which may be extended by one year at a time, but the total period shall not exceed seven years in aggregate.
47. Section 22-A of SICA 1985 empowers BIFR to pass orders in the interest of the sick industrial company or even in public interest requiring the sick industrial company not to dispose of, except with the consent of BIFR any asset during the period of preparation or consideration of the scheme under Section 18 of SICA 1985 and during the



period beginning with the recording of opinion for winding up of the company under Section 20(1) of SICA 1985 by BIFR up to commencement of the proceedings relating to winding up before the High Court.

48. All these provisions which fall under Chapter III of SICA 1985 have to be read conjointly and that too, along with other relevant provisions and the scheme of SICA 1985. It is a settled canon of interpretation of statutes that the statute should not (*sic*) be construed in its entirety and a sub-section or a section therein should not be read and construed in isolation. Chapter III, in fact, is the soul and essence of SICA 1985 and it provides for the methodology that is to be adopted for the purposes of detecting, reviving or even winding up a sick industrial company. Provisions under SICA 1985 also provide for an appeal against the orders of BIFR before another specialised body i.e. AAIFR. To put it simply, this is a self-contained code and because of the non obstante provisions, contained therein, it has an overriding effect over the other laws. As per Section 32 of SICA 1985, the Act is required to be enforced with all its vigour and in precedence to other laws.
49. BIFR has been vested with wide powers and, being an expert body, is required to perform duties and functions of wide-ranged nature. If one looks into the legislative intent in relation to a sick industrial company, it is obvious that BIFR has to first make an effort to provide an opportunity to the sick industrial company to make its net worth exceed the accumulated losses within a reasonable time, failing which BIFR has to formulate a scheme for revival of the company, even by providing financial assistance in cases wherein BIFR in its wisdom deems it necessary and finally only when both these options fail and the public interest so requires, BIFR may recommend winding up of the sick industrial company. So long as the scheme is under consideration before BIFR or it is being implemented after being sanctioned and is made operational from a given date, it is the legislative intent that such scheme should not be interjected by any other judicial process or frustrated by the impediments created by third parties and even by the



management of the sick industrial company, in relation to the assets of the company.”

86. It is clear from the above that there was no absolute bar on SCL to sell its properties, but it required the permission of the BIFR to do so in order that the scheme for its rehabilitation is not jeopardized or frustrated. The right of the secured creditors to proceed against the asset was also temporarily interdicted in aid of a rehabilitation scheme.

87. In the present case, the sale of non-productive assets was included in the Sanctioned Scheme as a means for raising finance. Thus, the BIFR had permitted the sale of the property. Clause XXV of the general terms and conditions of the Sanctioned Scheme required “*the company [SCL] to form an Asset Sale Committee as per guidelines of the BIFR to sell non-productive assets to part finance the Scheme*”.

88. In the present case, there is no dispute that the ASC was constituted as per the guidelines. Thus, in the present case, the contention that the petitioner was precluded from seeking specific performance of the contract for sale and purchase of the property, which was permitted by the BIFR is unmerited. In any circumstances neither Section 22 nor Section 22A of the SICA proscribed institution of any action for sale of the assets or provided any absolute bar on the sale of assets. The said restrictions were only put in place for the purpose of considering or framing a scheme for rehabilitation of the sick industrial company.



89. Thus, even while the provisions of the SICA were in force, a person was not impeded from approaching the civil court in such matters. The only restriction being that it would require the consent of the BIFR. Thus, the fundamental premise that with the repeal of the SICA, the petitioner has lost its rights to seek specific performance of a concluded contract for sale and purchase of the property or to seek alternate relief is without any basis.

90. Mr. Gupta had relied upon Section 26 of the SICA and contended that no civil court would have the jurisdiction in respect of the matters which the AAIFR and the BIFR was empowered to determine under the SICA. He submitted that the question whether SCL and the ASC had acted in accordance with the Sanctioned Scheme was a matter that could be decided only by the BIFR.

91. The said contention is flawed for several reasons. First of all, Section 26 of the SICA barred the jurisdiction of the courts to determine any matter which the BIFR and the AAIFR were empowered to determine. However, with the repeal of the SICA, Section 26 of the SICA stands obliterated from the statute book. There is no bar for a civil court to now determine any right acquired by the petitioner or any other person, which is saved by section 5 (1) of the Repeal Act, notwithstanding that while the SICA was in force, the jurisdiction of the courts in regard to such matters may have been barred.

92. Secondly, the rights, if any, acquired by the petitioner arise in connection with her participating in the bidding process to purchase the



property pursuant to a public notice. Such rights are contractual rights and the petitioner's recourse to civil courts in respect of these rights was not absolutely barred.

93. The learned counsels appearing for SCL, IFCI and MCHL had relied upon the decision in the case of ***Shree Sajjan Mills Ltd. & Ors. v. Municipal Corporation, Ratlam: (2009) 17 SCC 665*** and contended that the rights acquired by the petitioner were merely contractual rights and, in any event, the BIFR and the AAIFR did not have the jurisdiction to decide the same. It was contended by Mr. Gupta that the decision in ***Shree Sajjan Mills Limited & Ors. v. Municipal Corporation, Ratlam (supra)*** was overruled by the Bench of three Judges of the Supreme Court in ***Raheja Universal Limited. v. NRC Limited & Ors. (supra)***.

94. In ***Shree Sajjan Mills Limited & Ors. v. Municipal Corporation, Ratlam (supra)***, the asset sale committee constituted pursuant to a scheme sanctioned by the BIFR had invited tenders for the sale of surplus land belonging to Shree Sajjan Mills (appellant before the Supreme Court). The respondent corporation also participated in the said auction and had deposited the earnest money. However, the respondent had failed to deposit 20% of the purchase price within a period of thirty days from the date of the auction, as it was required to do under the terms and conditions of the sale. The respondent corporation filed a suit for recovery of the earnest money before a civil court. The appellant filed an application objecting to the jurisdiction of the court to entertain the suit, relying on Section 26 of the SICA. The civil court accepted the said objection that it did not have the



jurisdiction to entertain the suit. The plaint was returned under Order VII Rule 10A of the Code of Civil Procedure, 1908 for presentation before an appropriate forum including the BIFR. The respondent preferred an appeal before the Madhya Pradesh High Court and was successful. The Madhya Pradesh High Court held that the transaction between the appellant (sick company) and the respondent corporation was outside the purview of the BIFR and the AAIFR and it did not affect the implementation of the sanctioned scheme. The Madhya Pradesh High Court, accordingly, allowed the appeal and set aside the order passed by the learned Civil Court. The sick company appealed to the Supreme Court and the Supreme Court agreed with the view of the Madhya Pradesh High Court and held as under:

“12. We agree with the view expressed by the High Court that the forfeiture of the earnest money by the Assets Sale Committee could not have been the subject-matter of a dispute within the meaning of Section 26 which either BIFR or AAIFR has the jurisdiction to determine. Accordingly, we see no reason to interfere with the judgment and order of the High Court impugned in this appeal.”

95. It is important to note that the decision of the Madhya Pradesh High Court – which was the subject matter of appeal in *Shree Sajjan Mills Limited & Ors. v. Municipal Corporation, Ratlam* (*supra*)—also rested on the finding that the controversy regarding forfeiture or refund of any money did not affect the sanctioned scheme. The Supreme Court had agreed with the said view and therefore, concluded that the matter could not have been made the subject matter of dispute before the BIFR or the AAIFR.



96. The controversy before the Supreme Court in ***Raheja Universal Limited. V. NRC Limited & Ors.*** (*supra*) arose in a materially different context. In that case, the respondent company (NRC Limited) had entered into an agreement for the sale of 344 acres of land for a total consideration of ₹166.40 crores after securing the consent of lending banks. Thereafter, the parties entered into two supplementary agreements for advancing the payment of installments. The possession of the land was also handed over to the purchaser. Thereafter, certain disputes arose between the parties as to the manner and time of payments. One problem faced by NRC Ltd. was in regard to labour dues. The purchaser had agreed to pay the third installment of ₹48.9 crores only on receipt of NOC from the labour. The management of NRC Ltd. had entered into negotiations with the recognized employee's union and had agreed that the dues would be cleared first and on transfer of land to the purchaser, the purchaser would provide 18 acres of land for an employees' colony. NRC Ltd. had also introduced an early retirement scheme and about 577 employees accepted to take the benefit of the same. However, in the meanwhile, NRC's net worth was eroded, and it made a reference to the BIFR under Section 15(1) of the SICA. The BIFR, subsequently, fixed a cut-off date and issued an order for NRC Ltd. to submit a draft rehabilitation scheme with further direction that the sale of 350 acres of land would form a part of the draft rehabilitation scheme. Both the parties appealed the orders passed by the BIFR before the AAIFR. The AAIFR modified the order and clarified that the provisions of Section 22A of the SICA would not apply to agreements for sale of land, which had been entered into, registered



and acted prior to the cutoff date. The AAIFR held that the provision of Section 22A of the SICA would not apply to the agreement for sale, which had been entered into, registered, acted upon and was in the process of completion. The AAIFR noted that the sale purchase agreement dated 30.06.2009 was signed after the reference was filed and fifteen days prior to the BIFR passing the restraint order under Section 22A of the SICA. The AAIFR also held that the BIFR had erred in fixing the cut off date as 30.07.2007 on the basis of the corporate debt restructuring scheme and there should not be substantial gap between the cut off date fixed and the date of the sanction of the scheme. The AAIFR concluded that the sale could be approved subject to the pre-payment of the entire remaining consideration of ₹1024.64 crores.

97. The High Court quashed the order passed by the AAIFR and held that the order permitting the sale of land in furtherance of the agreement between the concerned parties was not sustainable. The order passed by the High Court was carried in appeal before the Supreme Court. The Supreme Court examined the legislative scheme and the scope of Section 22 and 22A of the SICA. The Supreme Court concluded that the scheme for revival of NRC Ltd. was primarily dependent on the sale proceeds of the land in question and utility of the remaining land for revival of the company. The said asset was duly taken into consideration in formulation of the scheme contemplated under Sections 17 and 18 of the SICA and the appropriate directions and prohibitory orders issued by the BIFR were within the scope of Sections 22 and 22A of the SICA. Accordingly, the appellant's contention that the BIFR had no



jurisdiction to issue such directives because the agreement to purchase land had been entered into earlier, was rejected.

98. It is also relevant to note that the Supreme Court took note of the the decision in the case of ***Deputy Commercial Tax Officer & Ors. v. Corromandal Pharmaceuticals Ltd & Ors..: 1997 10 SCC 649*** wherein the Supreme Court had observed that “*the language of Section 22 of the Act is certainly wide. But, in the totality of the circumstances, the safeguard is only against the impediment that is likely to be caused in the implementation of the scheme*” and thus held that Section 22 of the SICA would apply only to the amounts which are reckoned and included in the sanctioned scheme. The other amount such as sales tax etc., which the sick companies are unable to collect after the date of the sanctioned scheme were held to legitimately belong to the Revenue and were not covered under Section 22 of the SICA

99. In addition, the Supreme Court also referred to the decision in ***Gram Panchayat & Anr. v. Shree Vallabh Glass Works Limited & Ors.: (1990) 2 SCC 440***, whereby the Supreme Court had upheld the decision of the Bombay High Court to quash the demand and recovery proceedings initiated by the gram panchayat for recovery of dues under Section 129 of the Bombay Village Panchayat Act, 1958; and ***Jay Engineering Works Ltd. v. Industry Facilitation Council & Anr.; (2006) 8 SCC 677***, whereby the Supreme Court had held that the provision of Section 22 of the SICA would apply to an award made under the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993.



100. The Supreme Court held that the aforesaid decisions in *Gram Panchayat & Anr. v. Shree Vallabh Glass Works Limited & Ors* (*supra*), *Jay Engineering Works Ltd. v. Industry Facilitation Council & Ors.* (*supra*), and *Deputy Commercial Tax Officer & Ors. v. Corromandal Pharmaceuticals Ltd & Ors.* (*supra*) had to be read in the context of the facts and there was no conflict in the views expressed.

101. The clear principle that emerges is that the jurisdiction of the BIFR or the AAIFR in regard to the dispute has to be read in the context of the object and purpose of their powers under the SICA. Sections 22 and 22A of the SICA are for preservation of the assets of the company in aid of the sanctioned scheme. In the present case, the Sanctioned Scheme provided for sale of assets for recovery of the dues and the bids invited by the ASC in respect of the property was with the approval of the BIFR for raising funds for implementation of the sanctioned scheme. Neither BIFR nor AAIFR were adjudicatory forums for adjudicating actions or claims of specific performance or damages. The powers of the BIFR and the AAIFR were for the specified objectives of the SICA. The powers to monitor the implementation of a revival scheme did not extend to adjudicating all disputes between the sick company and third parties merely because the said disputes arose in the course of business or activities, while the sick company was being revived.

102. In the facts of this case, the BIFR had permitted the sale of the property for funding the cost of the Sanctioned scheme. It was not required to adjudicate contractual disputes arising from the sale. The



contention that the petitioner could claim specific performance of the concluded contract only before the BIFR/AAIFR and not before the Civil Court is erroneous.

103. The contention that Section 4(b) of the Repeal Act is unconstitutional is unmerited and the prayer that the said section be declared as unconstitutional is rejected.

Whether the abatement of proceedings before the BIFR and the AAIFR are illegal?

104. We find no merit in the contention that the abatement of proceedings pursuant to the Repeal Act are illegal or without authority of law. The petitioner's contention that the abatement of proceedings (Appeal No.60/2015 and M.A. No. 45/2016 in Appeal No. 60/2015 were pending before the AAIFR and M.A. Nos. 541/2014, 470/2015, 53/2016 in Case No. 9/2006 pending before the BIFR) is illegal and without the authority of law rests on the premise that the Repeal Act is unconstitutional and the petitioner is remediless in respect of its relief.

105. As stated above, we are unable to accept that the enactment of the Repeal Act is *ultra vires* or is liable to be struck down. Further, as stated above, the contention that the petitioner is left remediless in respect of its rights is erroneous.

106. In view of the above, the petitioner's prayer that the abatement of the proceedings in Appeal no. 60/2015 and MA No. 45 of 2016 in Appeal No. 60/2015 pending before the AAIFR; and in M.A. No.



541/2014, 470/2015, 53/2016 in Case No. 9/2006 pending before the BIFR, be declared as illegal is rejected.

Legality of the communication dated 20.02.2015 issued by the Secretary of the BIFR

107. By the communication dated 20.02.2015, the Secretary of the BIFR had informed the IFCI that “*BIFR has no objection in IFCI (OA) proceeding with the asset sale process*”. Indisputably, the said statement is incorrect. There is no material on record to establish that the BIFR had expressed its objection to the sale of the property to MCHL.

108. Section 4 of the SICA provides for constitution of the BIFR. In terms of Section 12 of the SICA, the jurisdiction, powers and authority of BIFR is exercised by the benches, thereof. Section 8(1) of the SICA, provides that the Central Government shall appoint a Secretary to the BIFR to exercise and perform, under the control of the Chairman of the BIFR, such powers and duties as may be prescribed or may be specified by the Chairman. There is no material produced before this Court to substantiate that the Secretary, BIFR had any power to decide whether the guidelines issued by the BIFR were being followed or not. According to the Secretary, BIFR (respondent no.20), the said letter was issued at the instance of the Chairman, BIFR. However, there is no record of the proceedings of the BIFR where any such decision had been taken.



109. There is merit in Mr Gupta's contention that the said communication is illegal and without authority of law.

110. Mr Dhir, learned counsel appearing for MCHL and Mr Sibal, learned senior counsel appearing for SCL, had submitted that the BIFR had sanctioned the scheme and had permitted the sale of non-productive assets. The Sanctioned Scheme provides that the ASC of SCL would be constituted for sale of SCL. The ASC was constituted in accordance with the guidelines framed by the BIFR and the said condition was complied with. No further permission was required from the BIFR to proceed with the sale of the property and the letter dated 20.02.2015, issued by the Secretary, BIFR must be construed in the aforesaid context.

111. The question whether the permission of the BIFR is required or not is a separate issue; however, it is apparent that there is no real contest that the letter dated 20.02.2015 issued by the Secretary, BIFR was without any authority and is liable to be set aside. It does appear that the said letter was issued, without authority, only to enable the ASC and SCL to conclude the transaction of sale of the property in favour of MCHL. In our view, the said communication is liable to be set aside. We accordingly do so. The petitioner's prayer (iii) is, accordingly, allowed.

Whether sale of the property is required to be cancelled as a consequence of setting aside of the communication dated 20.02.2015?



112. It is contended on behalf of the petitioner that the property was sold to MCHL pursuant to the aforementioned letter dated 20.02.2015 issued by the Secretary, BIFR and therefore the sale is required to be cancelled as it was effected without the permission of the BIFR.

113. We are unable to accept the aforesaid contention. Although the ASC may have taken into account the aforesaid letter dated 20.02.2015 for proceeding ahead with the execution of the sale deed in favour of MCHL, however, the same cannot be declared *void ab initio* on the said ground or on the ground that the sale of property to MCHL did not have any specific approval of the BIFR. The BIFR's specific approval is not required for sale of the property to MCHL. BIFR had permitted the sale of the property to fund the cost of the Sanctioned Scheme. SCL had realized the value of its property and there is no dispute that the proceeds were deployed for the purpose of implementing the Sanctioned Scheme. The BIFR is not required to provide specific approvals at each stage.

114. The ASC had decided to proceed with the sale of the said property in favour of MCHL. It is apparent that the ASC had held back further steps in view of the letters dated 16.12.2014 and 21.01.2015 issued by the Secretary, BIFR stating that the sale of the property was in violation of the Asset Sale Guidelines issued by the BIFR. The IFCI had disputed that the sale of the property is not in accordance with the guidelines issued by the BIFR. Admittedly, there is no order passed by the BIFR interdicting the sale of the property in favour of MCHL and thus the setting aside of the letter dated 20.02.2015 issued by the



Secretary, BIFR conveying BIFR's consent to proceed with the sale does not render the sale deed executed in favour of MCHL as *void ab initio*.

115. It is the petitioner's case that the sale in favour of MCHL is contrary to the general guidelines issued by the BIFR. First of all, there is a dispute whether the guidelines were violated. Second, mere violation of the guidelines, if any, would not necessarily nullify the sale of the property. As noted above, SCL was the owner of the property and had full right to deal with the same. The said right was truncated in view of the provisions of the SICA and therefore the property could not be sold without the consent of the BIFR. Once the BIFR had permitted the sale, there is no requirement of the BIFR to confirm the sale in favour of any particular person. The sale was for the purpose of funding the Sanctioned Scheme and viewed in the said perspective, SCL had realized a value higher than the price offered by the petitioner.

116. It is also material to note that the ASC was constituted with as many as fifteen members. The IFCI was the chair of the ASC. The other members included Dena Bank, Bank of India, Central Bank of India, Life Insurance Corporation General Insurance Corporation, New India Assurance Co., National Insurance Corporation, United India Insurance Co., Oriental Insurance Co. and four other secured creditors. Thus the cancellation of the sale in favour of the petitioner and further sale in favour of MCHL was with the consent of the secured creditors of SCL.



117. We are unable to accept that the sale of the property was in violation of the Sanctioned Scheme. The petitioner's contention that the sale deed be declared as *void ab initio*, as a consequence of setting aside of the letter dated 20.02.2015, cannot be accepted.

Whether it is apposite to adjudicate the petitioner's claim for specific performance of the contract for sale of the property and in the alternative refund of the amount paid, in these proceedings?

118. It is the petitioner's case that there is a deep and serious fraud wherein SCL, the secured creditors and the officials of the BIFR had colluded and acted *malafidely* with the view to defraud the petitioner and to favour MCHL.

119. The petitioner also claims specific performance of its contract for sale of the property in its favour and in the alternative, refund of the consideration amount paid, which has been forfeited by SCL/secured creditors. In our view, the said issues raise several disputed questions of fact, and it would not be apposite to decide the same in these proceedings.

120. The petitioner claims that the respondents and SCL had perpetuated a fraud by not disclosing that an NOC from respondent no.3 would be required. The petitioner contends that in terms of the circular dated 20.07.2012, issued by respondent no.3, its members were entitled to exercise the pre-emptive right of refusal. Thus, without the said NOC, the property could not be transferred to the petitioner or to any other non-member and this created an obstruction to the implementation of the Sanctioned Scheme. The IFCI, SCL and MCHL counter the



aforesaid contention. It is contended on their behalf that the property was put up for auction on an “*as is where is basis*”; thus, it was incumbent upon the petitioner to take necessary NOC from respondent no.3. And, in case of any other member exercising any pre-emptive right, the petitioner would be entitled to the consideration, thereof.

121. It is material to note that the petitioner had furnished her bid and had, *inter alia*, certified as under:

“In case her offer is accepted and she fails to pay the amount in the manner to be specified in the letter of acceptance, the amount of earnest money and any further instalments paid by her under this offer shall stand absolutely forfeited”.

122. Despite furnishing the said letter, the petitioner had failed to pay the amount as undertaken. The LOA issued by the IFICI clearly stated that the acceptance would be effective only on receipt of 50% of the bid amount, excluding the amount already deposited, within 15 days of the receipt of the LOA. The petitioner sought repeated extension for paying the aforesaid amount but the payments made by the petitioner fell short of the required 50%.

123. According to the petitioner, the ASC had extended the time for making the payment of the consideration and had further made it contingent on receipt of certain documents. This is stoutly contested by the respondents. The petitioner had sought extension of time for making the payments which was considered in the meeting of the ASC held on 09.07.2014 and 14.07.2014. The ASC had not accepted the petitioner's



request for extension of time. One of the cheques issued by the petitioner was also dishonoured.

124. The petitioner claims that at their meeting held on 22.08.2014, ASC had altered the payment schedule and had agreed that the petitioner would make the payment after receipt of the documents. The respondents dispute the said claim. According to the respondents, the minutes of the ASC held on 22.08.2014 clearly indicate that it was decided that SCL would “*try to arrange*” the documents to be provided before 15.09.2014 and the petitioner would make the payment of the entire outstanding amount together with interest immediately on receipt of the documents after, which the process for registration of the property would commence. However, the ASC had also clarified that if some papers were not available or there was any discrepancy, the adjudication of the sale deed for the payment of stamp duty, would be carried out and the petitioner would make the entire outstanding payment together with interest. The respondents claim that the payment was not contingent on receiving any document, which was unavailable. The learned counsel for the respondents argue that there was no commitment that the NOC would be issued by respondent no.3. The only document referred to in the minutes of the meeting held on 22.08.2014 was a conditional NOC from respondent no.3. They contend that if there are any pre-emptive rights available to the members of respondent no.3, the sale in favour of the petitioner would be subject to those rights.

125. SCL also relied upon the emails dated 20.11.2014 sent to the petitioner forwarding the draft sale agreement and pointed out the



corrections made in the sale agreement to be sent for adjudication. SCL had pointed out that the requirement of a NOC from the society (respondent no.3) for transfer of the shares in favour of the purchaser had been deleted. The respondents also sent a letter dated 25.11.2014 calling upon the petitioner to pay the balance amount, failing which, the transaction in question would be cancelled. According to SCL, the transaction was liable to be cancelled as the petitioner had not paid the consideration as required.

126. The ASC also decided to unanimously cancel the bid and forfeit the EMD at the meeting held on 02.12.2014.

127. It is apparent from the above that the question whether SCL / ASC was entitled to cancel the contract involves several disputed issues and it would not be apposite to adjudicate the same in these proceedings.

128. The petitioner has also challenged the sale of the property to MCHL and has made allegations of collusion between certain officials of BIFR, ASC and SCL.

129. Undeniably, the course of events raises questions as to how the transaction in favour of MCHL was consummated. MCHL had made an offer for purchase of the property by a communication dated 07.11.2014 at a price of ₹28 crores and requested that the said offer be placed before the ASC. At the material time, the transaction in favour of the petitioner was not cancelled. The said offer was declined by SCL and MCHL was asked to furnish the offer in exercise of its preemptive rights. Thus, in effect, MCHL was asked to offer a lower price and compete with other



members of respondent no.3 who may be interested to purchase the property. Only three offers were stated to have been received and apparently the bidders for those offers were connected.

130. The petitioner's claim in the alternative for a refund of the part consideration paid by her also raises contentious issues. There is a serious question – whether SCL could have forfeited the entire consideration paid by the petitioner. The same does not appear in conformity with the decision of the ASC or the legal opinion considered by the ASC in its meetings. At the meeting held on 13.11.2014 and 14.11.2014, the ASC had noted that as per paragraph 8(e) of the Guidelines issued by the BIFR on 12.10.2010, the bid security of a selected bidder was required to be forfeited and the bid cancelled if the selected bidder did not show interest. The ASC was thereafter required to take action for re-sale of the assets/goods at the risk and cost of the defaulter.

131. The ASC had also taken note of the legal opinion obtained by the IFCI. The concerned advocates had opined that adjudication of the documents for payment of stamp duty could be carried out and if the bidder did not make the outstanding payment thereafter, the ASC should forfeit the bid security and initiate other actions, including re-sale of the property.

132. At the meeting held on 02.12.2014, the ASC had decided to cancel the bid in terms of the legal opinion received from the IFCI and to “*have the EMD forfeited*”. However, contrary to the said decision,



the IFCI had forfeited the part consideration paid by the petitioner and had not confined itself only to forfeiting the EMD. In addition, there is also a serious question as to whether the ASC/SCL would be entitled to forfeit any amount in the given facts where the property has been sold to MCHL pursuant to MCHL's exercise of its pre-emptive right as a member of the respondent no.3 society. If the property could not be transferred to the petitioner without offering the same to the members of the respondent society and MCHL had exercised its pre-emptive rights to purchase the property, thus, the forfeiture of part consideration paid by the petitioner may not be permissible.

133. The issues as highlighted above are some of the issues that are based on the rival stands of the parties. These are by no means exhaustive. The principal dispute between the parties centers around whether the petitioner was entitled to specific performance of the agreement and/or refund of the amount paid by the petitioner.

134. Mr. Gupta submitted that the petitioner has no equally efficacious remedy except to approach this Court under Article 226 of the Constitution of India, essentially for three reasons. First, that a fraud has been perpetuated which is so brazen that the same is sufficient to invoke the jurisdiction of this Court. Second, there is an element of public law involved because the sale of the property was concluded by LOA dated 15.05.2014 issued pursuant to the bids invited by a public notice dated 27.03.2014. It is submitted that since the sale of the property was pursuant to a revival scheme (the Sanctioned Scheme) approved by the BIFR under Section 18(4) of the SICA, all actions are required to be



supervised, monitored and remedied by the BIFR. Third, it was submitted that the petitioner's vested right was stultified by the respondents acting *malafidely* to favour MCHL. Therefore, the acts were actionable under the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. Mr. Gupta referred to the decisions of the Supreme Court in *Jagdish Mandal v. State of Orissa & Ors.*: (2007) 14 SCC 517; *United India Insurance Co. Ltd. v. Rajendra Singh & Ors.*: (2000) 3 SCC 581; and *S.J.S. Business Enterprises (P) Ltd. v. State of Bihar & Ors.*: (2004) 7 SCC 166 and on the strength of the said decisions, contended that in cases of fraud and mischief, where public officials were involved, the sale of property was liable to be restored.

135. The contention that there is a public law element which requires this Court to adjudicate the petitioner's claim for enforcing the transaction relating to the sale and purchase of the property, is unpersuasive. Merely because assets of SCL was sold to finance its rehabilitation under a scheme sanctioned by the BIFR does not introduce any element of public law in the transaction of sale and purchase of the property of a company. As noted above, the petitioner claims that a concluded contract had come into force with the ASC accepting the petitioner's bid for purchase of the property. It is relevant to note that the ASC is an Asset Sale Committee of SCL. Under the guidelines, the ASC has been constituted by the nominees of the secured creditors, SCL as well as nominee of the BIFR. The object is to ensure that the asset is not sold without the participation of the secured creditors who



otherwise would have rights in respect of the said property. The sale is not of a public asset but a private one. The question whether the petitioner's right arises on the realm of public law requires to be determined by the nature of the petitioner's right, which the petitioner claims arises from the acceptance of the bid, pursuant to a notice issued by SCL *albeit* through the ASC.

136. The decision of the Supreme Court in ***Jagdish Mandal v. State of Orissa & Ors.*** (*supra*) has little relevance on the facts of the present case. In the case of ***Jagdish Mandal v. State of Orissa & Ors.*** (*supra*) the controversy related to the award of construction contracts for the Water Resource Department, State of Orissa. The Tender Committee in the said case had rejected the lowest bid of a contractor in respect of two contracts. The first was rejected on the basis of an allegation that the earnest money was paid by pledging the Postal Term Deposit of ₹1,70,000/-, and the passbook was manipulated. The second was rejected on two grounds: (i) the bidder had manipulated the passbook relating to the earnest money deposit in the first contract; and (ii) the value for one particular work was 99.01% less than the estimated rate and the bid for another item was significantly higher than the rate analysis submitted by the tenderer for the said item.

137. The Supreme Court found that the allegation that the lowest bidder had forged the Postal Term Deposit was incorrect. The Supreme Court also found that the bids made by the lowest bidder (petitioner) had been rejected arbitrarily. In the aforesaid context the Court considered the scope of judicial review in relation to award of contracts.



The Supreme Court considered the exceptions where the court would interfere in commercial contracts. The scope of determination before the Supreme Court was of government contracts floated by the State regarding public works and not sale of property by private commercial entities.

138. There is little scope for the courts to interfere under Article 226 of the Constitution of India, to adjudicate contractual disputes in the realm of private law. The fundamental premise that since the Sanctioned Scheme entails constitution of an asset sale committee (the ASC) and sale of non-productive assets of SCL for its rehabilitation, places the contract for sale of the property of SCL in the realm of public law, is unmerited.

139. The reliance by Mr. Gupta on the decision in *United India Insurance Co. Ltd. v. Rajendra Singh & Ors* (*supra*) is also misplaced. The controversy in the said case revolved around the question whether the Motor Accident Claims Tribunal (MACT) could recall its award of compensation which were secured fraudulently in that case. The respondents (father and son) had filed two separate claims before the MACT in relation to an accident. The MACT awarded compensation in the said proceedings. Subsequently, the United India Insurance Co. Ltd., (appellant before the Supreme Court) became aware that the claimants had received injuries in another incident at a different place. Apparently, while operating their own tractors they had run into a ditch and the occupants of the tractors had slipped down and sustained injuries. The MACT declined to recall its award on the ground that it



had no jurisdiction to review the same. The Insurance Company approached the High Court of Allahabad. However, the High Court of Allahabad declined to quash the award accepting that the MACT had no power to review its award under the Motor Vehicles Act, 1988. In the appeal preferred by the Insurance Company (United India Insurance Co. Ltd.), the Supreme Court held that the Insurance Company was justified in pursuing the matter as it was dealing with public money. The Supreme Court referred to an earlier decision in ***S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by Lrs. & Ors.: 1994 (1) SCC 1*** and held that the appellant was entitled to move for recalling of the order passed by the MACT on the basis of newly discovered facts amounting to fraud of a high degree and that such a remedy could not be foreclosed. The said decision is not an authority for the proposition that a party alleging fraud in respect of a commercial contract is entitled to approach this Court by way of a writ petition under Article 226 of the Constitution of India and there is no requirement to institute an original action.

140. We are also unable to accept that the decision in the case of ***M/s S.J.S. Business Enterprises (P) Ltd. v. State of Bihar & Ors. (supra)*** is of much assistance to the petitioner. In that case, the petitioner had borrowed funds from the Bihar Industrial Credit and Investment Corporation Ltd. (BICICO). BICICO commenced proceedings under Section 29 of the State Financial Corporation Act, 1951 for the sale of a hotel which was mortgaged by the appellant to BICICO. There were serious allegations regarding the manner in the which auction was



conducted in the said case. In the first round, the property in question was valued at ₹2.16 crores. Respondent no.6 had offered to purchase the same at ₹41 lacs and the said bid was rejected as too low. The property was again evaluated by BICICO and its value was estimated at ₹1.58 crores. It was thereafter once again re-evaluated for the third time, and this time the estimated value was further reduced to ₹94.81 lacs. The sale notice was published inviting bids for the said property (hotel) on an as is where is basis. The offers were to be submitted in a sealed cover within a period of three days. Two of the said days were public holidays (being Holi and Good Friday). The sale notice was issued on the same day and pursuant thereto respondent no.6 before the Supreme Court made an offer to purchase the same for ₹95.50 lacs. The officials of BICICO further negotiated with respondent no.6 and finalized the consideration at ₹1 crore. The Supreme Court also noted that the additional consideration was already paid prior to the sale notice.

141. The appellant before the Supreme Court approached the Patna High Court by way of a writ petition impugning the sale notice and the sale procedure. One day prior to that, the petitioner also filed a suit which was withdrawn after its writ petition was entertained by the Patna High Court. The Patna High Court thereafter rejected the writ petition on the sole ground that the petitioner/appellant had suppressed the fact that it had filed a suit prior to the filing of the petition. In the aforesaid context, the Supreme Court held that the fact that the appellant had already filed a suit “*was not such a fact the suppression of which could*



affect the final disposal of the writ petition on merits”. The Supreme court also explained that the existence of an adequate or suitable alternate remedy is merely a factor which a Court would take into account while considering whether to entertain a petition under Article 226 of the Constitution of India.

142. It is material to note that in the said case, the action impugned was of State Finance Corporation in exercise of its statutory power under Section 29 of the State Finance Corporation Act, 1951. The proposition that the existence of an alternate remedy does not denude the High Court of its jurisdiction under Article 226 of the Constitution of India is well settled. However, it is also well settled law that the High Court would in normal circumstances, refrain from entertaining a petition under Article 226 of the Constitution of India where the petitioner has an equally efficacious remedy and there are disputed questions of fact.

143. The petitioner has founded the present petition on the premise of an allegation that the respondents had acted fraudulently and in a *mala fide* manner to deprive her of the vested right to have a sale deed of the property executed in her favour. We are of the view that it would not be apposite to consider these questions in proceedings under Article 226 of the Constitution of India.

144. Before concluding, we must add that the petitioner has *bonafidely* pursued her claims before the BIFR, the AAIFR and this Court; therefore, it would be open for the petitioner to seek exclusion of the period spent in pursuing these remedies, for the purposes of limitation.

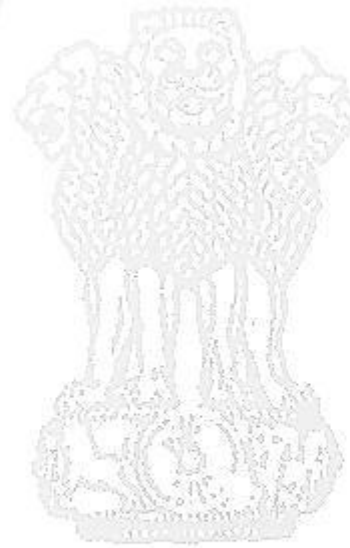


145. The petition is disposed of in the aforesaid terms. All pending applications are also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

JUNE 2, 2023
RK/GSR/CH



सत्यमेव जयते