HC-KAR
NC: 2026:KHC:37432
WP No. 2513 of 2017
CNR: KAHC010016252017

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.G.S. KAMAL

WRIT PETITION NO. 2513 OF 2017 (GM-RES)

BETWEEN:

M/S. INDIA SUGARS & REFINERIES LIMITED
NO.102 & 108, MIDFORD HOUSE
MIDFORD GARDENS, OFF. M.G.ROAD
BANGALORE-560 001
REPRESENTED BY ITS MANAGER FINANCE
MR. P.S. KRISHNAMURTHY

...PETITIONER

(BY SRI. RAJESH CHANDER, SENIOR COUNSEL [VC] A/W
SRI. HARSHAVARDHAN B. SHARMA AND
SMT. SMITHA, ADVOCATES)

AND:

1. STATE BANK OF INDIA
CENTRAL OFFICE
MADAM CAMA ROAD
NARIMAN POINT
MUMBAI-400 001
AND ONE OF ITS BRANCH OFFICES
AT STRESSED ASSETS MANAGEMENT
GROUP BRANCH, 2ND FLOOR
OFFICE COMPLEX BUILDING
LHO CAMPUS, NO.65
ST. MARK'S ROAD
BANGALORE-560 001

2. DEPUTY COMMISSIONER OF
COMMERCIAL TAXES (AUDIT)
BELLARY
LAL BAHADDUR SHASTRI COMPLEX
BUDA COMPLEX, MOTI CIRCLE
BELLARY-583 104

3. THE CHIEF SECRETARY
GOVERNMENT OF KARNATAKA
SECRETARIAT, BANGALORE
KARNATAKA

4. STATE OF KARNATAKA
THROUGH THE SECRETARY
COMMERCE & INDUSTRIES DEPARTMENT
MULTI STOREYED BUILDING
SACHIVALAYA-II
BANGALORE-560 001

5. THE SECRETARY
MINISTRY OF CONSUMER AFFAIRS
FOOD & PUBLIC DISTRIBUTION
KRISHNA BHAVAN
GOVERNMENT OF INDIA
NEW DELHI-110 001

6. SUGAR DEVELOPMENT FUND
THROUGH THE CHAIRMAN AND
M.D DEPARTMENT OF FOOD & PUBLIC
DISTRIBUTION, DTE OF SUGAR
KRISHNA BHAVAN
NEW DELHI-110 001

7. INDUSTRIAL FINANCE CORPORATION OF INDIA
THROUGH THE CHAIRMAN AND M.D
IFCI TOWER, 61, NEHRU PLACE
NEW DELHI-110 019

8. THE CENTRAL PROVIDENT FUND
COMMISSIONER
HUDCO VISHALA, 14
BHIKAJI CAMA PALACE
R.K.PURAM, NEW DELHI-110 066

9. DTE OF INCOME TAX (RECOVERY)
DEPARTMENT OF REVENUE
MAYUR BHAVAN, CONNAUGHT PLACE
NEW DELHI-110 001

10. KARNATAKA STATE INDUSTRIAL &
INFRA DEVELOPMENT CORPORATION
LIMITED, THROUGH THE CHAIRMAN
AND M.D., KHANIJA BHAVAN
NO.49, 4TH FLOOR, EAST WING
RACE COURSE ROAD
BANGALORE-560 001

11. THE ASSISTANT DIRECTOR
ESIC, REGIONAL OFFICE
RAJENDRA PLACE
NEW DELHI-110 008

12. THE PRESIDENT/SECRETARY
ISR, WORKERS' UNION
3/179, PATEL NAGAR
HOSPET-583 201

13. BELLARY DISTRICT CO-OP
CENTRAL BANK LTD.
THROUGH THE CHAIRMAN AND M.D
OPPOSITE TOWN POLICE STATION
HOSPET-583 201

14. THE SECRETARY
MINISTRY OF FOOD

GOVERNMENT OF INDIA
KRISHNA BHAVAN
NEW DELHI-110 001

15. THE RESIDENT COMMISSIONER
GOVERNMENT OF KARNATAKA
10, KAUTILYA MARG
CHANAKYA PURI
NEW DELHI-110 011

...RESPONDENTS

(BY SMT. HEMAVATHI, ADVOCATE FOR
SRI. CHINTHAN CHINNAPPA, ADVOCATE FOR C/R1;
SRI. M. SRINIVAS KUMAR, HCGP FOR R2 TO R4;
SRI. K.N. SUBRAMANI, ADVOCATE FOR R7;
SRI. MAHESH SHETTY, CGC FOR R5 AND R14;
VIDE ORDER DATED 23.11.2017, NOTICE TO R9 TO R15 IS DISPENSED WITH;
R6 AND R8 ARE SERVED AND UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR THE RECORDS IN MA NO.78/2016 FILED BY THE RESPONDENT BANK BEFORE THE APPELLATE AUTHORITY FOR INDUSTRIAL AND FINANCIAL RECONSTRUCTION, DELHI, AND SET ASIDE / QUASH THE IMPUGNED ORDER DTD.30.11.2016, PASSED BY THE AAIFR VIDE ANNEX-A.

THIS PETITION, COMING ON FOR FINAL HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE M.G.S. KAMAL

ORAL ORDER

1. Petitioner is before this Court seeking following reliefs:

> *" (a) to call for the records in M.A.No.78/2016, filed by the Respondent Bank before the Appellate Authority for Industrial and Financial Reconstruction, Delhi, and set aside / quash the Impugned Order, dated 30.11.2016, passed by the AAIFR therein (Annexure A herein); and*
>
> *(b) pass such further and other orders and directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.*

2. Brief facts of the case are;

2.1 That petitioner is a company carrying on the business *inter-alia* of manufacturing and selling sugar. It had availed financial assistance from the respondent-Bank, which is stated to be one of the two secured creditors of the petitioner-Company. As on 15.11.2015, total dues payable by the petitioner-Company to the respondent-Bank is stated to be not exceeding Rs.12,52,32,872.62/-. Immoveable assets of the petitioner-Company were mortgaged in favour of the respondent-Bank as security for repayment of said loan amount.

2.2 That petitioner-Company having been declared as Sick was referred to the Board for Industrial and Financial

Reconstruction (BIFR). Under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as 'the Sica, 1985'). By Order dated 12.02.2002, BIFR sanctioned scheme for revival of the petitioner-Company, appointing respondent-Bank as monitoring agency for the implementation Scheme. The said scheme was last modified on 22.11.2013, directing restructuring of the purchase tax liability of the petitioner-Company. Thus there was substantial progress towards rehabilitation of the petitioner-company.

2.3 Things stood thus, on 15.07.2013 respondent-Bank initiated the proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, by issuing a notice under Section 13(2) thereof demanding Payment of sum of Rs.18,29,89,009/-.

2.4 That petitioner issued a reply dated 13.09.2013, raising the objection citing the process of restructuring, which was rejected by the respondent-Bank as it had already initiated the proceedings under SARFAESI Act. This followed by issuance of possession notices dated 05.05.2014 and 13.05.2014 as contemplated under Section 13(4) of the SARFAESI Act, constraining the petitioner to file an Application in S.A.No.274/2017, under Section 17 of the SARFAESI Act before the Debt Recovery Tribunal, Bangalore (DRT), contending *inter-alia*, that the respondent-Bank had not taken into consideration the concessional rate of interest which the petitioner-Company was entitled to in terms of the applicable RBI guidelines and for declaration that the demand made by the respondent-Bank was in excess and highly exaggerated.

2.5 That on 23.12.2014, respondent-Bank filed an application in M.A.No.28/2015 before BIFR seeking declaration that the reference of the petitioner-Company under the provisions of the SICA, 1985 had abated in the light of respondent-Bank having initiated proceedings under the SARFAESI Act.

2.6 On 09.06.2015, the application in S.A.No.274/2014 filed by the petitioner before the DRT was rejected. Constraining the petitioner to file an application in

M.A.No.246/2015 before the BIFR seeking clarification to the effect that the sanction scheme did not prevent the petitioner from being entitled for concessional rates of interest as per RBI guidelines.

2.7 That the petitioner also preferred a review application on 08.07.2015 in Review Application No.6/2015 seeking review of the Order dated 09.06.2015 passed by the DRT.

2.8 Despite, pendency of the matter before the DRT, the respondent-Bank had precipitated the matter in furtherance to the notices issued under Section 13 of the SARFAESI Act, which further constrained the petitioner-Company to approach this Court by filing a writ petition in W.P.No.42451/2015.

2.9 That by Order dated 18.01.2016, accepting the contention of the petitioner-Company, this Court quashed the SARFAESI proceedings initiated by the respondent-Bank holding that the petitioner-Company was indeed entitled for concessional rate of interest as per the guidelines of RBI and further directed the respondent-Bank to recalculate and crystallize the dues owed by the petitioner-Company within seven days as per the revised statement of accounts submitted by the petitioner.

2.10 Petitioner filed the copy of the aforesaid Order dated 18.01.2016 passed by this Court before the DRT. Taking note of the relief granted by this Court, the DRT by Order dated 20.01.2016, disposed of the review application filed by the petitioner-Company under Section 17 of the SARFAESI Act and directed the respondent-Bank to comply with the said order. Respondent-Bank had preferred a Writ Appeal in W.A.No.425/2016 against the Order dated 18.01.2016. The said writ appeal is stated to have been dismissed, confirming the order of the learned Single Judge.

2.11 Things stood thus, the application filed by the respondent-Bank in M.A.No.28/2015 was taken up for final hearing. That by ordered dated 11.07.2016, taking note of the Order dated 18.01.2016 passed by this Court, BIFR dismissed the application of the respondent-Bank.

2.12 Being aggrieved, respondent-Bank preferred an appeal in M.A.No.78/2016 before the Appellate Authority for Industrial and Financial Reconstruction (AAIFR), New Delhi. By order dated 30.11.2016, the AAIFR allowed the said appeal filed by the respondent-Bank, setting aside the order dated 11.07.2016 passed by the BIFR and declared that the reference of the petitioner to the BIFR under the provisions of the SICA, 1985 had abated in view of the SARFAESI proceedings initiated by the respondent-Bank.

2.13 It is this order in the aforesaid factual background has resulted in petitioner filing the present Writ Petition.

3. Learned counsel for the respondent-Bank at the outset clarified that in the meanwhile, the claim of the respondent-Bank are stated to have been settled and there are no pending claims against the petitioner-Company. As such, nothing remains in this petition for consideration.

4. Per contra, Sri. Rajesh Chander, learned Senior counsel appearing for the petitioner through video conferencing,

however submits that notwithstanding the claim of the respondent-Bank having been satisfied, a larger issue is still required to be considered in the petition, namely the validity or otherwise of the Order dated 30.11.2016, as per Annexure-A, finding on which would determine the statutory rights and obligations which the petitioner-Company is entitled to and perform in terms of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003, (hereinafter referred to as 'the Repeal Act, 2003') which is now repealed.

5. He submits that if the order impugned is found to be illegal and unjustified, it would amount to reference being pending consideration before the BIFR, at the time when the SICA, 1985, was repealed, providing an opportunity to the petitioner to seek redressal of its grievance or implementation of the scheme under Insolvency and Bankruptcy Code, 2016, as provided under the Repeal Act, 2003. He further submits that if on the other hand the order impugned is upheld, petitioner would have no

effective remedy. It is on this premise that learned Senior Counsel take this Court through the records.

6. He further refers to the Order dated 18.01.2016, passed by the Co-ordinate Bench of this Court in W.P.No.42451/2015, in terms of which, the Co-ordinate Bench of this Court has held that the petitioner being entitled to the benefit of revised rate of interest provided under the RBI guidelines, 2002 and 2008 as applicable to the Sick Industrial Companies and has further proceeded to direct the respondent- Bank to crystallize the dues as per the statement of accounts furnished by the petitioner. That eventually the Co-ordinate Bench of this Court quashed the notice dated 14.09.2014 as per Annexure-N, which was issued by the respondent-Bank in exercise of its power under Section 13 of the SARFAESI Act.

7. He then refers to the review application which was filed by the petitioner before the DRT in Review Petition No.6/2015, whereby the petitioner-Company had sought for declaration that the possession notice dated 05.05.2014 and 13.05.2014 as per Annexures-G and H,

issued by the respondent-Bank are null and void and that the interest charged by the respondent-Bank was excessive and in violation of RBI guidelines applicable to the petitioner-Company and also for a direction to the respondent-Bank to claim the correct amount from the petitioner-Company in accordance with the applicable rates of interest mentioned under RBI guidelines.

8. He also referred to the Order dated 20.01.2016, passed by the DRT as per Annexure-Q in the said review petition, whereby the DRT taking note of the order dated 18.01.2016 as per Annexure-P passed by this Court, in W.P.No.42451/2016, had disposed of the said review petition observing that since the High Court had granted the relief, the respondent-Bank shall comply as directed.

9. Thus referring to these orders, learned Senior Counsel insists that as on the date when the appeal was filed before the AAIFR by the respondent-Bank, seeking declaration of the reference before the BIFR having abated, on the principal ground of initiation/pendency of the SARFAESI proceedings, there were indeed no

SARFAESI proceedings and that since the AAIFR has allowed the appeal filed by the respondent-Bank solely on the ground of purported pendency of the SARFAESI proceedings, which is factually incorrect, the impugned order is unsustainable.

10. He further refers to provisions of Section 4 of the Amendment Act, Sick Industrial Companies (Special Provisions) Repeal Act, 2003, to highlight the possibility of the reliefs which are available to the petitioner-Company in the event of abatement of the proceedings by operation of law. Hence seeks for allowing of the petition.

11. Heard and perused the records.

12. The question which arise for consideration in this petition is;

> Whether by Order dated 30.11.2016, passed in Appeal No.78/2016, the Appellate Authority for Industrial and Financial Reconstruction, New Delhi is justified in holding that the proceedings/reference of the petitioner before the BIFR stood abated?

13. Facts narrated above do not require reiteration. Perusal of the impugned order dated 13.07.2016 at Annexure-A, indicate that the sole ground and reason to allow the appeal filed by the respondent-Bank seeking declaration with regard to reference of the petitioner-Company having abated, is initiation and pendency of the proceedings under SARFAESI Act.

14. Paragraph Nos.8 to 10 of the impugned order read as under:

> *"8. As regards the argument of the learned counsel for the respondent that in view of the order of the Hon'ble High Court of Karnataka as well as the ruling of the Hon'ble High Court of Calcutta (supra) the SARFAESI action taken by the secured creditor does not survive, we do not agree with the same, it is for the reason that this is an issue which hinges on the legal validity of the action taken by the secured creditor under Section 13(4) SARFAESI Act, 2002. Such a finding on the legal validity of SARFAESI Action has to be given by the appropriate forum, namely, DRT/DRAT or the concerned High Court under SARFAESI Act. Neither BIFR nor AAIFR is the competent authority to give the finding on the legal validity of the action already taken by the secured creditor Under Section 13(4) of SARFAFSI Act. As far as AAIFR and BIFR are concerned, as long as the said action is not quashed or set aside, it remains valid and we are only supposed to take note of it. As already stated, the action taken by the appellant bank under Section 13(4) of SARFAESI Act has not been set aside till date and since it represents more than 3/4th of the financial assistance disbursed to the respondent sick company, the requirements under third proviso to Section 15(1) of SICA are complete. As a consequence, the abatement of*

the pending reference of the appellant has to take place automatically by operation of law.

9. For aforesaid reason, we are of the view that BIFR erred in dismissing the MA of the appellant company praying for abatement of reference of the respondent company.

10. We, accordingly, set aside the para 2.4(i) of the impugned order and allow the appeal to extent as above.''

15. Though the AAIFR has taken note of the order passed by the Co-ordinate Bench of this Court, it has apparently not delve into the consequence of the said order. The Co-ordinate Bench of this Court in W.P.No.42451/2016 by Order dated 18.01.2016, considering the rival submissions of the parties, provisions of SARFAESI Act and the guidelines issued by RBI, at paragraph No.5 has held as under:

''5. In the light of the above, the petitioner is held entitled to the benefit of the revised rates of interest provided under the RBI guidelines of 2002 and 2008, as applicable to sick industrial companies, as stated at Annexures-M & N. The respondent- bank is directed to crystallize the dues as per the statement of account furnished along with I.A.No.IV, which has been accepted by the respondent-Bank as being arithmetically accurate, after due verification. Having regard to the grave financial situation of the petitioner, the said exercise shall be completed forthwith, in any event within a period of seven days from today. Consequently, the notice dated 14.9.2015. Annexure A, is quashed.''

16. Thus quashing of the said notice dated 14.09.2015 as per Annexure-N issued under Section 13 of the SARFAESI Act would indeed amount to setting aside/termination of such proceedings, nothing being pending thereon.

17. It is also relevant to note the relief sought for by the petitioner in the Review Application in R.A.No.6/2015 before the DRT, which read as under:

> *" **7. Relief Sought For**:*
>
> *In view of all the above, it is respectfully prayed that this Hon'ble Tribunal may recall order dated 09.06.2015, allow S.A 274/2015 and declare (1) that the possession notices dated 05.05.2014 and 13.05.2014 are null and void and also (2) that the interest charged by the Respondent Bank is excessive and in violation of the RBI guidelines applicable to Petitioner and also direct the Respondent to claim the correct amount from the Petitioner forthwith in accordance with the applicable rates of interest mentioned under the RBI guidelines applicable to the Petitioner. This Hon'ble Tribunal may award appropriate compensation and costs to the Petitioner under section 19 of the Securitization Act."*

18. Taking note of the order passed by the Co-ordinate Bench of this Court as noted above, the DRT has disposed of the said Review Application in Review Application.No.6/2015 by its order dated 20.01.2016 as per Annexure-Q, which reads as under:

'' Learned Counsel for Applicant submits that already Hon'ble High Court has already granted relief hence, present R.A. does not survive.

Learned Counsel of Respondent present.

R.A. is disposed of by observing that already Hon'ble High Court has granted relief, Bank shall comply it as directed by the Hon'ble High Court''

19. Thus the order dated 18.01.2016 in W.P.No.42451/2016 passed by the Co-ordinate Bench of this Court and the order of the DRT dated 20.01.2016, passed in Review Application No.6/2015, were in place much prior to the order being passed by the AAIFR on 30.11.2016.

20. As on the date when the appeal was disposed of by the AAIFR, accepting the contention of the respondent-Bank regarding pendency and SARFAESI ACT, there were no SARFAESI proceedings pending.

21. As rightly pointed out by the learned Senior Counsel appearing for the petitioner, the reasons and the grounds assigned in the impugned order are factually incorrect and contrary to the records and thus the order suffers from perversity.

22. If the AAIFR had applied its mind to the order passed by the Co-ordinate Bench of this Court, the relief sought in the Review Application and the order passed by the DRT, it would have to come to a different conclusion, instead of holding that the pending reference of the petitioner-Company stood abated.

23. Therefore, this Court is persuaded by the Submissions advanced by the learned Senior Counsel appearing for the petitioner-Company that the order is unsustainable and same requires to be quashed.

24. Having said that, it is appropriate to refer to Section 4(b) of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003, which reads as under:

> *"4. **Consequential provisions.—** On the dissolution of the Appellate Authority and the Board,—*
>
> *(a) ….*
>
> *(b) any appeal preferred to the Appellate Authority or any reference made to the Board or any inquiry pending before the Board or any other authority or any proceeding of whatever nature pending before the Appellate Authority or the Board immediately before the commencement of this Act shall stand abated:*
>
> *Provided that a company:-*

(i) in respect of which such appeal or reference or inquiry stand abated under this clause may make a reference under PART VIA of the Companies Act, 1956 (1 of 1956) within one hundred and eighty days from the commencement of this Act in accordance with the provisions of the Companies Act, 1956;

(ii) which had become a sick industrial company as defined in clause (46AA) of Section 2 of the Companies Act, 1956 (1 of 1956), before the commencement of the Companies (Second Amendment) Act, 2002 (11 of 2003) may make a reference under PART VIA of the Companies Act, 1956 within one hundred and eighty days from the commencement of the Companies (Second Amendment) Act, 2002 or within sixty days of final adoption of accounts after such commencement, whichever is earlier, and reference so made shall be dealt with in accordance with the provisions of the Companies Act, 1956 (1 of 1956):

Provided further that no fee shall be payable for making such reference under PART VIA of the Companies Act, 1956 (1 of 1956) by a company whose appeal or reference or inquiry stand 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 repealed enactment shall be deemed to be a scheme sanctioned or under implementation under section 424D of the Companies Act, 1956 (1 of 1956) and shall be dealt with in accordance with the provisions contained in PART VIA of that Act;"

25. Since, this Court has concluded that the order passed by the AAIFR is contrary to the records and the provisions of law, natural consequence is that the proceedings before the BIFR shall be treated to have been pending consideration at the time when the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 was

given effect to. The petitioner therefore should be entitled to and is at liberty to avail the remedy provided thereunder. Accordingly, following:

ORDER

(i) Petition is ***allowed***.

(ii) Impugned order dated 30.11.2016, passed by the AAIFR as per Annexure-A is quashed.

Sd/-
(M.G.S. KAMAL)
JUDGE

RL
List No.: 1 Sl No.: 11