

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 20868 of 2012

Titagarh Industries Limited

Vs.

State of West Bengal & Ors.

For the Petitioner : Mr. Soumya Majumder, Sr. Adv.
Ms. Arpita Saha,
Mr. Sayantan Bose,
Mr. D. Basu.

For the State : Mr. Debjit Mukherjee,
Ms. Kalpita Paul.

For the Respondents : Mr. Susanta Pal.
Nos. 22, 31 & 36

Hearing concluded on : 25.08.2025

Judgment on : 15.09.2025

SHAMPA DUTT (PAUL), J. :

1. The writ application has been preferred challenging the order dated 31st May, 2011 passed by the learned Judge, First Labour Court, West Bengal.

2. 35 applicants before the First Labour Court, West Bengal, Kolkata filed applications under Section 33C(2) of the Industrial Disputes Act, 1947, alleging therein that they were all staff of the erstwhile Titagarh Paper Mills Company Limited, working in the head office of the said erstwhile Titagarh Paper Mills Company Limited at 95, Park Street, Kolkata- 700016. 2016.

3. The case of the petitioner is that:-

- (a) Titagarh Paper Mills Company Limited (hereinafter referred to as "the company") became sick and was referred to the Board for Industrial and Financial Reconstruction (BIFR) for its revival in terms of the provisions of The Sick Industrial Companies (Special Provisions) Act, 1985.
- (b) **In terms of the scheme sanctioned by the BIFR on 17th November, 1994 in respect of the company,** the said company was merged with Titagarh Steels Limited, whereby all liabilities of the erstwhile company was to be met by Titagarh Steels Limited (which, on the date of passing of the order impugned was known as Titagarh Industries Limited).
- (c) **The sanctioned scheme of the BIFR** provided that all employees of the company would be retrenched with effect from the date of the scheme, i.e. 17th November,

1994 **under Section 25F of the Industrial Disputes Act, 1947.** The applicants alleged that the company retrenched its employees with effect from 4th November, 1994 without complying with **the condition precedent of retrenchment as provided in Section 25F of the Industrial Disputes Act, 1947, i.e. one month notice pay and compensation as per law.**

- (d) Aggrieved by and dissatisfied with the order of the BIFR, four operating units of the company went in appeal against the order dated 30th August, 1995. **The scheme was remanded back to the BIFR for reconstruction/reconsideration but nothing materialized.**

4. In the aforesaid facts, the 35 applicants filed their respective applications under Section 33C(2) of the Industrial Dispute Act for computation of their benefits, inter-alia, for notice pay under Section 25F of the Industrial Disputes Act, 1947, LTA for the year 1993-1994, medical aid as per clause 15(3) of the settlement dated 21st October, 1981, leave wages for 56 days as per clause 6(3) of the settlement, bonus under the Payment of Bonus Act, 1965 for the years 1993-1994 and 1994-1995 retiral benefit for four months wages as per clause 11(5) of the Memorandum of Settlement dated 21st October, 1981.

5. The Labour Court upon hearing the said applications which were contested by the petitioner has allowed the said applications.
6. The petitioner has challenged the said order of the Labour Court on the ground that the Labour Court erred in fact and law in passing the order impugned.
7. It is stated by the petitioner that, Section 32 of The Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) provides that the provisions of SICA or of any schemes made thereunder would prevail over anything that is contained in any instrument that is inconsistent with the provisions of SICA, 1985 or any scheme made thereunder.
8. The claims made by the applicants are based primarily on a Memorandum of Settlement dated 21st October, 1981 entered into by and between the erstwhile management of the company and its workmen.
9. Admittedly the said Memorandum of Settlement predates the scheme. **It is thus asserted that in view of the admitted position that there existed a sanctioned scheme framed by the BIFR in terms of the provisions of The Sick Industrial Companies (Special Provisions) Act, 1985, it is the provisions of the sanctioned scheme that would prevail over the terms of the Memorandum of Settlement dated 21st October, 1981.**

10. Upon the sanction of the scheme dated 17th November, 1994 by the BIFR, the rights and obligations of the workmen and the transferee company, i.e., the petitioner herein, are governed by the scheme and **not by** the provisions of the Memorandum of Settlement dated 21st October, 1981. As such no computation of benefit could have been made by the Labour Court in terms of the provisions of the Memorandum of Settlement dated 21st October, 1981.
11. It is further stated that the dues of all employees and workmen of the erstwhile Company stood crystallized as per the scheme and no claim save those sanctioned by the scheme could have survived, post the sanction of the scheme, whether under any law or agreement or settlement. Petitioner has relied upon the judgment of the Supreme Court in ***State of Bihar & Ors. v. Bihar Rajya M.S.E.S.K.K. Mahasangh & Ors., (2005) 9 SCC 129.***
12. It is thus stated that the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) being a special statute would not only prevail over the provisions of the other General Law but also over other special laws in view of the non obstante clause contained in Section 32 of The Sick Industrial Companies (Special Provisions) Act, 1985.

13. As such, no claims could have been entertained by the Labour Court under any provision of the Industrial Disputes Act, 1947 or the Payment of Bonus Act, 1965 in view of the fact that the non obstante clause in Section 32 of SICA, 1985 overrides the provisions of the Industrial Disputes Act, 1947 and the Payment of Bonus Act, 1965.
14. The private respondents have not filed any written notes and their case before this Court is similar to their case as made out before the Labour Court.
15. **It is their (respondents) case that:-**

The company has not paid even some of the legitimate dues of the applicants despite several representations by the applicants and by the operating unions for payment to the employees as **per the Memorandum of Settlement dated 21.11.1981, which is applicable to the employees.** So the applicants finding no other alternative had to approach the Labour Court for their legitimate dues regarding notice pay under section 25F of the I.D. Act, LTA for the year 1993-94, medical aid as per Clause 15(3) of the settlement dated 21.10.1981, leave wages for 56 days as per Clause-15(3) **of said settlement,** bonus under the payment of Bonus Act, 1965 for the year 1993-94 and 1994-95, retiral benefit for four months wages as per Clause 11 (5) **of the Memorandum of Settlement** dated 21.10.1981. Applicants have prayed for

computation of their monetary dues as per section 33C (2) of the I.D. Act before the Labour Court.

16. It is thus their case that they are entitled to the dues as per the memorandum of settlement not the scheme of the BIFR, which was rightly allowed by the Labour Court and have further submitted that the order of the Labour Court being in accordance with law, the writ application is liable to be dismissed.

17. The petitioner along with written notes has filed a list of dates and stated therein that:-

i) On 17.11.1994, an Order of BIFR was passed whereby the assets and specified liabilities of mill nos. 1 and 2 were vested in Titagarh Steels Limited, following which all the workmen had been paid their dues in full and final settlement and retrenchment compensation had also been paid to the concerned workmen.

ii) On 04.12.1995, an Order was passed by BIFR extending protection under Section 22(3) of the SICA Act, 1985 to the erstwhile company by the BIFR.

iii) In 1996, the Trade Unions representing the workmen preferred an appeal against BIFR order dated 4.12.95 before AAIFR Being Appeal No. 57 of 1996.

iv) On 01.07.1996, the Appeal was dismissed by the AAIFR by passing an order, holding that if any individual

employee would have any grievance regarding non-payment or under payment of legitimate dues, they could approach the BIFR for specific implementation of that provision of the sanctioned scheme.

- v) On 04.07.1996,** a fresh certificate of incorporation issued by ROC for change in name from Titagarh Steels Limited to Titagarh Industries Limited.

As the paper industry underwent severe recession, mill no. 1 could not be revived, mill no. 2 remained closed, negatively effecting the financial health of Titagarh Industries Limited.

Titagarh Industries Limited approached Calcutta High Court with a scheme of restructuring.

- vi) On 17.07.1998,** the Govt. of West Bengal passed a reasoned order under Section 12(5) of the 1947 Act, refusing to refer the dispute between the Union and erstwhile company for adjudication by any Industrial Tribunal/Labour Court.

All workmen represented by the Unions accepted the said order passed by the State Government, accepting that if they would have any grievance, they would have to approach the BIFR for the same.

18. It is further stated that the petitioner company was unable to revive its operation.

19. The petitioner has relied upon the following judgments:-

(a) State of Bihar & Ors. v. Bihar Rajya M.S.E.S.K.K.

Mahasangh & Ors., (2005) 9 SCC 129, (relates to non-obstante clause).

(b) Modi Rubber Ltd. vs Continental Carbon India Ltd., in

Civil Appeal No. 375 of 2017, decided on 17th March, 2023.

20. Heard the parties in full.

21. The Supreme Court in :-

i. Tata Motors Ltd. vs Pharmaceutical Products of India Ltd. & Anr., in Civil Appeal No. 3460 of 2008 (arising out of SLP (C) No. 20289 of 2006, decided on 16.05.2008, held:-

“23. The SICA furthermore was enacted to secure the principles specified in Article 39 of the Constitution of India. It seeks to give effect to the larger public interest. It should be given primacy because of its higher public purpose. Section 26 of SICA bars the jurisdiction of the Civil Courts.

24. What scheme should be prepared by the operating agency for revival and rehabilitation of the sick industrial company is within the domain of BIFR. Section 26 not only covers orders passed under SICA but also any matter which BIFR is empowered to determine.”

ii. Raheja Universal Limited vs Nrc Limited & Ors., AIR

2012 Supreme Court 1440, held:-

“22. The 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 the 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 the BIFR has to formulate a scheme for revival of the company, even by providing financial assistance in cases wherein the BIFR in its wisdom deems it necessary and finally only when both these options fail and the public interest so requires, the BIFR may recommend winding up of the sick industrial company. So long as the scheme is under consideration before the 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. In other words, the object and purpose of the Act of the 1985 is to ensure smooth sanctioning of the scheme and its due implementation. Both these stages, i.e., pre and post sanctioning of the scheme by the BIFR, are equally material stages where the provisions of Sections 22 and 22A read with Section 32 of the Act of 1985 would come into play. Such an approach would also be acceptable as otherwise the entire scheme under Chapter III of the Act of 1985 would be frustrated. Doctrine of frustration envisages that an exercise of special jurisdiction in futility, is neither the requirement of legislature nor judicial dictum.

24. In Jay Engineering (supra), the dictum of this Court was that the Act of 1985 is a complete code in itself and the provisions of Section 22 of

the Act of 1985 would apply to an award made under the Interest on Delayed Payments to Small Scale and Ancillary Industries Undertaking Act, 1993, which would be governed by the provisions of the Arbitration and Conciliation Act, 1996. This Court also stated the principle that the Act of 1985 would have an overriding effect over other statutes, i.e. the 1993 Act in that case. However, the question whether the BIFR, while implementing the scheme, could reduce the quantum of liability of the creditors was left open.

26. Section 22A was introduced by the Amending Act 12 of 1994. The obvious intent of introducing the said provision was to empower the BIFR to issue any direction to the sick industrial company, its creditors and shareholders, in the interest of the company or even in public interest, directing the company not to dispose of any assets, except with the consent of the BIFR. The directions so issued are to remain in force during the preparation and consideration of the scheme. BIFR is also vested with similar powers where it recommends to the High Court for winding up of a company. The directive issued by BIFR would remain in force upto the commencement of the proceedings for winding up before the High Court. Section 22 is the reservoir of the statutory powers empowering the BIFR to determine a scheme, right from its presentation till its complete implementation in accordance with law, free of interjections and interference from other judicial processes. Section 22(1) deals with the execution, distress or the like proceedings against the company's properties, including appointment of a Receiver. It also specifically provides that even a winding up petition would not be instituted and no other proceedings shall lie or proceed further, except with the consent of the BIFR. In contradistinction to this power, Section 22(3) states that pending an enquiry or a scheme under the provisions of the Act of 1985 and even where the scheme is sanctioned, for the due implementation of such scheme, the BIFR may, by an 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 or privileges, obligations and liabilities accruing or arising thereunder before the said date, shall remain suspended and shall be enforceable with such adoption and in such a manner as may be specified by the BIFR. In other words, all those instruments to which the sick industrial company is a party, will be subject to the orders of the BIFR. Further, such proceedings can even be modified by the BIFR, of course, for the limited purpose of implementing the scheme. The declarations made by the BIFR under Section 22(3) are subject to the restrictions of time as stated under the proviso to this section. The maximum period for which such a declaration in aggregate can continue is seven years. The legislative intent of giving an over-riding effect to the declarations of the BIFR, as contemplated under Section 22(3) of the Act of 1985, is further fortified by the language of Section 22(4), which states that any declaration made under Section 22(3) shall take effect notwithstanding anything contained in the Companies Act, 1956 or any other law, the memorandum and articles of association of the company or any instrument, decree, order of a court, settlement etc. Any remedy for enforcement of a right which may be available to a third party and any such proceedings before any court or tribunal shall remain stayed or be continued subject to such declaration. Section 22(4)(b) brings status quo ante and in fact, makes it clear that on cessation of such a declaration, the right, privilege, obligation or liability which was suspended shall become revived and enforceable as if the declaration had never been made. The proceedings will continue from the stage at which they were stayed. It can safely be perceived that the provisions of Section 22 of the Act of 1985 are self-explanatory. They would cease to operate

within their own limitations and not by force of any other law, agreement, memorandum or even articles of association of the company. The purpose is so very clear that during the examination, finalization and implementation of the scheme, there should be no impediment caused to the smooth execution of the scheme of revival of the sick industrial company. It is only when the specified period of restrictions and declarations contemplated under the provisions of the Act of 1985 is over, that the status quo ante as it existed at the time of the consideration and finalization of the scheme, would become operative. This is done primarily with the object that the assets of the company are not diverted, wasted, taken away and/or disposed of in any manner, during the relevant period.

27. The powers of the BIFR under Section 22(3) can be segregated under two different heads. Firstly, the power to suspend simplicitor the operation of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or any other instrument in force, to which the sick industrial company is a party or which may be applicable to the sick industrial company before the date of such order. Secondly, any rights, privileges, obligations or liabilities accruing or arising before the said date, shall be enforceable with such adaptation and in such manner as may be specified by the BIFR.

28. This dissection clearly demonstrates the intent of the framers of law, that the BIFR has the power to even make changes in such instruments, documents etc. which create rights and liabilities vis-à-vis the sick industrial company, and before permitting them to be enforced. Such an approach alone can be justified, as otherwise the expression 'shall be enforceable with such adaptation and in such manner as may be specified by the BIFR' would be meaningless. It is a settled principle of interpretation of statutes that every word and expression used by the legislature has to be given

its proper and effective meaning as the legislature uses no expression without purpose or meaning. The maxim Lex Nil Frusta Jubet i.e. Law Commands nothing vainly further elucidates this principle. Of course, the power to make this declaration as already noticed is controlled by limitation of time as specified in the proviso to the Section. Lifting of such declaration by lapse of time or otherwise or in accordance with the provisions of Section 22(4) shall bring the status quo ante as if such declaration had never been made. Section 22A is obviously a power over and above the wide powers vested in BIFR under the provisions of Section 22 of the Act of 1985. Section 22 is the reservoir of the statutory powers empowering the BIFR to deal with the scheme, right from its presentation till its complete implementation in accordance with law, free of interjections and interference from other judicial processes.

39. From the above judgments of this Court, the unambiguous principle of law that emerges is that the provisions of the Act of 1985 shall normally override the other laws except the laws which have been specifically excluded by the Legislature under Section 32 of the Act of 1985. The Act of 1985 has been held to be a special statute vis-à-vis the other laws, most of which have been indicated above. In the present case, we are concerned with the provisions of the Act of 1882. It is the case of the respondent-company before us that they have got an interest in the immovable property by virtue of the Memorandum of Understanding, Agreements dated 1st March, 2007 and 17th August, 2010 and by part performance, as they had been given possession of the land in question. It was contended that as their interests were duly protected under the provisions of the Act of 1882, the BIFR/AAIFR, in exercise of its powers under Sections 22(1), 22(3) and 22A of the Act of 1985, cannot place any restriction upon their title or interest in the immovable

property. In other words, the contention is that vis-à-vis the Act of 1985, the provisions of the Act of 1882 shall prevail.

51. The principle of law that emerges from the afore-referred discussion, which consistently has judicial benediction, is that a scheme for rehabilitation or restructuring of a sick industrial company undertaken by a specialized body like the BIFR/AAIFR should, as far as legally permissible, remain obstruction free and the events should take place as pre-ordained, during consideration and successful implementation of the formulated scheme. Wide jurisdiction is vested in BIFR/AAIFR to issue directives, declarations and prohibitory orders within the rationalized scope and limitations prescribed under Section 22(1), 22(3) and 22A of the Act of 1985.”

iii. Modi Rubber Ltd. vs Continental Carbon India Ltd., in Civil Appeal No. 375 of 2017, decided on 17th March, 2023, held:-

“11.9 As observed and held by this Court in the case of Tata Motors Limited (supra), SICA, 1985 has been enacted to secure the principles specified in Article 39 of the Constitution of India. It seeks to give effect to the larger public interest and, therefore, it should be given primacy over other laws because of its higher public purpose.

11.10 In the case of Raheja Universal Limited (supra), it is observed and held that the SICA, 1985 is a special law, giving overriding effect vis- à-vis other laws and the provisions of general laws like Companies Act for regulation, incorporation, winding up etc. of the companies would have still been overridden to the extent of inconsistency. In the case of NGEF Ltd. Vs. Chandra Developers (P) Ltd., (2005) 8 SCC 219, it is specifically observed by this Court that the SICA, 1985 is a special statute, which is a complete code in itself.

11.11 As observed and held by this Court in the aforesaid decisions, the provisions of SICA, 1985 shall normally override other laws except the laws, which have been specifically excluded by the legislature under Section 32 of SICA, 1985.

14. Now, so far as the submission on behalf of the unsecured creditors that to compel the unsecured creditors to accept the scaled down value of its dues would tantamount to and would be violative of Article 300A of the Constitution of India is concerned, the same has also no substance. Scaling down the value of the dues is under the rehabilitation scheme prepared under Section 18 of the SICA, which has a binding effect on all the creditors. Therefore, the same cannot be said to be violative of Article 300A of the Constitution of India. The law permits framing of the scheme taking into consideration and to provide the measures contemplated under Section 18, therefore, the rehabilitation scheme which provides for scaling down the value of dues of the creditors /unsecured creditors and even that of the labourers cannot be said to be violative of Article 300A of the Constitution of India as submitted on behalf of the unsecured creditors.

15. In view of the above and for the reasons stated above, the view taken by the High Court of Delhi in Continental Carbon India Ltd. (supra) that on approval of a scheme by the BIFR under the Sick Industrial Companies (Special Provisions) Act, 1985, the unsecured creditors has an option not to accept the scaling down value of its dues and to wait till the rehabilitation scheme of the sick company has worked itself out with an option to recover the debt with interest post such rehabilitation is erroneous and contrary to the scheme of SICA, 1985 and the same deserves to be quashed and set aside and is accordingly quashed and set aside.

It is observed and held that the rehabilitation scheme under Section 18 of the SICA, 1985 shall bind all the creditors including the unsecured creditors and the unsecured creditors have to

accept the scaled down value of its dues provided under the rehabilitation scheme. Conclusion:-

(i) Civil Appeal No. 375 of 2017 is accordingly allowed. No costs.”

iv. Fertilizer Corporation of India Ltd. & Ors. vs M/s. Coromandal Sacks Private Limited, in Civil Appeal Nos. 5366-5367 of 2024, decided on 26th April, 2024, held:-

“129. A two-judge bench of this Court, in a recent decision in Modi Rubber Ltd. v. Continental Carbon India Ltd., reported in 2023 SCC OnLine SC 296 decided the issue as to whether it was open to an unsecured creditor to not accept the scaled down value of its dues, as computed in the rehabilitation scheme, and wait for the revival of the sick company to recover its debt with interest post the rehabilitation. This Court, after an exhaustive consideration of the object of the 1985 Act, answered the issue in the negative and held as follows:

“40. The short question, which is posed for the consideration of this Court is:— “Whether on approval of a scheme by the BIFR under the Sick Industrial Companies (Special Provisions) Act, 1985, an unsecured creditor has the option not to accept the scaled down value of its dues, and to wait till the scheme for rehabilitation of the respondent - sick company has worked itself out, with an option to recover the debt with interest post such rehabilitation?”

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49. Thus, the primary concern of the Board would be the revival of the sick company and to save the sick company from winding up. That is why with a view to see that there is no impediment in framing the rehabilitation scheme and to get out the sick company from sickness. Section 22 provides for suspension of legal proceedings, contracts etc. On a bare reading of Section 22 and Section 22A of

SICA, it appears that 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.

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53. Keeping in mind the statement of objects and reasons for enactment of SICA, 1985 and the powers exercised by the BIFR and the primary concern to revive the sick industry for which the rehabilitation scheme is to be framed under Section 18, the question posed is required to be considered.

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56. The operating agency is defined under Section 3(i) and it means any public financial institution, State-level institution, scheduled bank or any other person as may be specified by general or special order as its agency by the Board. No other persons including the unsecured creditors comes into picture like preparing the scheme under Section 18. Section 18 of the SICA does not provide that at the time of preparing of the scheme under Section 18 or when it is sanctioned by the Board, the unsecured creditors are required to be heard. The only provision for the consent required is Section 19 and the agency/person, who is required to give the financial assistance, its consent is required. Once the rehabilitation scheme/scheme under Section 18 prepared by the operating agency is sanctioned by the BIFR, which may include the scaling down the value of dues of the unsecured creditors, the same shall bind all, otherwise the rehabilitation scheme shall not be workable at all and the object and purpose of enactment of the SICA, 1985 will be frustrated. If some persons/unsecured creditors and/or even the labourers are permitted to get out of the purview of the scheme and thereafter permitting such or some of the unsecured creditors to wait till the

scheme for rehabilitation of the sick company has worked itself out, in that case, the scheme shall not be workable at all. To make the company viable, the concerned persons including the unsecured creditors have to sacrifice to some extent otherwise the revival efforts shall fail.

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59. If the submission on behalf of the unsecured creditors, which has been accepted by the High Court in the case of Continental Carbon India Ltd. (supra) that an unsecured creditor can opt out of the scheme sanctioned by the BIFR under the SICA, 1985 and is allowed not to accept the scaled down value of its dues and may wait till the scheme for rehabilitation of the sick company has worked itself out, with an option to recover the debt post such rehabilitation is accepted/allowed, in that case, the minority creditors may frustrate the rehabilitation scheme, which may frustrate the object and purpose of enactment of SICA, 1985.

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61. Thus, minority creditors and that too some unsecured creditors cannot be permitted to stall the rehabilitation of the sick company by not accepting the scaled down value of its dues. Unless and until there is a sacrifice by all concerned, including the creditors, financial institutions, unsecured creditors, labourers, there shall not be any revival of the sick industrial company/company.

62. Now, so far as the submission on behalf of the unsecured creditors that the unsecured creditors should have an option not to accept the scaled down value of its dues and to wait till the scheme for rehabilitation of the sick company has worked itself out, with an option to recover the debt post such rehabilitation is concerned, the same has no substance and cannot be accepted. It is required to be noted that in a given case, because of the scaling down of the value of the dues of the creditors, the company survives. The company has survived in view of the rehabilitation scheme because of the sacrifice/scaling down the value of the dues of the creditors including the financial institutions. How such a benefit can be permitted

to be given to the unsecured creditors, who does not accept the scaled down value of its dues. Such an unsecured creditor cannot be permitted to take the benefit of the revival scheme, which is at the cost of other creditors including the financial institutions and even the labourers.

63. Now, so far as the view taken by the High Court that the unsecured creditor had an option not to accept the scaled down value of its dues and can wait till the scheme for rehabilitation of the company has worked itself out with an option to recover the debt with interest post such rehabilitation is accepted, in a given case, the sick company, which has been able to revive because of the scaling down the value of the dues, may again become sick, if the entire dues of the unsecured creditors are to be paid thereafter. It may again lead to becoming such a revived company again as a sick company. If such a thing is permitted, in that case, it will again frustrate the object and purpose of enactment of the SICA, 1985.

64. Now, so far as the submission on behalf of the unsecured creditors that to compel the unsecured creditors to accept the scaled down value of its dues would tantamount to and would be violative of Article 300A of the Constitution of India is concerned, the same has also no substance. Scaling down the value of the dues is under the rehabilitation scheme prepared under Section 18 of the SICA, which has a binding effect on all the creditors. Therefore, the same cannot be said to be violative of Article 300A of the Constitution of India. The law permits framing of the scheme taking into consideration and to provide the measures contemplated under Section 18, therefore, the rehabilitation scheme which provides for scaling down the value of dues of the creditors/unsecured creditors and even that of the labourers cannot be said to be violative of Article 300A of the Constitution of India as submitted on behalf of the unsecured creditors.

65. In view of the above and for the reasons stated above, the view taken by the High Court of Delhi in Continental Carbon India Ltd. (supra) that on approval of a scheme by the BIFR under the

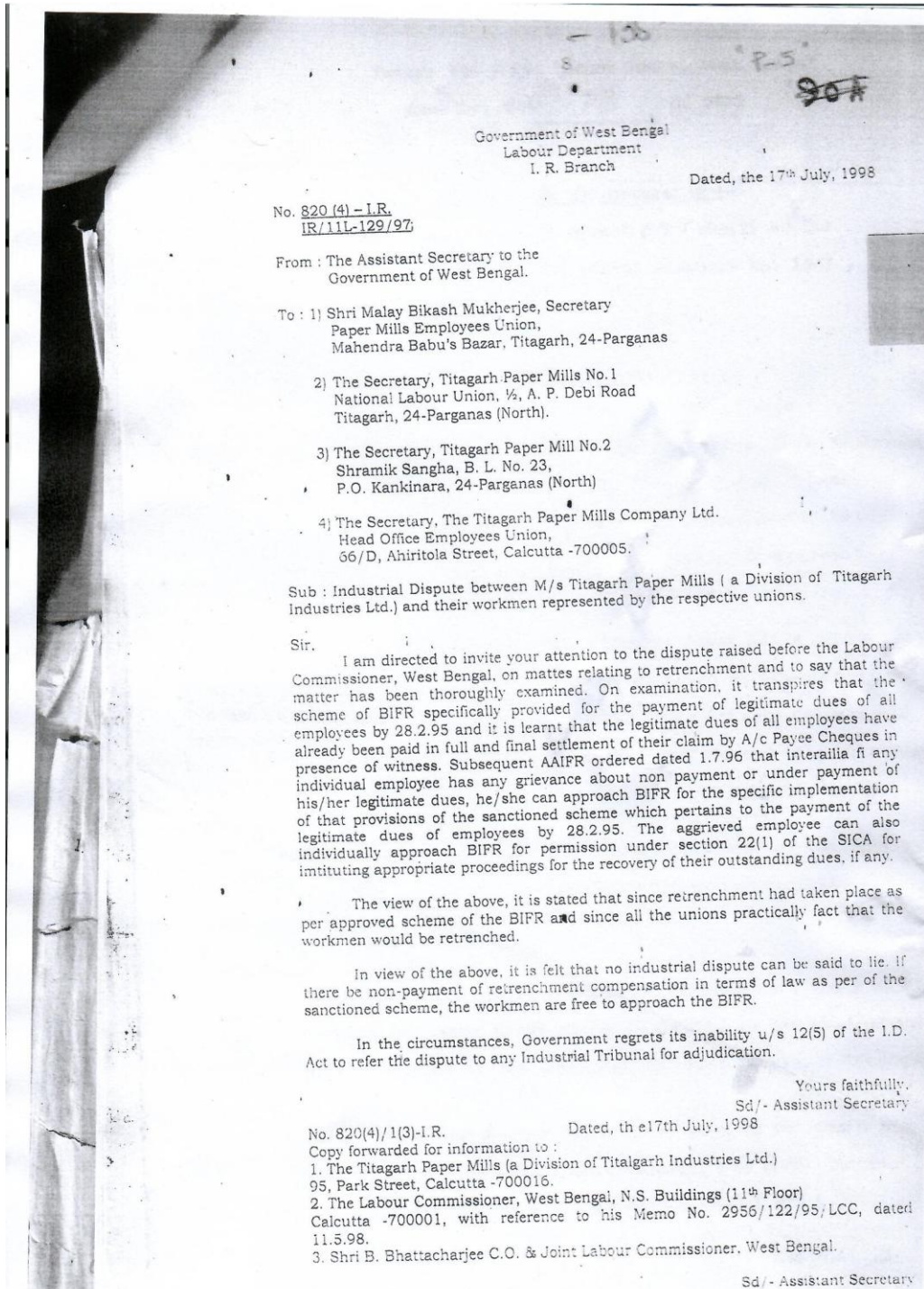
*Sick Industrial Companies (Special Provisions) Act, 1985, the unsecured creditors has an option not to accept the scaling down value of its dues and to wait till the rehabilitation scheme of the sick company has worked itself out with an option to recover the debt with interest post such rehabilitation is erroneous and **contrary to the scheme of SICA, 1985 and the same deserves to be quashed and set aside and is accordingly quashed and set aside.***

(Emphasis supplied)

130. It is clear from the aforesaid observations of this Court that the revival of a sick industry should be given utmost priority and any interpretation which may result in a newly revived company becoming sick again should be avoided at all costs. In the case on hand, the decree in favour of the original plaintiff was not a part of the scheme of rehabilitation approved by the BIFR. Had it been so, it is nothing but obvious that the scheme would have proposed to settle the dues of the original plaintiff at a scaled down value, since a similar approach was adopted in the scheme to settle the dues of all the other creditors. **In that scenario, the original plaintiff would not have had any other option but to accept the scaled down value and settle its dues as per the dictum in Modi Rubber (supra).**

140. For the period during which the defendant company was sick and before the BIFR, it cannot be said that the withholding of the payment of the dues of the original plaintiff was wilful and intentional. We say so because first, the liability of the original defendants was disputed and was finally adjudicated only by way of the impugned judgment, much after the BIFR proceedings had come to an end; and secondly, even if the liability of the original defendants was not disputed, or was even acknowledged before the BIFR, recovery of the same could not have been done without the permission of the BIFR in view of the suspension of recovery proceedings by Section 22(1) of the 1985 Act.”

22. The document at page 135 (Annexure P-5) being relevant, a scanned copy is placed herein:-



23. The Labour Court in its order also held:-

*“.....The applicants have not prayed for retrenchment compensation **but as the provision of Section 25F** sub Section 1 of I.D. Act have not been complied with so they are entitled to get the notice pay.....”*

24. From the order/award under challenge it appears that the First Labour Court has allowed the application under Section 33C(2) of the I.D. Act and done so, by fully relying upon and only on the basis of the memorandum of settlement dated 21.10.1981 (Exhibit 7).

25. Section 25F of the I.D. Act lays down:-

“25F. Conditions precedent to retrenchment of workmen.
No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; [* * *]*
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days 'average pay [for every completed year of continuous service] or any part thereof in excess of six months; and*
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]”*

26. The said provision clearly lays down the entitlement of a workman on retrenchment.

27. Section 32 of SICA (Sick Industrial Companies (Special Provisions) Act 1986, lays down:-

“32. Effect of the Act on other laws .- (1) The provisions of this Act and of any rules or schemes made thereunder

shall have effect notwithstanding anything inconsistent therewith contained in any other law except the provisions of the [Foreign Exchange Regulation Act, 1973 (46 of 1973)], and the [Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976)] [[This Act has now been repealed by the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (15 of 1999).] for the time being in force or in the Memorandum or Articles of Association of an industrial company or in any other instrument having effect by virtue of any law other than this Act.

(2)Where there has been under any scheme under this Act an amalgamation of a sick industrial company with another company, the provisions of section 72-A of the Income-tax Act, 1961 (43 of 1961), shall, subject to the modifications that the power of the Central Government under that section may be exercised by the Board without any recommendation by the specified authority referred to in that section, apply in relation to such amalgamation as they apply in relation to the amalgamation of a company owning an industrial undertaking with another company.”

- 28. Section 32 of SICA** is clear that the memorandum of settlement dated 21.10.1981 will not prevail over the scheme of the BIFR dated 17.11.1994, which provides for retrenchment compensation as per Section 25F of the Industrial dispute Act.
- 29.** The Labour Court has granted relief on the basis of the said memorandum of settlement and as such the same being against the provision of Section 32 of SICA, is not in accordance with law and is thus liable to be set aside.
- 30.** Accordingly, the order dated 31st May, 2011, passed by the learned Judge, First Labour Court, West Bengal, **is hereby set aside.**

31. If the workers/respondents have not got their dues as per Section 25F of the Industrial Disputes Act, as provided under the scheme of the BIFR, the parties shall appear before the BIFR, which shall proceed in accordance with law and dispose the claims expeditiously.
32. **WPA 20868 of 2012 is allowed.**
33. All connected application, if any, stands disposed of.
34. Interim order, if any, stands vacated.
35. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

[Shampa Dutt (Paul), J.]