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W.P.No.32574 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.06.2025

PRONOUNCED ON : 17.06.2025

CORAM :

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUNDER MOHAN

W.P.No.32574 of 2024

WMP Nos.35402 and 35403 of 2024

1. M/s. Sivanandha Steels Limited,
a Public Limited Company,
incorporated under the provisions
of Companies Act,
having its office at
No.18 - 20, Industrial Estate,
Ambattur, Chennai – 600 058.

2. Mr.P.Venkatesan

...Petitioners

Vs

Kotak Mahindra Bank Limited,
Having its office at Dass India Tower,
II Floor, No.3, II Line Beach,
Parrys, Chennai – 600 001.

...Respondent



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Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records in M.A.No.27 of 2012 order dated 30.07.2024 on the file of the Debt Recovery Appellate Tribunal Chennai and quash the same.

For Petitioners: Mr.K.P.Prabhuraj,
for M/s.AK Mysamy and
Associates

For Respondent: Mrs.Anantha Gomathy

ORDER

(Delivered by the Hon'ble Justice SUNDER MOHAN)

The writ petition impugns an order of the Debt Recovery Appellate Tribunal dated 30.07.2024 passed in MA.No.27 of 2012.

2. The brief facts leading to the filing of the writ petition are as follows:

a) On 05.08.1995, first petitioner entered into a Hire Purchase Agreement with one Upasana Finance Limited for Rs.43,99,625/- payable



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in 36 equated monthly installments. On 08.08.1995, first petitioner entered into a Lease Finance Agreement with the said Upasana Finance Limited for Rs.32,12,500/- payable in monthly installments over sixty months.

b) Admittedly, first petitioner defaulted in payment. On 28.01.1999, first petitioner agreed to settle the dues to the said Upasana Finance Limited.

c) On 17.02.2000, first petitioner made a reference to the Board for Industrial and Financial Reconstruction [hereinafter referred to as '**BIFR**'] under the Sick Industrial Companies Act [hereinafter referred to as '**SICA**'].

d) On 22.09.2000, BIFR declared first petitioner as a Sick Industrial Company.

e) On 09.08.2005, BIFR sanctioned a Rehabilitation Scheme for first petitioner after evaluating the feasibility of revival.



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f) On 18.04.2006, BIFR discharged first petitioner from its purview after successful implementation of the rehabilitation scheme.

g) On 16.05.2006, the said Upasana Finance Limited assigned its debt to respondent through a deed of assignment.

h) On 24.08.2006, respondent filed an application before BIFR under Section 18(2) of SICA, seeking to declare the scheme as failed and to wind up first petitioner under Section 29(1) of SICA.

i) On 10.04.2008, BIFR dismissed respondent's application holding that respondent was entitled to recover amounts only as per the sanctioned scheme.

j) First respondent challenged the order of BIFR before the Appellate Authority for Industrial and Financial Reconstruction [hereinafter referred to as '**AAIFR**']. The AAIFR dismissed respondent's appeal.



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k) Aggrieved by the said order, respondent filed a writ petition before the Delhi High Court in WP No.7794 of 2010. On 22.11.2010, the Delhi High Court dismissed the writ petition with costs of Rs.25,000/- (Rupees Twenty Five Thousand only).

l) The Special Leave Petition bearing SLP No.6174 of 2011 before the Hon'ble Supreme Court, challenging the order of the Delhi High Court came to be dismissed on 01.04.2011.

m) Thereafter respondent filed OA No.200 of 2010 before the Debts Recovery Tribunal- II, Chennai [hereinafter referred to as '**DRT**'] for recovery of money. First petitioner filed an interim application in I.A.SR No.7553 of 2010 praying for dismissal of the said OA, since the loan assigned to respondent is covered under the sanctioned scheme of the BIFR.

n) DRT by order dated 19.08.2011 held that the Hire Purchase facility



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availed by first petitioner is covered under the sanctioned scheme and the lease facility availed by first petitioner is not covered under the sanctioned scheme and therefore, respondent is entitled to recover the dues from petitioners in respect of lease facility alone.

o). Petitioners aggrieved by the said order of the DRT filed MA No.27 of 2011 before the Debt Recovery Appellate Tribunal [hereinafter referred to as '**DRAT**'], Chennai, *inter alia* on the ground that both the Hire Purchase Facility and the Lease Facility were covered under the BIFR scheme. The DRAT by the impugned order dated 30.07.2024 held that there was no provision under the Recovery of Debts and Bankruptcy Act [hereinafter referred to as '**RDBA**'] to reject an OA at the inception and therefore, set aside the order of the DRT with a further direction to the DRT to decide the main OA No.200 of 2010 on merits and in accordance with law as expeditiously as possible. It is against this order that the present writ petition has been filed.

3. Mr. Prabhuraj, learned counsel for the petitioner submitted:

(a) that respondent ought not to have filed an application for



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recovery of money, since the money due to them is covered under the sanctioned scheme, which has been upheld by the BIFR, AAIFR, Delhi High Court and the Hon'ble Supreme Court; that the scheme covers both the lease facility as well as the hire purchase facility and therefore, there cannot be any distinction between the two facilities;

(b) that the DRT erred in holding that the lease facility was not covered under the scheme; and that the DRAT erred in setting aside the order of the DRT even in respect of the hire purchase facility;

(c) that the scheme was challenged by respondent before the BIFR after the assignment; that the BIFR found that the scheme was in accordance with law; that by virtue of the scheme, first petitioner was discharged from the purview of SICA/BIFR; and that the BIFR held that all hire purchase creditors / other unsecured / trade creditors would be settled by the company viz., first petitioner in terms of the sanctioned scheme.

(d) that the AAIFR before whom the BIFR's order was challenged also held that the sanctioned scheme is valid and therefore the claim of



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respondent is unsustainable; that the writ petition filed challenging the said order of AAIFR before the Delhi High Court was dismissed with costs, which was also confirmed by the Hon'ble Supreme Court in SLP; and that therefore, respondent ought not to have reopened the issue by filing an application for recovery of money before the DRT; and that the DRAT erred in law in holding that the interim application to dismiss the OA was not maintainable and in directing the DRT to decide all the issues afresh on merits.

4. Mrs.Ananda Gomathy, learned counsel for respondent *per contra*, however, would contend that the scheme would make it clear that only a hire purchase facility was covered under the scheme and the lease facility was not covered. She pointed out to the lease agreement entered into between Upasana Finance Limited and petitioner besides the orders passed by the BIFR/AIFR/ Delhi High Court to substantiate her claim. She also referred to the terms of the scheme in support of her submission that the scheme would only cover the hire purchase facility and not the lease facility.

5. The questions involved in this writ petition are whether the



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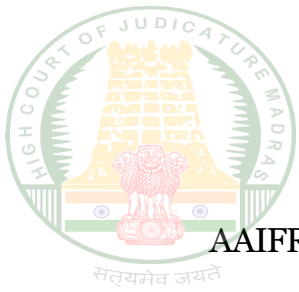
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facilities granted to first petitioner by Upasana Finance Limited and assigned to respondent herein are covered under the scheme and whether first respondent was entitled to file an application for the recovery of the amount due under the facilities before the DRT.

6. The facts narrated above would show that after the debts were assigned in favour of respondent, they had challenged the scheme before the BIFR and further prayed that they should be declared as entitled to recover the amounts due to them and not be bound by the terms of the sanctioned scheme. The BIFR in its order dated 10.04.2008 had held as follows:

(b) Further as the company M/s.SSL has already been discharged from the purview of SICA/BIFR vide Board's order dt. 18/04/06 and also as the debt of M/s.Upasana Finance Corporation is now reported to have purchased by M/s. KMBL, it is for the company M/s.SSL and M/s. Upasana Finance Corporation / M/s.KMBL to settle the dispute, if any, in this regard. The Board, however, reiterates its earlier views that the dues of all the HP Creditors/other unsecured/trade creditors would be settled by the company M/s.SSL in terms of the SS-05.

7. M/s.SSL in the above order refers to first petitioner. As stated earlier, respondent challenged the above said order before the AAIFR. The



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AAIFR held that the assignee, i.e., respondent herein is not entitled to any amount more than the amount payable by them under the sanctioned scheme. It further directed the company, first petitioner herein, to deposit the amount due to respondent in a NLA (No Lien Account) as respondent herein had refused to accept the settlement amount offered by the company in terms of the scheme. It further held that no interest is payable to respondent herein from the date of valid offer. It is the admitted case of respondent before the DRT that petitioners had forwarded three demand drafts totally for a sum of Rs.19,92,244/- on 15.04.2008 in full and final settlement of all the claims of respondent and that respondent vide their letter dated 16.04.2008, returned the said demand drafts.

8. The Delhi High Court dismissed the challenge made to the order of the AAIFR with costs. The order of the Delhi High Court was also confirmed by the Hon'ble Supreme Court as the SLP challenging the said order was dismissed. It is at this stage respondent initiated proceedings before DRT for recovery of money due to them claiming that they are not bound by the scheme.



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WEB COPY 9. The order of AAIFR makes it very clear that respondent is bound by the terms of the scheme. Though it is a case of respondent now that the scheme covered only hire purchase facility and they are entitled to the payment as per the scheme only in respect of hire purchase facility, their original claim before DRT was that they are entitled to the amounts due under both the facilities. Therefore, even as per their admission made before this Court, we are of the view that they ought not to have filed an application seeking recovery of money under both the facilities. The application before DRT is an abuse of process of law.

10. Be that as it may. Since the finding of the AAIFR that the scheme is binding on respondent has become final, we would have to advert to the terms of the scheme. Admittedly, the scheme covers hire purchase facility. The question is whether the lease facility is also covered under the scheme. Clause 'K' in paragraph No.5.2 of the scheme reads as follows:

K. Pressing creditors:

To accept settlement to the extent of Rs.48 lakh in first two years and accept the balance after clearance of IDBI and dues of the



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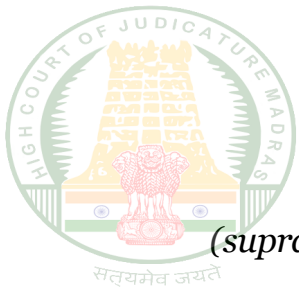
banks.

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The learned counsel for respondent is unable to state as to why this clause is not applicable to a lease facility.

11. That apart, the Hon'ble Supreme Court in a recent decision in ***Modi Rubber Limited v. Continental Carbon India Limited***¹, had held that rehabilitation scheme under Section 18 of SICA shall bind all the creditors including the unsecured creditors and the unsecured creditors have to accept the scaled down value provided under the rehabilitation scheme. The unsecured creditor cannot be allowed to stall the rehabilitation of a sick company by independently making a claim for its due in entirety. Unless all the creditors, financial institutions, unsecured creditors, workers, accept the scheme, the revival of the sick industrial company would not be feasible. The unsecured creditors cannot be allowed to frustrate the rehabilitation scheme by making a parallel claim. The relevant observations of the Hon'ble Supreme Court in ***Modi Rubber***

¹ (2023) 17 SCC 263



(supra) is extracted hereunder.

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“46. Under Section 18 of the SICA, 1985, it is the operating agency to prepare a scheme with respect to the sick company providing for any one or more of the measures mentioned in Section 18, which include:-

(i) the financial reconstruction of the sick industrial company;

(ii) such other preventive, ameliorative and remedial measures as may be appropriate.

47. 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.

48. At this stage, it is required to be noted that if a sick company is ordered to be wind up, in that case, the unsecured creditors otherwise may not get anything. However, on the other hand on sanctioning the rehabilitation scheme under Section 18,



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the unsecured creditors may get part of their dues /debts, which otherwise, they may not get. At this stage, it is required to be noted that as per Section 18(8) of SICA, 1985, which has been substituted by Act 12 of 1994, on and from the date of the coming into operation of the sanctioned scheme or any provision thereof, the scheme or such provision shall be binding on the sick industrial company and the transferee company or, as the case may be, the other company and also on the shareholders, creditors and guarantors and even the employees of the said companies.

49. Thus, the intention of the legislature is very clear. Creditors includes unsecured creditors. The submission on behalf of the unsecured creditors that the word “creditors” is not defined like IBC, 2016 and therefore, the scheme shall not bind the unsecured creditors, cannot be accepted. Looking to the object and purpose of the SICA, 1985 and the provisions of Sections 18 and 19 of the SICA, 1985, the word “creditors” shall have to be construed in a broad manner and is not required to be construed narrowly, otherwise, the object and purpose of rehabilitation scheme shall be frustrated. If the scheme binds the creditors, including other creditors like financial institutions etc., who may have a better claim than the unsecured creditors, there is no reason to treat the unsecured creditors separately and not to treat them as creditors. Therefore, even as per Section 18(8), the scheme shall bind all the creditors and guarantors and even the employees of the sick company, for whose revival the scheme is sanctioned.

50. 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.

51. At the cost of repetition, it is observed that the primary object and purpose of SICA, 1985 is revival of a sick industrial company even by providing rehabilitation scheme



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under Section 18. A reading of the statement of objects and reasons says that the effect of the ill effects of sickness in industrial companies was a serious concern not only to the Government but also to the society at large. Therefore, it was found that there is a need to fully utilise the productive industrial assets; afford maximum protection of employment and optimize the use of the funds of the banks and financial institutions and it is imperative to revive and rehabilitate the potentially viable sick industrial companies. Considering Section 20 of the Act it becomes clear that winding up of a company is only resorted to as a last resort and only when it is just and equitable to wind up the sick industrial company.

52. 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.

53. 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.

54. 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



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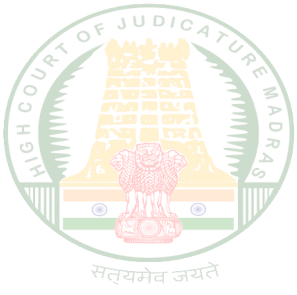
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option to recover the debt with interest post such rehabilitation is accepted, in a given case, the sick company, which has been able to revive because of the scaling down the value of the dues, may again become sick, if the entire dues of the unsecured 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.

55. 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.

56. 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.

57. 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.”



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WEB COPY 12. Having failed in their attempt to challenge the scheme, respondent have filed an application before the DRT, which indirectly challenges the scheme and the orders passed by the BIFR, AAIFR, Delhi High Court and the Hon'ble Supreme Court. Therefore, we are of the considered view that respondent is bound by the terms of the scheme and they are entitled to only the scaled down value in respect of both the facilities as per the scheme.

13. Hence, the impugned order of DRAT is quashed and we further hold that the application filed by respondent before the DRT claiming the entire amount due is not maintainable. Accordingly, the writ petition stands allowed.

14. We must compliment both the lawyers for assisting the Court in deciding this matter.



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15. Mr.Prabhuraj is pressing for costs. Ms.Anantha Gomathy requests that no costs be imposed. Ms.Anantha Gomathy tried to justify the action of the bank in approaching the Debts Recovery Tribunal, notwithstanding having lost before the BIFR, AAIFR, High Court of Delhi and the Hon'ble Supreme Court. We are not inclined to accept the justification. In our view, it was an absolute misadventure by the bank. Therefore, we impose cost of Rs.1,00,000/- [Rupees One Lakh only] on respondent/bank to be paid to petitioners within two weeks from the date of uploading this order. A compliance affidavit is to be filed within one week thereafter with a copy to advocate for petitioners.

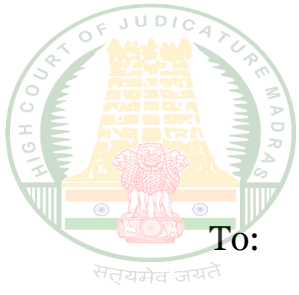
Consequently, interim applications stand closed.

(K.R.SHRIRAM, CJ.)

(SUNDER MOHAN, J.)

17.06.2025

Index : Yes/No
Neutral Citation : Yes/No
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To:

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1. The Debt Recovery Appellate Tribunal,
Chennai.
 2. The Debts Recovery Tribunal-II,
Chennai.



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THE HON'BLE CHIEF JUSTICE
AND
SUNDER MOHAN,J.

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Pre-delivery order in
W.P.No.32574 of 2024

17.06.2025