2024 INSC 348

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 5366-5367 OF 2024

FERTILIZER CORPORATION OF INDIA LIMITED & ORS. **…APPELLANTS**

VERSUS

M/S COROMANDAL SACKS PRIVATE LIMITED **…RESPONDENT**

J U D G M E N T

J. B. PARDIWALA, J.:

For the convenience of exposition, this judgment is divided into the following parts: -

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A. FACTUAL MATRIX

1. Since the issues raised in both the captioned appeals are the same; the parties are also the same and the challenge is also to the self-same impugned common judgment and order passed by the High Court, those were taken up for hearing analogously and are being disposed of by this common judgment and order.

2. The appellants herein are the original defendants and the respondent herein is the original plaintiff.

3. The present appeals arise from the impugned common judgment and order dated 10.06.2022 ("**impugned judgment**") passed by the High Court of Telangana at Hyderabad partly allowing the Appeal Suit No. 808 of 2002 and Appeal Suit No. 913 of 2004 respectively preferred by the original defendants and the original plaintiff respectively against the judgment and decree dated 19.09.2001 passed by the Senior Civil Judge, Peddapalli in O.S. No. 37 of 1996 decreeing the suit partly in favour of the original plaintiff.

4. M/s Coromandal Sacks Private Limited, that is, the original plaintiff, is a company registered under the Companies Act, 1956 established with the assistance of the Andhra Pradesh Industrial Development Corporation Limited ("**APIDC**") and is engaged in the manufacturing of High Density Poly Ethylene ("**HDPE**") bags.

5. Fertilizer Corporation of India Ltd. ("**FCIL**"), that is, the defendant company, is a Public Sector Undertaking ("**PSU**") of the Government of India established for the manufacturing of fertilisers and are operating under the administrative control of the Ministry of Chemicals and Fertilizers, Government of India.

6. The original defendants required HDPE bags for the purpose of packaging and supply of fertiliser to their customers. They had been placing orders for the

same with the original plaintiff since 1986-87 onwards. The terms and conditions including the technical specifications of the bags and terms of payment were specified in the notices inviting tender ("**NIT**") issued from time to time and the purchase orders issued in pursuance thereof. As per the terms of the NIT, the original defendants were required to make the entire payment within 20 days of the receipt of the bags and approval of the same. The terms of the purchase orders also entitled the original defendants to deduct up to a maximum of 5% of the contract price towards liquidated damages upon delay in supply of bags by the original plaintiff.

i. Case of the original plaintiff before the trial court

7. The case of the original plaintiff before the trial court was that the original defendants placed with it certain purchase orders for the supply of the HDPE bags, which were manufactured by it as per the specifications and duly supplied periodically. The purchase orders were amended from time to time to account for the increase in the number of bags which were required by the original defendants. It was the case of the original plaintiff that in pursuance of the communications exchanged with the original defendants, it supplied 42,000 bags over and above the quantity mentioned in the purchase orders to meet with the urgent requirements of the original defendants, on the understanding that a subsequent purchase order would be issued to account for the extra supply.

8. The grievance of the original plaintiff was that when a formal purchase order was subsequently issued by the original defendants to account for the extra bags supplied by the original plaintiff, the price per bag mentioned in the said order fell short of the price agreed upon between the parties. The original plaintiff was also aggrieved by the deductions made by the original defendants towards the liquidated damages for the alleged delay in supply of the bags and the penalty imposed towards the supply of the alleged poor quality of the bags. The original plaintiff also claimed to have suffered losses due to the refusal of the original defendants to accept 25,000 bags after placing the order, which were printed as per the specifications prescribed by the original defendants and had to be sold as scrap due to non-acceptance by the original defendants.

9. With a view to recover the aforesaid losses, the original plaintiff instituted the civil suit for the recovery of Rs 8,27,100.74/- along with Rs 10,31,803.14/- towards interest up to the date of institution of the suit. A detailed break-up of the claim of the original plaintiff before the trial court is as follows:

S. No.	Particulars	Amount (Rs.)
1.	Towards price difference for 33,000 bags, i.e., from Rs. 8.75/bag to Rs. 10.25/bag	49,500
2.	Towards price difference for 9,000 bags, i.e., from Rs. 8.75/bag to Rs. 9.44/bag	6,210
	Total	**Rs. 55,710.00**

	(Towards price difference for 42000 bags)	
3.	Towards Liquidated Damages deducted by the defendants	1,63,470.75
4.	Towards deduction against penalties	4,89,919.99
5.	Towards loss incurred on 25,000 Bags printed which was sold as waste @ 50% price on account of not taking delivery.	1,18,000.00
	Principal Grand Total	**8,27,100.74**
6.	Towards Interest on Rs. 55,710 from 01.01.1994 to 21.11.1996 at the rate of 24%	38,609.32
7.	Towards Interest on Rs. 1,63,470.75 from 01.01.1994 to 21.11.1996	1,13,298
8.	Towards Interest on delayed payment up to 15.07.1994 as per the Debit Note dated 15.07.1994	3,45,467
9.	Towards interest on Rs. 3,45,467 from 16.07.1994 to 21.11.1996	1,94,900.18
10.	Towards interest on Rs. 4,89,919.99 from 01.01.1994 to 21.11.1996	3,39,534.69
	Total Interest	**10,31,803.14**
	Grand Total	**18,58,903.88**

ii. Case of the original defendants before the trial court

10. The original defendants filed their written statement before the trial court stating that there was no discrepancy in the purchase order issued subsequent to the supply of the extra bags and that the imposition of liquidated damages was justified as per the terms of the NIT and the purchase orders. It was also stated that the deductions imposed as penalty for the supply of poor quality of the bags was also justified and interest @ 24% was not liable to be imposed.

11. The original defendants further stated before the trial court that as they had been declared to be a sick company under Section 3(1)(o) of the Sick Industrial Companies (Special Provisions) Act, 1985 ("**the 1985 Act**"), the suit for recovery was not maintainable as per Section 22(1) of the 1985 Act and thus was liable to be dismissed.

12. The trial court, having regard to the specific pleadings of the parties proceeded to frame 10 issues as tabulated hereinbelow.

S. No.	***Issue***	***Decision of the trial court***
1.	*Whether the plaintiff had supplied 42,000 bags (33,000 + 9,000) on the advice and urgency showed by the defendants on his own?*	*Decided in favour of the plaintiff*
2.	*Whether the defendants after taking and consuming the bags even without placing order can deny the agreed price for the 42,000 bags?*	*Decided in favour of the plaintiff – Rs 55,710/- with interest @ 12% p.a. from 01.01.1994 till realisation*
3.	*Whether the defendants had any right to deduct Rs. 1,63,471/- as Liquidated Damages?*	*Partly decided in favour of the defendants*
4.	*Whether the defendants were entitled to deduct Rs. 4,89,919.99 as penalty. If so, whether it was in accordance with the terms and conditions of order/tender?*	*Decided in favour of the defendants*
5.	*Whether the plaintiff was entitled to interest for the delayed payment as per law?*	*Partly decided in favour of the plaintiff – Interest rate of 12% granted on the payments held as due and delayed.*
6.	*Whether the plaintiff had printed 25,000 bags as per the oral order of the defendants? If so, whether the plaintiff*	*Decided in favour of the plaintiff – Rs 1,18,000/- with*

	sustained loss at the rate of 50% of the value due to refusal on the part of the defendants to take delivery of the bags?	*interest @ 12% p.a. from 01.01.1994 till realisation.*
7.	*Whether the defendants had called for a fresh tender after placing of the orders to the plaintiff and in which M/s Neptune Polymers, Ahmedabad quoted rate of a bag at Rs. 8.46, the same has become binding on the plaintiff?*	*Decided in favour of the plaintiff*
8.	*Whether the defendants had regularised the supply of 33,000 bags at Rs. 8.46/bag vide P.O. No. 40893 dated 21.04.1994 and same was accepted by the plaintiff?*	*Decided in favour of plaintiff*
9.	*Whether the suit was not maintainable as the defendants have been declared as Sick Industry by the BIFR vide Case No. PUC/C/515/92 dated 06.11.1992?*	*Decided in favour of the plaintiff*
10.	*Whether the suit of the plaintiff was barred by limitation?*	*Decided in favour of the plaintiff*

13. On the issue of applicability of Section 22 of the 1985 Act, it was observed thus by the trial court:

> *"Both sides have not argued on this issue and no material is produced before the Court and no evidence is also adduced on this issue. Hence, the defendant company failed to prove that it is a sick industry and the plaintiff's suit is maintainable. I answer this issue in favour of the Plaintiff accordingly"*

14. The final decree drawn by the trial court reads thus:

> *"1. That the suit of the plaintiff be and is hereby decreed.*
>
> *2. That the defendants 1 to 4 be and are hereby directed to pay Rs. 55,710/-, Rs. 100,848 and Rs. 1,18,000/- to the plaintiff together with interest @ 12% per annum from 01.01.1994 till realization.*

3. That the defendants 1 to 4 be and are hereby further directed to pay Rs. 1,72,734/- to the plaintiff together with interest @ 12% per annum from 16.07.1994 till realization.

4 That the suit of the plaintiff for the rest of the claim of Rs. 4,89,919/- be and is hereby dismissed.

5. That the defendants do pay Rs. 37,169/- to the plaintiff towards the costs of the suit."

iii. Appeals before the High Court

15. Both the parties went to the High Court in appeal against the aforesaid decision of the trial court. The original plaintiff contended before the High Court, *inter alia*, that the deductions towards the liquidated damages and penalty were wrongly imposed on it by the original defendants, and that the interest at the rate of 24% with monthly compounding ought to have been granted on the delayed payments in light of the provisions of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 ("**the 1993 Act**").

16. The original defendants on the other hand contested that the trial court had failed to consider the evidence properly and had wrongly awarded the amounts under different heads to the original plaintiff. The contention as to the applicability of Section 22(1) of the 1985 Act was also raised by the original defendants.

17. The High Court, *vide* the impugned judgment partly allowed both the appeals. The original defendants were allowed to deduct an amount of Rs 1,63,471/- towards the liquidated damages, whereas the original plaintiff was allowed to recover the amounts deducted towards penalty, price difference in the supply of 42,000 bags and the loss incurred due to the refusal of the original defendants to accept the delivery of 25,000 bags. Pertinently, the High Court accepted the contention of the original plaintiff on the issue of interest and granted 24% compound interest on the amounts due.

18. Despite recording the submissions of the parties on the applicability of Section 22(1) of the 1985 Act, neither any point for determination was framed nor any finding was returned on the same by the High Court.

19. Aggrieved by the impugned judgment, more particularly as regards the awarding of 24% interest in favour of the original plaintiff – which has inflated the principal decretal amount to one of mammoth proportions – the original defendants are before this Court with the present appeals.

B. SUBMISSIONS ON BEHALF OF THE APPELLANTS/ORIGINAL DEFENDANTS

20. Ms. Malvika Trivedi, the learned senior counsel appearing on behalf of the original defendants submitted that the 1985 Act overrides the 1993 Act as the same was enacted in the larger public interest by the Parliament with a view to secure the directive specified under Article 39 of the Constitution.

21. It was further submitted that the 1993 Act having been enacted to provide for and regulate the payment of interest on delayed payments to the small-scale industries, does not envisage a situation where an industrial undertaking becomes sick and requires a scheme for its revival.

22. It was argued that the provisions of the 1985 Act should be given the widest possible import in light of the fact that the same is a self-contained code containing provisions like the statutory bar on civil suits for recovery of money from sick industrial companies under Section 22 and the non-obstante clause under Section 32 by virtue of which the provisions of the 1985 Act are given an overriding effect. Reliance was placed by the learned senior counsel upon the decisions of this Court in ***Jay Engineering Works Ltd. v. Industry Facilitation Council*** reported in (2006) 8 SCC 677 and ***Tata Motors Ltd. v. Pharmaceutical Products of India Ltd.*** reported in (2008) 7 SCC 619.

23. It was further submitted that the impugned judgment and order passed by the High Court failed to take into consideration the law settled by this Court in

Bhoruka Textiles Ltd. v. Kashmiri Rice Industries reported in (2009) 7 SCC 521 which held that if the jurisdiction of the civil court was ousted in terms of the jurisdictional bar imposed under Section 22 of the 1985 Act, then any judgment rendered by it would be *coram non-judice* and as a result a nullity.

24. To fortify her aforesaid submission, the learned senior counsel argued that the facts of the present case are similar to the facts in ***Bhoruka Textiles*** (supra) as follows:

I. The defendant company was declared as a sick industrial undertaking under Section 3(1)(o) of the 1985 Act and was referred to the BIFR for its revival on 06.11.1992 and an enquiry under Section(s) 16 and 17 respectively of the 1985 Act was pending in respect of the defendant company at the time of the institution of the suit by the original plaintiff before the trial court.

II. The suit for recovery of money was instituted by the original plaintiff against the original defendants without obtaining the consent of the BIFR, as mandated by Section 22 of the 1985 Act.

III. Despite the statutory bar under Section 22 against the institution of a suit for the recovery of money, the trial court decided the suit and decreed it. Even the High Court in the impugned judgment failed to decide the issue of lack of jurisdiction of the trial court in deciding the suit.

25. The learned senior counsel further submitted that the contention of the original plaintiff that the statutory bar under Section 22 of the 1985 Act applies only against a recognized creditor and such debts as are acknowledged before the BIFR during the pendency of the reference application is not the correct understanding of the law and is against the beneficial object of the Act. It was contended that the reliance placed by the original plaintiff on the decision of the Delhi High Court in ***Sunil Mittal Properties of Shree Shyam Packaging Industries v. M/s LML Ltd.*** reported in (2011) 123 DRJ 249 is misplaced as the said decision failed to consider the law settled by this Court in ***Bhoruka Textiles*** (supra) and thus could be termed as *per incuriam*.

26. One another submission made by the learned senior counsel was that out of the total claim put forward by the original plaintiff before the trial court, only the amount of Rs 55,710/- could have been recognized as delayed payment. It was submitted that the deductions made by the original defendants towards liquidated damages and penalty while remitting the payment to the original plaintiff could not have been classified as delayed payment for the purpose of computation of interest under the 1993 Act and the interest could only have been claimed on the undisputed and agreed upon sum under the contract.

27. It was argued that the liability, if any, of the original defendants to pay interest on the amount of Rs 4,89,919.99/- should be limited from the date of the

impugned judgment, wherein the High Court while partially modifying the decree awarded by the trial court, awarded the amount as above in favour of the original plaintiff for the first time.

28. It was also argued that the High Court erred in interfering with the exercise of discretion by the trial court in awarding 12% pendente lite interest in favour of the original plaintiff.

29. The learned senior counsel further submitted that the original plaintiff had the option of taking recourse to the mechanism prescribed under Section 6 of the 1993 Act which provides for making a reference of any dispute to the Industry Facilitation Council for acting as an arbitrator or a conciliator. However, by consciously approaching the civil court by way of a suit for recovery of money despite the jurisdictional bar contained under Section 22 of the Act, the original plaintiff must now face the consequences of approaching a non-jurisdictional forum.

30. Lastly, it was submitted by the learned senior counsel that the defendant company remained under BIFR for a period of 21 years and was revived in 2013 after intervention of the Cabinet Committee on Economic Affairs. The economic distress caused by the enforcement of the liability imposed upon the

original defendants by the High Court may potentially overwhelm the efforts at revival of the defendant company.

C. SUBMISSIONS ON BEHALF OF THE RESPONDENT/ORIGINAL PLAINTIFF

31. Mr. Sundeep Pothina, the learned counsel appearing on behalf of the original plaintiff submitted at the outset that Section 22 of the 1985 Act is not applicable to the instant case as neither the debt came to be acknowledged, nor the name of the creditor company figured before the BIFR. Since, in the case on hand, the original defendants did not include the liability of the original plaintiff in their list of liabilities in accordance with Section 21(a)(i) of the 1985 Act nor in their book of accounts under Section 21(a)(ii) of the 1985 Act nor did it include the original plaintiff company in the list of creditors under Section 21(b) of the 1985 Act at the time of reference or thereafter, the jurisdictional bar available under Section 22 of the 1985 Act cannot be said to be applicable to the suit instituted by the original plaintiff.

32. It was further submitted that the reliance placed by the original defendants on ***Bhoruka Textiles*** (supra) in support of their contention regarding Section 22 of the 1985 Act is misplaced for the following reasons:

I. This Court in ***Bhoruka Textiles*** (supra) decided the issue as to whether the bar under Section 22 of the 1985 Act would apply to a suit for

recovery instituted for defaults occurring post the reference of the sick industrial company to the BIFR when the reference was pending. However, the issue in the present case is different and pertains to whether a suit for determination of 'illegal deductions' and 'breach of contract' and liability would be barred by virtue of Section 22 of the Act.

II. In ***Bhoruka Textiles*** (supra), not only the debt but the creditor was also acknowledged before the BIFR and there was no dispute on the issue or size of default. However, in the present case, both the existence and quantum of liability are under dispute. The original defendants have not referred to the original plaintiff as a 'creditor' before any forum.

33. It was further argued that the reliance placed by the original defendants on ***Jay Engineering*** (supra) is also of no avail as in the facts of that case, there was no dispute over the quantum of dues and the sick company therein had reckoned the dues and the liabilities were covered in the revised rehabilitation scheme. Further, the decision in the said case only supports the contention of the original plaintiff that the adjudicatory process of making an award is not barred under Section 22 of the 1985 Act and it is only the execution of such an award against a sick company which is protected under Section 22 of the 1985 Act. Thus, as the civil court in this case was the adjudicating authority having inherent jurisdiction to decide the suit under Section 9 of the Civil

Procedure Code, 1908, the adjudicatory part of determining the liability couldn't be said to have been barred by Section 22 of the Act. It is only the execution of such a decree arrived at as a result of the adjudicatory process which could be said to be barred under Section 22 of the 1985 Act during the period when the sick company is under the protection of the BIFR.

34. The learned counsel further submitted that the reliance placed by the original defendants on the decision of this Court in ***Tata Motors*** (supra) is also misplaced as the said decision pertains to Section 26 of the 1985 Act while the case on hand pertains to the applicability of Section 22 of the 1985 Act. He contended that even the said decision supports the case of the original plaintiff as it explains the distinction between the adjudicatory authority of a civil court and the BIFR and holds that the jurisdiction of a civil court is barred in respect of any matter for which the BIFR or the Appellate Authority for Industrial and Financial Reconstruction ("**AAIFR**") is empowered.

35. The learned counsel, while placing reliance on the decision of the Delhi High Court in ***Sunil Mittal*** (supra), argued that the facts of the present case are squarely covered by the said decision. It was submitted that in the said case, a distinction was drawn between the 'process of assessment' and 'quantified recoveries' and it was held that while the realisation of the latter is stayed by virtue of Section 22 of the 1985 Act, the former, which is the process of

finalisation of liability, does not get stayed by operation of Section 22 of the 1985 Act.

36. The learned counsel submitted that the contention of the original defendants that the decision in ***Sunil Mittal*** (supra) is rendered *per-incuriam* as the same failed to consider the decision in ***Bhoruka Textiles*** (supra) is incorrect as the court therein had based its decision on the judgment of a division bench of the Delhi High Court in ***Saketh India Limited v. W. Diamond India Ltd.*** reported in 2010 SCC OnLine Del 1786. The decision in ***Saketh India*** (supra) has exhaustively considered the various decisions of this Court on the issue of applicability of jurisdictional bar under Section 22 of the 1985 Act and thus the decision in ***Sunil Mittal*** (supra) cannot be characterised as *per-incuriam*.

37. The learned counsel submitted that the High Court in its impugned judgment has determined the issue of rate of interest under Section 4 of the 1993 Act. The High Court, after looking into the relevant material, observed that the floor rate charged by the State Bank of India ("**SBI**") for the financial year 1993-94 was 19% and thus awarded interest at 24% which is 5 per-cent points above the floor rate.

38. The learned counsel, in the last, submitted that as opposed to the representations made by the defendant company about its current financial

status, the net worth of the defendant company as on 31.03.2022 is in the positive and is at the least not less than 2,000/- crores.

D. ANALYSIS

39. Before adverting to the rival submissions canvassed on either side, we would like to briefly discuss the proceedings in respect of the defendant company before the Board for Industrial and Financial Reconstruction ("**BIFR**") in terms of Section 15 of the 1985 Act.

i. Proceedings in respect of FCIL before the BIFR

40. At the end of financial year 1991-92, the defendant company suffered huge erosion in its net worth and became a sick industrial company. Accordingly, a reference was made to the BIFR in terms of Section 15 of the 1985 Act. Thereafter, the BIFR after hearing the representatives and stakeholders declared the defendant company to be a sick company under Section 3(1)(o) of the 1985 Act vide its order dated 06.11.1992. The BIFR also granted FCIL and the Government of India time till 31.03.1993 to submit their final plan for rehabilitating the company.

41. During the entire period of adjudication of the suit by the trial court and for a part of the period during the pendency of the appeals before the High Court, the defendant company continued to remain a Sick Industrial company with a

Special Director appointed by the BIFR and the SBI appointed as the Operating Agency.

42. On 09.05.2013, the Cabinet Committee on Economic Affairs ("**CCEA**") met and took decisions on the revival of the defendant company. The Government of India waived off its loan and interest amounting to Rs. 10,643/- crore and the debt owed to the other PSUs were settled at 30% of their respective dues as on 31.03.2003.

43. Meanwhile, the BIFR in the course of one important hearing looked into the progress towards the revival of the defendant company in detail. After taking into account the developments over the course of 20 years, the BIFR issued the following relevant directions: -

> *"i. The company, M/s Fertilizer Corpn. Of India (Case No. 515/1992) ceases to be a Sick Industrial Company, within the meaning of Section 3(1)(o) of the SICA as its net-worth has turned positive. It is therefore, de-registered from the purview of SICA/BIFR.*
>
> *xxx xxx xxx*
>
> *iv. The Board discharges the State Bank of India from the responsibility of Operating Agency (OA) to the Board.*
>
> *v. All Secured Creditors, Statutory Authorities are at liberty to recover their dues, if any, according to law."*

44. Thus, in view of the directions of the BIFR dated 27.06.2013 referred to above, the defendant company ceased to be a Sick Industrial company during the pendency of the appeals before the High Court.

45. The submissions of the original defendants were focussed on and limited to the following two aspects – jurisdictional bar on the civil court in deciding the suit instituted by the original plaintiff by virtue of Section 22(1) of the 1985 Act; and the legality & validity of the interest rate of 24% per annum awarded by the High Court in the original plaintiff's favour.

ii. Issues for Determination

46. Having heard the parties extensively on the aforesaid aspects and having perused the materials on record, the following two questions fall for our consideration:

I. Whether the suspension of legal proceedings as envisaged under Section 22(1) of the 1985 Act would extend to a civil suit for recovery of money even if the debt sought to be proved in the plaint has not been admitted by the sick industrial company? If so, whether the decree in favour of the original plaintiff could be said to be *coram non-judice*?

II. Whether the High Court was correct in granting 24% compound interest on the principal decretal amount in favour of the original plaintiff?

iii. Overview of Industrial Sickness and the Legislative Scheme of the 1985 Act.

47. Before we proceed to answer the aforesaid issues, we would like to discuss briefly the concept of industrial sickness, the legislative scheme of the 1985 Act and the object behind its enactment. This will help us develop a better contextual understanding of the questions before us.

48. Sickness in industries is a natural fall-out of industrialisation. Industrial sickness can be understood to refer to a situation wherein an industrial unit fails to generate surplus and is incurring losses over a period of time resulting in the erosion of its net-worth. Section 3(o) of the 1985 Act defines a 'sick industrial company' to be one which at the end of a financial year accumulates losses equal to or exceeding its net worth.

49. While there could be numerous causes of sickness, the mismanagement of the industrial unit, faulty planning at the inception of an industry, technical drawbacks, recession in the market, labour disputes, changes in the fiscal policies of the government, unavailability of credit facilities, and non-availability of raw-materials are some of the prominent factors causing industrial sickness.

50. As the Indian economy transitioned from being an agriculture-intensive one towards a more industry-centric one, a growing number of industries suffered huge financial losses resulting in their closure, which in turn led to the loss of employment, government revenue and locking up of the investible funds of banks and financial institutions which were invested in setting up of those industries. In order to curb industrial sickness and its detrimental impacts on the Indian economy, many policies and legislations were enacted over the years by the executive and the legislative wing respectively. The aim of such enactments was two-fold – first, to reduce the incidence of sickness in industries by promoting a conducive industrial climate and secondly, to identify sick companies and take effective remedial steps for revival of such companies and upon failure, to wind them up.

51. One of the first such enactments was the Industrial Development and Regulation Act, 1951 ("**IDRA Act, 1951**") which contained provisions empowering the Central Government to cause investigation into the affairs of an Industrial Company which is to be wound up for the purpose of reviving such Company in the interest of general public by ensuring production, supply or distribution of articles.

52. Nationalisation of sick industries through legislations was another approach adopted by the government to revive or continue the operation of sick

industries in national interest. An enactment brought in with the object of dealing with sickness in the textile industry was the Sick Textile Undertaking (Nationalization) Act, 1974 which, *inter alia*, provided for the reorganisation and rehabilitation of sick textile industries. Similarly, The Aluminium Corporation of India Ltd. (Acquisition and Transfer of Aluminium Undertaking) Act, 1984 and The Futwah Islampur Lightway Line (Nationalisation) Act, 1985 were enacted with similar objects.

53. Industrial Reconstruction Bank of India Act, 1984 was enacted to provide financial assistance to sick industrial companies for their revival. However, the said enactment was repealed thereafter.

54. In 1981, the Reserve Bank of India ("**RBI**") appointed a committee under the chairmanship of late Shri T. Tiwari to look into the causes of industrial sickness, to assess the depth of the problem and to suggest comprehensive and focussed remedial measures to counter the problem of industrial sickness in India. The committee submitted its report suggesting, *inter alia*, the setting up of a quasi-judicial body through a special legislation to handle the cases of industrial sickness. This suggestion of the committee led to the enactment of the 1985 Act.

55. The Statement of Objects and Reasons accompanying the Sick Industrial Companies Bill, 1985 reads as follows:

> *"The ill effects of sickness in industrial companies such as loss of production, loss of employment, loss of revenue to the Central and State Governments and locking up of investible funds of banks and financial institutions are of serious concern to the Government and the society at large. The concern of the Government is accentuated by the alarming increase in the incidence of sickness in industrial companies. It has been recognised that in order to fully utilise the productive industrial assets, afford maximum protection of employment and optimise the use of the funds of the banks and financial institutions, it would be imperative to revive and rehabilitate the potentially viable sick industrial companies as quickly as possible. It would also be equally imperative to salvage the productive assets and realise the amounts due to the banks and financial institutions, to the extent possible, from the non-viable sick industrial companies through liquidation of those companies.*
>
> *2. It has been the experience that the existing institutional arrangements and procedures for revival and rehabilitation of potentially viable sick industrial companies are both inadequate and time-consuming. A multiplicity of laws and agencies makes the adoption of coordinated approach for dealing with sick industrial companies difficult. A need has, therefore, been felt to enact in public interest a legislation to provide for timely determination by a body of experts of the preventive, ameliorative, remedial and other measures that would need to be adopted with respect to such companies and for enforcement of the measures considered appropriate with utmost practicable despatch.*
>
> *3. The salient features of the Bill are-*
> *(i) Application of the legislation to the industries specified in the First Schedule to the Industries (Development and Regulation) Act. 1951, with the initial exception of the scheduled industry relating to ships and other vessels drawn by power, which may however be brought within the ambit of the legislation in due course:*

(ii) identification of sickness in an industrial company, registered for not less than seven years, on the basis of the symptomatic indices of cash losses for two consecutive financial years and accumulated losses equalling or exceeding the net worth of the company as at the end of the second financial year,

(iii) the onus of reporting sickness and impending sickness at the stage of erosion of fifty per cent, or more of the net worth of an industrial company is being laid on the Board of Directors of such company; where the Central Government or the Reserve Bank is satisfied that an industrial company has become sick, it may make a reference to the Board, likewise if any State Government, scheduled bank or public financial institution having an interest in an industrial company is satisfied that the industrial company has become sick, it may also make a reference to the Board;

(iv) establishment of Board consisting of experts in various relevant fields with powers to enquire into and determine the incidence of sickness in industrial companies and devise suitable remedial measures through appropriate schemes or other proposals and for proper implementation thereof;

v) constitution of an Appellate Authority consisting of persons who are or have been Supreme Court Judges, senior High Court Judges and Secretaries to the Government of India, etc. for hearing appeals against the order of the Board.

4. The notes on clauses appended to the Bill explain the various provisions of the Bill.

NEW DELHI

THE 22nd August, 1985. VISHWANATH PRATAP SINGH"

56. The preamble to the 1985 Act reads as follows:

"An Act to make, in the public interest, special provisions with a view to securing the timely detection of sick and potentially sick companies owning industrial undertakings, the speedy determination by a Board of experts of the preventive, ameliorative, remedial and other measures which need to be taken with respect to such companies and the expeditious enforcement of the measures so determined and for matters connected therewith or incidental thereto."

57. Having discussed the object behind the enactment of the 1985 Act and the developments leading up to its inception, we shall now briefly discuss the scheme and scope of the 1985 Act.

58. The 1985 Act is divided into four chapters. The first chapter contains preliminary provisions including the definitions and a declaration that the 1985 Act is enacted in furtherance of the principles enshrined in clauses (b) and (c) of the Article 39 of the Constitution. The second chapter, *inter alia*, provides for the establishment of the BIFR and the AAIFR and prescribes the term of office and conditions of service of their chairperson and members and also the procedure to be followed by them.

59. The third chapter, which is often described as the soul and essence of the 1985 Act, provides for the methodology that is to be adopted for the purposes of detecting, reviving or even winding up a sick industrial company. Section 15 enables the Board of Directors of a company which has become sick to make reference to BIFR for determination of measures which shall be adopted with respect to the company. The Central Government or the Reserve Bank or the State Government concerned may also make the reference to the BIFR for the same purpose if it has sufficient reasons to believe that a company has become sick. Once a reference is made, it is open to the BIFR to conduct an inquiry

for determining whether the company has become sick. If the BIFR is satisfied on completion of the inquiry that the company has become sick, it can adopt any of the measures envisaged in Section 17 of the 1985 Act. When an order is made under Section 17 a scheme with respect to the company shall be prepared by "the operating agency" specified in such order under Section 18. The operating agency may also be directed by the BIFR under Section 21 to prepare, *inter alia*, an inventory of the books of account of the sick company and its assets and liabilities, a list of shareholders and secured and unsecured creditors, a valuation report in respect of the shares and the assets etc. Section 20 provides for the winding up of a sick company where the BIFR is of the opinion that such a company is not likely to become viable in the future. Section 22, which is at the heart of the dispute before us, *inter alia*, provides for the suspension of legal proceedings of the nature as specified in the said section.

60. The fourth chapter, among other things, provides for the detection of potentially sick companies in the initial stages by mandating the Board of Directors of such companies to bring such potential sickness to the knowledge of the BIFR and the shareholders of the companies. Punishment of up to two years imprisonment along with fine is also prescribed in case of default in complying with the requirement. The issue of mismanagement leading to sickness in companies is sought to be dealt with under Section 24 of the 1985

Act which provides strict measures in case of proved misfeasance, breach of trust, etc. Section 26 bars the jurisdiction of civil courts in respect of matters which the BIFR or the AAIFR are empowered to determine. Section 32 is the non-obstante provision which imparts overriding effect to the 1985 Act over other laws in force except for the two legislations mentioned in the said section itself. The 1985 Act was repealed by the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 which was notified on 01.12.2016.

61. Having discussed in detail the scheme of the 1985 Act and the object and purpose behind its enactment, we shall now proceed to answer the issues framed by us.

iv. <u>ISSUE NO. 1</u>: Whether the suspension of legal proceedings as envisaged under Section 22(1) of the 1985 Act would extend to a civil suit for recovery of money even if the debt sought to be proved in the plaint has not been admitted by the sick industrial company? If so, whether the decree in favour of the original plaintiff could be said to be *coram non-judice*?

62. To answer the issue before us, it is important to first delineate the scope of the relevant provision, which is reproduced hereinbelow:

> *"**22. Suspension of legal proceedings, contracts, 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…."*

63. Section 22(1) of the 1985 Act provides that subject to the fulfilment of the conditions as described in the sub-section, proceedings of the nature mentioned therein shall remain suspended in respect of a sick industrial company.

64. For the bar under the said sub-section to get attracted, it is necessary that in respect of an industrial company:

I. An inquiry under Section 16 of the 1985 Act is pending; OR

II. A scheme under Section 17 of the 1985 Act is under preparation or consideration; OR

III. A sanctioned scheme is under implementation; OR

IV. An appeal under Section 25 of the 1985 Act is pending.

65. If one of the four conditions as mentioned aforesaid is fulfilled, then notwithstanding anything contained in the Companies Act, 1956 or any other

law or the memorandum and articles of association of the industrial company or any other instrument having effect under the Companies Act, 1956 or other law, proceedings in the nature of the following cannot be initiated, and if already initiated, cannot be proceeded with, except with the consent of the BIFR or the AAIFR, as the case may be:

I. Winding up of the industrial company;

II. Execution, distress or the like against any of the properties of the industrial company;

III. Appointment of receiver in respect of any of the properties of the industrial company;

IV. Suit for recovery of money from the industrial company;

V. Suit for enforcement of a security against the industrial company;

VI. Suit for enforcement of a guarantee in respect of loans or advance granted to the industrial company.

66. It is pertinent to mention that prior to the coming into force of the Sick Industrial Companies (Amendment) Act, 1993 w.e.f. 01.02.1994, the proceedings in the nature of a suit as mentioned in (iv), (v) and (vi) in paragraph 65 above were exempt from the ambit of the suspension as envisaged under Section 22(1) of the 1985 Act.

67. Thus, as can be seen from the plain reading of Section 22(1) of the 1985 Act, for an industrial company to avail the benefit of suspension of legal proceedings, two conditions have to be fulfilled – *First*, one of the four requirements as mentioned in paragraph 64 should be satisfied, that is, the industrial company must be at the prescribed stage of proceedings before the BIFR or the AAIFR. *Secondly*, the nature of proceedings sought to be suspended should be one which falls within the ambit of proceedings mentioned in paragraph 65 above.

68. We shall first examine whether the first of the two conditions as mentioned above is satisfied, as the protective shield of Section 22(1) of the 1985 Act is only available so long as the proceedings before the BIFR or the AAIFR are pending. It was observed by a three-judge bench of this Court in ***Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association CSI CINOD Secretariat, Madras*** reported in (1992) 3 SCC 1 thus:

> *"....We are, therefore, of the opinion that the passing of the interim order dated February 21, 1991 by the Delhi High Court staying the operation of the order of the Appellate Authority dated January 7, 1991 does not have the effect of reviving the appeal which had been dismissed by the Appellate Authority by its order dated January 7, 1991 and it cannot be said that after February 21, 1991, the said appeal stood revived and was pending before the Appellate Authority. In that view of the matter, it cannot be said that any proceedings under the Act were pending before the Board or the Appellate Authority on the date of the passing of the order dated August 14, 1991 by the learned Single Judge of the Karnataka High Court for winding up of the company or on November 6, 1991 when the Division Bench passed*

> *the order dismissing O.S.A. No. 16 of 1991 filed by the appellant-company against the order of the learned Single Judge dated August 14, 1991. Section 22(1) of the Act could not, therefore, be invoked and there was no impediment in the High Court dealing with the winding up petition filed by the respondents…"*
>
> (Emphasis supplied)

69. As discussed hereinbefore in paragraph 40 of the judgment, the Board of Directors of the defendant company, passed a resolution dated 20.04.1992 to the effect that the company had become a sick company for the purposes of the 1985 Act and thus a reference to the BIFR was required to be made. In accordance with the resolution, a reference was accordingly made under Section 15(1) of the 1985 Act. Subsequently, a bench of the BIFR took up the reference of the defendant company for consideration and vide order dated 06.11.1992, *inter alia*, decided that the company fulfilled all the criteria prescribed under Section 3(1)(o) of the 1985 Act for being declared a sick company. The bench also granted the defendant company and the Government of India time till 31.03.1993 to submit a proposal for rehabilitation of the company for the consideration of the bench.

70. The defendant company continued to remain a sick company under the 1985 Act and proceedings before the BIFR continued and it was only on 27.06.2013, after a detailed consideration of the progress made by the company towards revival, that the BIFR declared the defendant company to

have ceased to be a sick industrial company. Consequently, the defendant company was deregistered from BIFR on the said date.

71. It is the case of the original defendants that the original civil suit for the recovery of money having been filed against the defendant company during the pendency of proceedings before the BIFR, the trial court committed an error in deciding the suit despite the statutory bar as envisaged under Section 22(1) of the 1985 Act.

72. From a perusal of the facts as discussed above, it is clear that the civil suit was instituted by the original plaintiff on 21.11.1996, that is, indeed, during the pendency of the proceedings in respect of the defendant company before the BIFR. Thus, the first condition precedent for the applicability of the restriction under Section 22(1) of the 1985 Act being satisfied, the only aspect that is now required to be determined is whether the suit instituted by the original plaintiff was of a nature as contemplated under Section 22(1).

73. From a bare reading of the provision, it appears that any 'suit for recovery of money' against a sick industrial company shall not lie or be proceeded with during the pendency of the proceedings in respect of such a company before the BIFR or the AAIFR, except with the permission of the BIFR or the AAIFR, as the case may be. However, it has been contended by the original plaintiff

that it is not a suit for recovery of money simpliciter is not barred under the provision, and only such suits for recovery of money which are instituted towards recovery of liabilities admitted by the sick company before the BIFR that fall within the protective ambit of Section 22(1).

74. In other words, the contention of the original plaintiff is that if a suit for recovery of money is brought against a sick company during the pendency of proceedings before the BIFR or the AAIFR with respect to the recovery of an acknowledged debt, then such a suit will be hit by Section 22(1) and cannot lie or be proceeded with except with the permission of the BIFR or the AAIFR, as the case may be.

75. This Court including many of the High Courts have had the occasion of interpreting Section 22(1) of the 1985 Act. One of the earliest decisions concerning Section 22(1) was rendered by a two-Judge Bench of this Court in ***Gram Panchayat and Another v. Shree Vallabh Glass Works Limited and Others*** reported in (1990) 2 SCC 440. In the said case, while deciding an appeal against the decision of the Bombay High Court quashing recovery proceedings towards property taxes and other amounts due under the provisions of the Bombay Village Panchayat Act, 1959 against the respondent company therein, which had been declared to be a sick company under the Act, the Bench held:

"5. The question is whether the Panchayat could not recover the amount due to it from out of the properties of the sick industrial company without the consent of the Board?

xxx xxx xxx

7. Section 22(1) provides that in case the enquiry under Section 16 is pending or any scheme referred to under Section 17 is under preparation or consideration by the Board or any appeal under Section 25 is pending then certain proceedings against the sick industrial company are to be suspended or presumed to be suspended. The nature of the proceedings which are automatically suspended are: (1) Winding up of the industrial company; (2) Proceedings for execution, distress or the like against the properties of sick industrial company; and (3) Proceedings for the appointment of receiver. The proceedings in respect of these matters could, however, be continued against the sick industrial company with the consent or approval of the Board or of the appellate authority as the case may be.

xxx xxx xxx

10. In the light of the steps taken by the Board under Sections 16 and 17 of the Act, no proceedings for execution, distress or the like proceedings against any of the properties of the company shall lie or be proceeded further except with the consent of the Board. Indeed, there would be automatic suspension of such proceedings against the company's properties. As soon as the inquiry under Section 16 is ordered by the Board, the various proceedings set out under sub-section (1) of Section 22 would be deemed to have been suspended.

11. It may be against the principles of equity if the creditors are not allowed to recover their dues from the company, but such creditors may approach the Board for permission to proceed against the company for the recovery of their dues/outstandings/overdues or arrears by whatever name it is called. The Board at its discretion may accord its approval for proceeding against the company. If the approval is not granted, the remedy is not extinguished. It is only postponed. Sub-section (5) of Section 22 provides for exclusion of the period during which the remedy is suspended while computing the period of limitation for recovering the dues.

> *12. In our opinion, the High Court was justified in quashing the recovery proceedings taken against the properties of the company and we accordingly, reject this petition, with no order as to costs."*
> (Emphasis supplied)

76. One another decision interpreting Section 22(1) of the 1985 Act was delivered by a two-judge bench of this Court in ***Maharashtra Tubes Ltd. v. State Industrial & Investment Corpn. of Maharashtra Ltd.*** reported in (1993) 2 SCC 144. In this case, this Court, while deciding the interplay between the power of recovery under the State Financial Corporations Act, 1951 and the suspension of certain legal proceedings under Section 22 of the 1985 Act, held thus:

> *"10. It was next contended that the right conferred on the Financial Corporation by Section 29 of the 1951 Act is not a 'legal proceeding' but merely an action permitted by statute and, therefore, Section 22(1) will have no application as it only bars legal proceedings for the winding up of any industrial company or for execution, distress or the like against any of its properties or for the appointment of a Receiver in respect thereof. Now Section 22(1) uses the expression 'proceedings' and not 'legal proceedings' which expression is albeit used in the marginal note to the said provision. Mr Rao contended that Section 22 must be read in the light of the marginal note and when so read it becomes obvious that only legal proceedings of the type mentioned in sub-section (1) thereof are barred and not the exercise of a right such as the one conferred by Section 29 of the 1951 Act. In support of his contention that the marginal note can be used as an aid to interpretation he invited our attention to a seven-Judge Bench decision of this Court in Bengal Immunity Company Ltd. v. State of Bihar [(1955) 2 SCR 603, 636 : AIR 1955 SC 661 : (1955) 6 STC 446] . In that case the marginal note to Article 286 of the Constitution was referred to and it was said that it furnished some clue as to the meaning and purpose of the Article. But at the same time the Court pointed out that unlike the marginal notes in the*

statutes of the British Parliament, the various Articles of the Constitution were passed by the Constituent Assembly with the marginal notes and, therefore, the Court considered it permissible to use the marginal note to understand the meaning and purport of the Article. But so far as statutes are concerned this Court in the case of Board of Muslim Wakfs, Rajasthan v. Radha Kishan [(1979) 2 SCC 468] held in no uncertain terms that the weight of the authority was in favour of the view that the marginal note appended to a section cannot be used for construing the section (see paragraph 24 at p. 479). Section 22(1) shorn of the irrelevant part provides that where an appeal under Section 25 relating to an industrial company is pending, then, notwithstanding anything contained in any 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 appointment of a Receiver in respect thereof shall lie or be proceeded with further, except with the consent of the BIFR or, as the case may be, the appellate authority. The purpose and object of this provision is clearly to await the outcome of the reference made to the BIFR for the revival and rehabilitation of the sick industrial company. The words 'or the like' which follow the words 'execution' and 'distress' are clearly intended to convey that the properties of the sick industrial company shall not be made the subject-matter of coercive action of similar quality and characteristic till the BIFR finally disposes of the reference made under Section 15 of the said enactment. The legislature has advisedly used an omnibus expression 'the like' as it could not have conceived of all possible coercive measures that may be taken against a sick undertaking. The action contemplated by Section 29 of the 1951 Act is undoubtedly a coercive measure directed at the take over of the management and property of the industrial concern and confers a further right on the Financial Corporation to transfer by way of lease or sale the properties of the said concern and any such transfer effected by the Financial Corporation would vest in the transferee all rights in or to the transferred property as if the transfer was made by the owner of the property. So also under the said provision the Financial Corporation will have the same rights and powers with respect to goods manufactured or produced wholly or partly from goods forming part of the security held by it as it had with respect to the original goods. It is, therefore, obvious on a plain reading of Section 29 of the 1951 Act that it permits coercive action against the defaulting industrial concern of the type which would be taken

> *in execution or distress proceedings; the only difference being that in the latter case the concerned party would have to use the forum prescribed by law for the purpose of securing attachment and sale of property of the defaulting industrial concern whereas in the case of a Financial Corporation that right is conferred on the creditor corporation itself which is permitted to take over the management and possession of the properties and deal with them as if it were the owner of the properties. If the Corporation is permitted to resort to the provision of Section 29 of the 1951 Act while proceedings under Sections 15 to 19 of the 1985 Act are pending it will render the entire process nugatory. In such a situation the law merely expects the corporation and for that matter any other creditor to obtain the consent of the BIFR or, as the case may be, the appellate authority to proceed against the industrial concern. The law has not left them without a remedy. We are, therefore, of the opinion that the word 'proceedings' in Section 22(1) cannot be given a narrow or restricted meaning to limit the same to legal proceedings. Such a narrow meaning would run counter to the scheme of the law and frustrate the very object and purpose of Section 22(1) of the 1985 Act."*
>
> (Emphasis supplied)

77. The decisions in ***Gram Panchayat*** (supra) and ***Maharashtra Tubes*** (supra) considered the unamended Section 22(1) of the 1985 Act. However, the said provision came to be amended by the Sick Industrial Companies (Amendment) Act, 1994 which came into effect from 01.02.1994. The suit in question before us having been filed in 1996, it is the amended Section 22(1) which would apply. Thus, we shall now look into some of the decisions wherein the amended Section 22(1) of the 1985 Act was interpreted.

78. The question whether proceedings for the recovery of dues arising after the sanctioning of the scheme would also be covered under the protective umbrella of Section 22(1) of the 1985 Act fell for the consideration of a two-

judge bench of this Court in ***Deputy Commercial Tax Officer and Others v. Corromandal Pharmaceuticals and Others*** reported in (1997) 10 SCC 649. This Court, while answering the issue in the negative, distinguished the facts before it from the decisions in ***Gram Panchayat*** (supra) and ***Maharashtra Tubes*** (supra) and held thus:

> *"13. On a fair reading of the provisions contained in Chapter III of Act 1 of 1986 and in particular Sections 15 to 22, we are of the opinion that the plea put forward by the Revenue is reasonable and fair in all the circumstances of the case. Under the statute, the BIFR is to consider in what way various preventive or remedial measures should be afforded to a sick industrial company. In that behalf, BIFR is enabled to frame an appropriate scheme. To enable the BIFR to do so, certain preliminaries are required to be followed. It starts with the reference to be made by the Board of Directors of the sick company. The BIFR is directed to make appropriate inquiry as provided in Sections 16 and 17 of the Act. At the conclusion of the inquiry, after notice and opportunity afforded to various persons including the creditors, the BIFR is to prepare a scheme which shall come into force on such date as it may specify in that behalf. It is in implementation of the scheme wherein various preventive, remedial or other measures are designed for the sick industrial company, steps by way of giving financial assistance etc. by Government, banks or other institutions, are contemplated. In other words, the scheme is implemented or given effect to, by affording financial assistance by way of loans, advances or guarantees or reliefs or concessions or sacrifices by Government, banks, public financial institutions and other authorities. In order to see that the scheme is successfully implemented and no impediment is caused for the successful carrying out of the scheme, the Board is enabled to have a say when the steps for recovery of the amounts or other coercive proceedings are taken against sick industrial company which, during the relevant time, acts under the guidance/control or supervision of the Board (BIFR). Any step for execution, distress or the like against the properties of the industrial company or other similar steps should not be pursued which will cause delay or impediment in the implementation of the sanctioned scheme. In*

order to safeguard such state of affairs, an embargo or bar is placed under Section 22 of the Act against any step for execution, distress or the like or other similar proceedings against the company without the consent of the Board or, as the case may be, the appellate authority. 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. If that be so, only the liability or amounts covered by the scheme will be taken in, by Section 22 of the Act. So, we are of the view that though the language of Section 22 of the Act is of wide import regarding suspension of legal proceedings from the moment an inquiry is started, till after the implementation of the scheme or the disposal of an appeal under Section 25 of the Act, it will be reasonable to hold that the bar or embargo envisaged in Section 22(1) of the Act can apply only to such of those dues reckoned or included in the sanctioned scheme. Such amounts like sales tax, etc., which the sick industrial company is enabled to collect after the date of the sanctioned scheme legitimately belonging to the Revenue, cannot be and could not have been intended to be covered within Section 22 of the Act. Any other construction will be unreasonable and unfair and will lead to a state of affairs enabling the sick industrial unit to collect amounts due to the Revenue and withhold it indefinitely and unreasonably. Such a construction which is unfair, unreasonable and against the spirit of the statute in a business sense, should be avoided.

14. The situation which has arisen in this case seems to be rather exceptional. The issue that has arisen in this appeal did not arise for consideration in the two cases decided by this Court in Gram Panchayat v. Shree Vallabh Glass Works Ltd. [(1990) 2 SCC 440] and Maharashtra Tubes Ltd. v. State Industrial & Investment Corpn. of Maharashtra Ltd. [(1993) 2 SCC 144] It does not appear from the above two decisions of this Court nor from the decisions of the various High Courts brought to our notice, that in any one of them, the liability of the sick company dealt with therein itself arose, for the first time after the date of sanctioned scheme. At any rate, in none of those cases, a situation arose whereby the sick industrial unit was enabled to collect tax due to the Revenue from the customers after the "sanctioned scheme" but the sick unit simply folded its hands and declined to pay it over to the Revenue, for which proceedings for recovery, had to be taken. The two decisions of this Court as also the decisions of High Courts

brought to our notice are, therefore, distinguishable. They will not apply to a situation as has arisen in this case. We are, therefore, of the opinion that Section 22(1) should be read down or understood as contended by the Revenue. The decision to the contrary by the High Court is unreasonable and unsustainable. We set aside the judgment of the High Court and allow this appeal. There shall be no order as to costs."

(Emphasis supplied)

79. The decision in ***Corromandal Pharmaceuticals*** (supra) was referred to and relied upon by a two-Judge Bench of this Court in ***Jay Engineering*** (supra) which set aside the order of the High Court as it failed to consider that the liabilities of the appellant-sick company therein with respect to the creditor were indisputably a part of the revised rehabilitation scheme. This Court held that if the liabilities of the creditor were duly considered and made a part of the rehabilitation scheme, the bar under Section 22(1) of the 1985 Act would apply, notwithstanding the fact that the liabilities arose after the company was declared to be a sick one. The relevant observations of this court are extracted hereinbelow:

"9. In the said scheme, the award made in favour of the respondents finds place in the category of "dormant creditors". The liabilities of the appellant vis-à-vis Respondent 2 were, therefore, indisputably a subject-matter of the said scheme. The High Court, in our opinion, committed an error in proceeding on the premise that the awarded amount had not been included and could not be included in the sanctioned rehabilitation scheme, the same being part of transactions which took place after 21-11-1997 ignoring the revised scheme made in the year 2003.

xxx *xxx* *xxx*

18. The award of the Council being an award, deemed to have been made under the provisions of the 1996 Act, indisputably is being executed before a civil court. Execution of an award, beyond any cavil of doubt, would attract the provisions of Section 22 of the 1985 Act. Whereas an adjudicatory process of making an award under the 1993 Act may not come within the purview of the 1985 Act but once an award made is sought to be executed, it shall come into play. Once the awarded amount has been included in the scheme approved by the Board, in our opinion, Section 22 of the 1985 Act would apply.

19. If the liabilities of the appellant are covered by the scheme framed under Section 22 of the 1985 Act, the High Court was clearly in error in coming to the conclusion that the provisions thereof are not attracted only because the debt had been incurred after the Company was declared to be a sick one.

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22. The High Court has placed strong reliance on CTO v. Corromandal Pharmaceuticals [(1997) 10 SCC 649] wherein this Court was considering an exceptional situation by reason of the fact that the liability of the sick company for the first time arose after the date of sanctioned scheme and the sick industrial unit was enabled to collect tax due to the Revenue from the exporters thereafter but declined to pay it over to the Revenue wherefor recovery proceedings had to be taken. This Court categorically opined that there cannot be any impediment in the enforcement of the scheme. Section 22 of the 1985 Act provides for a safeguard against impediment that is likely to be caused in the implementation of the scheme. Section 22 was also held to be of wide import as regards suspension of legal proceedings from the moment, the inquiry is started till after the implementation of the scheme or disposal of the scheme under Section 25 of the 1985 Act. It was categorically held:

> *"... it will be reasonable to hold that the bar or embargo envisaged in Section 22(1) of the Act can apply only to such of those dues reckoned or included in the sanctioned scheme...."*

The ratio laid down in the said decision, therefore, instead of assisting the respondent assists the appellant."

(Emphasis supplied)

80. The original defendants have strongly relied upon the decision of a two-judge bench of this Court in ***Bhoruka Textiles*** (supra). In the said case, the respondent therein, filed a suit for recovery against the appellant, a sick industrial company. The civil court decreed the suit in favour of the respondent therein with the finding that the transaction referred to took place subsequent to the reference of the appellant company to the BIFR and thus the suspension under Section 22(1) of the 1985 Act would not apply. The civil court also held that in the absence of any final order declaring the appellant company as a sick company by the BIFR, mere reference of the said company to the BIFR would not bring the protection under Section 22(1) of the 1985 Act into effect.

81. This Court negatived both the findings noted above and held that the civil court committed a manifest error in holding that the transaction in question was subsequent to the reference, when from the admitted facts it was apparent that it took place prior to the referral. It was observed by the Bench thus:

> *"7. Chapter III of the Act provides for reference, enquiries and schemes. Section 15 of the Act provides for reference to the Board in terms whereof the Board of Directors of the company is required to make a reference within 60 days from the date of the duly audited accounts of the company for the financial year as at the end of which the company has become a sick industrial company. Such reference is made for determination of the measures which may be adopted with respect to the company. The proviso appended thereto, however, entitles the Board of Directors to make a reference within 60 days from the date of formation of the opinion that the company had become a sick industrial company before the audited accounts of the financial*

year in question are finalised. Section 16 of the Act empowers the Board to make such enquiry as it may deem fit for determining whether any industrial company has become a sick industrial company, inter alia, upon receipt of a reference with respect to such company under Section 15.

xxx *xxx* *xxx*

10. Section 22 of the Act must be interpreted giving a plain meaning to its contents. An enquiry in terms of Section 16 of the Act by the Board is permissible upon receipt of a reference. Thus, reference having been made on 27-12-2001 and the suit having been filed on 17-12-2002, the receipt of a reference must be held to be the starting period for proceeding with the enquiry.

11. The effect of the provisions of the Act has been considered by a three-Judge Bench decision of this Court in Tata Motors Ltd. v. Pharmaceutical Products of India Ltd. [(2008) 7 SCC 619] wherein it, in no uncertain terms, held that SICA is a special statute and, thus, overrides other Acts like the Companies Act, 1956, stating: (SCC p. 635, paras 31-33)

> *"31. 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.*
>
> *32. 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.*
>
> *33. The jurisdiction of the civil court is, thus, barred in respect of any matter for which the Appellate Authority or the Board is empowered. The High Court may not be a civil court but its jurisdiction in a case of this nature is limited."*

12. If the civil court's jurisdiction was ousted in terms of the provisions of Section 22 of the Act, any judgment rendered by it would be coram non judice. It is a well-settled principle of law that a judgment and decree passed by a court or tribunal lacking inherent jurisdiction would be a nullity. In Kiran Singh v. Chaman Paswan [AIR 1954 SC 340] this Court held: (AIR p. 342, para 6)

> *"6. ... It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties."*
>
> *(See also Chief Engineer, Hydel Project v. Ravinder Nath [(2008) 2 SCC 350 : (2008) 1 SCC (L&S) 940] , SCC p. 361, para 26.)"*
>
> (Emphasis supplied)

82. A three-Judge Bench of this Court in ***Raheja Universal Limited v. NRC Limited and Others*** reported in (2012) 4 SCC 148 undertook a comprehensive study of the various decisions of this Court on the interpretation of Section 22 of the 1985 Act to clarify the divergences and settle the position of law on the said provision. The relevant observations are as follows:

> *"23. The provisions of SICA 1985 impose an obligation on the sick industrial companies and potentially sick industrial companies to make references to BIFR within the time specified under SICA 1985. Default thereof is punishable under the provisions of SICA 1985. Largely, the proceedings before BIFR are specific to rehabilitation or winding up of the sick company and SICA 1985 hardly contemplates adversarial proceedings. The bodies constituted under SICA 1985 would least exercise their jurisdiction to a lis between any party or upon the rival interests of the parties.*
>
> *xxx xxx xxx*
>
> *30. Dealing with the language of Section 22 of SICA 1985, this Court in Jay Engg. case [(2006) 8 SCC 677 : AIR 2006 SC 3252] took the view that the said Act shall prevail and though the adjudicatory process of making an award under the 1993 Act would not come under the purview of SICA 1985, once an award*

is made and sought to be executed, the provisions of Section 22 of SICA 1985 shall take over and such award would not be executable against the sick company, particularly when the party in whose favour the award was made was, as in the present case, included in the category of dormant creditors of the sick company.

xxx *xxx* *xxx*

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.

xxx *xxx* *xxx*

54. Firstly, the facts of these cases are different and distinct and, therefore, conclusions of the Court have to be read with reference to the facts of the respective cases only and not dehors thereof. Once the dictum of this Court is read with reference to the facts of the respective cases, it would be evident that there is no conflict of views within the ambit of ratio decidendi of the respective judgments to make both of them legal and binding precedents.

55. Despite these judgments and with an intention to clarify the law, we would state that the matters which are connected with the sanctioning and implementation of the scheme right from the date on which it is presented or the date from which the scheme is made effective, whichever is earlier, would be the matters which squarely fall within the ambit and scope of Section 22 of SICA 1985 subject to their satisfying the ingredients stated under that provision. This would include the proceedings before the civil court, Revenue Authorities and/or any other competent forum in

the form of execution or distress in relation to recovery of amount by sale or otherwise of the assets of the sick industrial company. It is difficult for us to hold that merely because a demand by a creditor had not been made a part of the scheme, pre- or post-sanctioning of the same for that reason alone, it would fall outside the ambit of protection of Section 22 of SICA 1985.

xxx xxx xxx

58. Section 22 is the reservoir of the statutory powers empowering 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 BIFR.

xxx xxx xxx

61. It can safely be perceived that the provisions of Section 22 of SICA 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, finalisation 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 SICA 1985 is over, that the status quo ante as it existed at the time of the consideration and finalisation 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.

xxx xxx xxx

69. Sections 22, 22-A, 26 and 32 have to be read and construed conjointly. A common thread of legislative intent to treat this law as a special law, in contradistinction to the other laws except the laws stated in the provisions and to ensure its effective

implementation with utmost expeditiousness, runs through all these provisions. It also mandates that no injunction shall be granted by any court or authority in respect of an action taken or to be taken in pursuance of the powers conferred to or by under this Act.

xxx *xxx* *xxx*

78. The expression "no proceedings" that finds place in Section 22(1) is of wide spectrum but is certainly not free of exceptions. The framers of law have given a definite meaning to the expression "proceedings" appearing under Section 22(1) of SICA 1985. These proceedings are for 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.

79. The expression "the like" has to be read ejusdem generis to the term "proceedings". The words "execution, distress or the like" have a definite connotation. These proceedings can have the effect of nullifying or obstructing the sanctioning or implementation of the revival scheme, as contemplated under the provisions of SICA 1985. This is what is required to be avoided for effective implementation of the scheme. The other facet of the same section is that, no suit for recovery of money, or for enforcement of any security against the industrial company, or any guarantee in respect of any loan or advance granted to the industrial company shall lie, or be proceeded with further without the consent of BIFR. In other words, a suit for recovery and/or for the stated kind of reliefs cannot lie or be proceeded with further without the leave of BIFR. Again, the intention is to protect the properties/assets of the sick industrial company, which is the subject-matter of the scheme.

80. It is difficult to state with precision the principle that would uniformly apply to all the proceedings/suits falling under Section 22(1) of SICA 1985. Firstly, it will depend upon the facts and circumstances of a given case, it must satisfy the ingredients of Section 22(1) and fall under any of the various classes of proceedings stated thereunder. Secondly, these proceedings should have the impact of interfering with the formulation, consideration, finalisation or implementation of the scheme."

(Emphasis supplied)

83. While the decisions in each of the aforesaid cases should be seen in the context of the specific factual situation therein, there is a common thread that binds them all together. All of the aforesaid decisions proceed on the footing that any proceeding which can possibly interfere with the formulation, consideration, finalisation or implementation of a rehabilitation scheme as envisaged under Chapter III of the Act, has to be suspended under Section 22(1) of the 1985 Act.

84. It is the above purpose which the scheme of Section 22(1) seeks to achieve by suspending the proceedings of the nature either mentioned specifically in the provision, or the proceedings of a like nature. Although this Court has interpreted the provision liberally by widening the ambit of its protective umbrella, yet it has also been mindful to extend such protection only to such cases where the refusal to allow such extension would result in miscarriage of the very purpose of the Act, which is the expeditious revival of sick companies.

85. The ameliorative object of the 1985 Act, as envisaged by the legislature, is sought to be achieved, *inter alia*, by the smooth formulation and implementation of a rehabilitation scheme. Thus, if any impediment exists to

the successful execution of the scheme, such an impediment is curtailed at the outset by the embargo provided under Section 22(1) of the 1985 Act.

86. It can be said without a cavil of doubt that the proceedings in the nature of execution or distress by way of appointment of receiver or attachment of immovable property, bank accounts, etc. would affect the assets of a sick company and may inevitably come in the way of the preparation or execution of the rehabilitation scheme. However, to hold that the protective shield of Section 22(1) of the 1985 Act would apply even to those proceedings which do not have any impact on the prospects of successful formulation and implementation of the scheme, and the possibility of revival of the sick company, would run contrary to the object of the Act, which was never to confer absolute immunity or impunity on the sick company.

87. Thus, as explained in paragraph 67 of this judgment, a perusal of the plain text of Section 22(1) of the 1985 Act brings out only two conditions for the suspension of legal proceedings to operate. However, various decisions of this Court, by necessary implication, have read into the said provision a third condition which too has to be fulfilled before a sick company can seek protection of the said provision. This third condition is that for a legal proceeding to be suspended under Section 22(1) of the 1985 Act, it should be

shown to be interfering with the formulation, consideration, finalisation or implementation of a rehabilitation scheme.

88. A Single Judge of the Delhi High Court has explained very succinctly these conditions in ***Goyal MG Gases Pvt. Ltd. v. SBQ Steels Ltd.*** reported in 2016 SCC OnLine Del 5100 thus:

> *"25. The applicability of embargo contained in Section 22(1) of SICA requires the cumulative and conjoint satisfaction of two conditions; namely; a) the proceeding sought to be suspended should clearly satisfy the ingredients of Section 22(1) and fall within one or more of the categories of proceedings indicated in the said provision and b) additionally, the continuance of the proceeding should have the impact of interfering with the formulation of the scheme.*
>
> *26. The Supreme Court has also made it clear that the applicability of the embargo contained in Section 22(1) of SICA depends on the facts and circumstances of each individual case; and no principle of universal application can be laid down in all such matters.*
>
> *27. The use of the expressions "Firstly" and "Secondly", in para 80 of Raheja Universal Ltd. (supra) would make it clear that both the conditions given in the judgment have to be satisfied cumulatively. Even if the suit/proceeding is of the category contemplated in Section 22(1), that by itself will not attract the bar contained in the said provision, unless it additionally has the impact of "interfering with the formulation, consideration, finalisation or implementation of the scheme."*
>
> (Emphasis supplied)

89. A Division Bench of the Delhi High Court in ***Saketh India*** (supra) considered the scope of Section 22(1) of the 1985 Act in the context of the object sought

to be achieved by it and held that the term 'suit for recovery' as it appears in the said provision must be construed *ejusdem generis*, meaning thereby that only such a suit for recovery which is in the nature of execution or any other coercive enforcement will be suspended by the effect of the provision. The relevant parts of the said decision are extracted hereinbelow:

> *"5. We think it appropriate, however, to consider the provision of SICA and analyse what it endeavours to achieve. We must immediately take note of the fact that SICA has been repealed by Sick Industrial Companies (Special Provisions) Repeal Act, 2003. While it is yet to be notified, it is significant that provisions akin to Section 22 are conspicuous by their absence in the new Scheme of revival of sick companies inserted in form of Part VIA, namely, "Revival and Rehabilitation of Sick Industrial Companies". Obviously, empirical analysis discloses that more often than not companies which have sought shelter of SICA have done so to procrastinate, delay and defer clearing its liability, with the obvious intention of coercing creditors into unfair settlements rather than implementing projected schemes supposed to assist in their reconstruction. When the statute is notified, amendments to the Companies Act, 1956 will become effective and all proceedings pending before BIFR will stand abated. To some extent, therefore, the present controversy has been rendered academic.*
>
> *6. Courts, however, have always been alive to the possible mischief that invocation of SICA can lead to. In a nutshell, where the not worth of a company is reduced to a negative, and the amelioration that is sought is for reviving the company rather than winding it up, the recourse to the Act would be legitimate. There is no justifiable reason, therefore, for all legal proceedings to be immediately even held in abeyance, if not dismissed. We are mindful of the fact that Parliament has incorporated an amendment in the Section with effect from 1.2.1994 in these words — "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". It*

appears to us that the phrase "recovery of money" must be construed ejusdem generis and accordingly recovery proceedings in the nature of execution or any other coercive enforcement that has been ordained to be not maintainable. We do not find any logic in holding legal proceedings to be not maintainable, or to be liable to be halted unless, even if the debt sought to be proved in the Plaint has not been admitted. Given the delays presently endemic in the justice delivery system if a creditor is disallowed even from proving the indebtedness of a recalcitrant debtor SICA company, it would cause unjustified hardship. Whichever way we look at the matter, there can be no logic in denying legal recourse to a party for proving its debt. In the event that at least the principal amount, or a substantial part of it stands admitted, either in the suit or by means of a mention in the Scheme placed before the BIFR, the aggrieved party must be permitted to prove its claim. In holding so, the only prejudice that we can conceive of is incurring expenditure in legal fees. When this is weighed against the interests of a person claiming that the company is indebted to it, the balance tilts in favour of the latter. A holistic reading of Section 22(1) of SICA makes it manifestly clear that Parliament's intention was to insulate sick companies only against proceedings for winding-up or for execution, or distress or the like or for enforcement of any security or guarantee. In the case in hand, despite several opportunities granted to the Appellant, it has miserably and perhaps deliberately failed to substantiate that the claim mentioned in the Suit has been reflected in the Scheme placed before the BIFR but even more poignantly, that a scheme was, in fact, pending before BIFR. If an Appeal is pending, has BIFR failed to grant or has withdrawn registration under SICA. We see the conduct of the Appellant as nothing more than an abuse of SICA.

7. The Apex Court has in Deputy Commercial Tax Officer v. Corromandal Pharmaceuticals, (1997) 10 SCC 649 enunciated the law in the context of SICA to be that a cessation of legal proceedings would be justified only if the dues in respect of which adjudication is ongoing is also included in or within the contemplation of the Scheme presented to BIFR. Their Lordships had analysed and distinguished its previous decisions in Gram Panchayat v. Shree Vallabh Glass Works Limited, (1990) 2 SCC 440 as well as Maharashtra Tubes Ltd. v. State of Industrial and Investment Corporation of Maharashtra Ltd., (1993) 2 SCC 144 on the reasoning that in those cases the liability of the sick

company had arisen for the first time after the sanction of the Scheme by BIFR….

8. In Sirmor Sudburg Auto Ltd. v. Kuldip Singh Lamba, [1998] 91 Comp. Cas. 727, R.C. Lahoti, J., as the Learned Single Judge of this Court then was, opined that to be entitled to a stay of legal proceedings under Section 22 of the Act, a mere pendency of the enquiry would not suffice; the claimed dues must be reckoned or included in the sanctioned scheme. A suit for eviction against a sick industrial company is not liable to be stayed under Section 22(1) of the SICA. This decision has been followed by the Division Bench of the Calcutta High Court in Taulis Pharma Ltd. v. Bengal Immunity Ltd., [2002] 108 Comp. Cas. 237. Similar views have also been expressed in Vibgyar Ink Chem (Pvt.) Ltd. v. Safe Pack Polymers Ltd., [1998] 93 Com. Cas. 407, which likewise is a decision of the Division Bench of the Andhra Pradesh High Court which enunciates that "an independent transaction de hors the scheme obviously cannot thus be covered within the ambit of Section 22 of the 1985 Act".

9. Justice Lahoti's view has also been followed by a Single Bench of the Calcutta High Court in Fort William Industries Limited v. Usha Bentron Limited, [2002] 108 Comp. Cas. 176. His Lordship, Dr. Mukundakam Sharma, J. has, in the Cement Corporation of India v. Manohar Basin, 82 (1999) DLT 343 : 1999 (51) DRJ 535 observed that since no documentary proof had been furnished to disclose that any scheme stood sanctioned the so-called SICA bar was not attracted. A Single Bench of the Bombay High Court in Special Steels v. Jay Prestressed Products Ltd., [1991] 72 Comp. Cas. 277 has opined that the pivotal question in connection with the current conundrum concerns the assets of the Company and its functioning, and these would not be jeopardized if a civil suit continues. In Hardip Singh v. Income Tax Officer, Amritsar, [1979] 118 ITR 57 (SC) the winding-up petition was allowed to continue and only when the third and final stage of the dissolution of the Company came to be reached, was the moratorium of Section 22 of the SICA enforced."

(Emphasis supplied)

90. The original plaintiff has placed strong reliance upon the decision of a single judge of the Delhi High Court in ***Sunil Mittal*** (supra). It was held therein that since the liability was neither admitted nor taken into consideration by any rehabilitation scheme, the suit proceedings could not have been adjourned *sine die* under Section 22(1) of the 1985 Act. The relevant paragraphs are extracted hereinbelow:

> *"21. In view of the aforesaid facts and circumstances of the case, I feel as the FChas not admitted its liability to pay the amount to the tune as claimed by the plaintiff nor such an amount has been reckoned or taken into consideration by any scheme of rehabilitation of the sick defendant company, therefore, the proceedings of the present suit cannot be adjourned sine die. As a matter of fact the defendant has not placed on record any documentary evidence to show that any such scheme has been formulated as yet and if formulated whether the said amount has been taken care of allegedly being owed to the Plaintiff.*
>
> *22. For the aforesaid reasons, I feel that the application of the Defendant totally misconceived and accordingly, the same is dismissed."*
>
> (Emphasis supplied)

91. It has come to our notice that the said decision in ***Sunil Mittal*** (supra) was challenged in appeal before a division bench of the Delhi High Court in ***LML Ltd. v. Sunil Mittal*** reported in 2013 SCC OnLine Del 1766 wherein the bench set aside the decision and held that Section 22(1) of the 1985 Act would apply to the facts of the case. The bench observed that from the record it was clear that the amount as claimed by the plaintiff in the recovery suit was admittedly covered by the scheme and thus the proceeding was liable to be suspended by application of Section 22(1) of the 1985 Act. Thus, the position of law held in

Sunil Mittal (supra), could not be said to have been disturbed, but only its incorrect application to the facts of the specific case was set aside in ***LML Ltd.*** (supra).

92. The decision in ***LML Ltd.*** (supra), on the contrary, fortifies the interpretation of Section 22(1) as was done in ***Sunil Mittal*** (supra) and ***Saketh India*** (supra). The relevant paragraph of the decision in ***LML Ltd.*** (supra) is extracted hereinbelow:

> *"16. The principle of law is thus unambiguous. Where the amount claimed or the liability sought to be set up is covered under the scheme, Section 22(1) will be attracted and there would be an automatic suspension of all legal proceedings including a suit for recovery of money. In the present case, the amount Rs. 21,74,490.88 is admittedly a part of the DRS pending before the BIFR. The debt of Rs. 3,00,000/- on account of sales tax dues, the petitioner admits as his liability. Even if this amount is not permitted to be adjusted at this stage as has been pointed out by the learned counsel for the respondent, keeping in view the wide import of the language of Section 22 of the said Act there can be no question of continuing with the suit proceedings. It also cannot be lost sight of the fact that the parties were maintaining a running account; payments were being made from time to time; it would thus not be possible to segregate the element of debt since the question would be whether the debt due to the plaintiff is correctly reflected or a lesser amount is in fact due to him. The language of Section 22 would take into its sweep a situation even where if the full amount is not a part of the DRS. The question of continuation of the suit would not arise."*
>
> (Emphasis supplied)

93. In ***M/s Haryana Steel & Alloys Ltd. v. M/s Transport Corporation of India*** reported in (2012) SCC OnLine Del 2140 it was held that the mere contention

of the sick company unsubstantiated by any material indicating that the amount forming subject-matter of the recovery suit is covered under the scheme, would not be sufficient to bring the company under the protective ambit of Section 22(1) of the Act. The relevant paragraphs of the said decision are extracted thus:

> *"11. However, there is another dimension to the said embargo placed on filing of the suit for recovery against a company when the proceedings are pending under the SICA, which is the necessity of the inclusion of the dues payable by the company to the plaintiff in the scheme formulated before the BIFR. It is a settled legal position that it is not by mere pendency of an enquiry under Section 16 of the said Act or preparation of the scheme thereof being under consideration or even filing of an appeal under section 25 before the appellate authority that by itself would entitle the appellant for the said statutory injunction against the respondent/plaintiff as the benefit of the prohibition or embargo created under section 22 of the Act would come into operation only where the appellant/defendant has disclosed before the Court, that the amounts claimed by the respondent/plaintiff have been duly shown and disclosed in the scheme formulated and laid before the BIFR. The Apex Court in the case of Deputy Commercial Tax Officer v. Corromandal Pharmaceuticals, (1997) 10 SCC 649 enunciated the law to hold that a cessation of legal proceedings would be justified only if the dues in respect of which adjudication is ongoing is also included in the contemplation of scheme presented by BIFR…*
>
> *xxx xxx xxx*
>
> *14. In the light of the above settled legal position, analyzing the facts of the case at hand, it is manifest that no material was placed on record by the appellant to show that the amount in respect of which the respondent laid its claim in the said recovery suit was reflected in the scheme laid before the BIFR. The only contention raised by the appellant before the trial court as well as before this Court was that the prohibition or embargo as envisaged in Section 22 would come into operation immediately once the defendant brings to the notice of the Court that an inquiry under Section 16*

> *is pending before the Board or an appeal is pending relating to the said inquiry before the Appellate Authority. Having failed to place any such material on record, this Court is of the clear view that the bar or embargo envisaged under Section 22 of the Act will not apply to the facts of the present case as the appellant cannot take the advantage of the said provision merely because an inquiry under Section 16 was pending before the BIFR or an Appeal under Section 25 against the order of BIFR was pending before the AAIFR."*
>
> (Emphasis supplied)

94. In ***Kusum Products Ltd. v. Hitkari Industries Ltd.*** reported in 2014 SCC OnLine Del 4926, a learned Single Judge of the Delhi High Court, relying upon the decision in ***Raheja Universal*** (supra) held that a suit for recovery of money simpliciter will not be liable to be suspended under Section 22(1) of the 1985 Act. It was observed thus:

> *"3. The aforesaid paragraphs show that the proceedings for which prior permission is required under Section 22 of SICA are proceedings in the nature of execution, distress or like. It is not every suit or every suit for recovery which automatically becomes proceedings in the nature of execution, distress or like, and only such suits of recovery where there would be proceedings which cause liquidation of assets of a sick company, would be those suits which would be hit by the bar of Section 22 of SICA.*
>
> *4. In the present case, the suit for recovery of money is a suit for recovery of money simplicitor. Counsel for the plaintiff does not press the interim applications under Order 38 Rule 5 of Code of Civil Procedure, 1908 (CPC) and Order 39 Rules 1 and 2 CPC. Accordingly, in the subject suit, there is no threat to the liquidation of the assets of the sick company and therefore no prior permission is required under Section 22 of SICA."*
>
> (Emphasis supplied)

95. In ***FMI Investment Pvt. Ltd. v. Montari Industries Ltd. and Another*** reported in (2012) SCC OnLine Del 5354, the High Court undertook a comprehensive analysis of the dictum as laid in ***Raheja Universal*** (supra) and ***Saketh India*** (supra) and held thus:

> *"6. The salient conclusions which can be arrived at from reading of the aforesaid paras in the case of Raheja Universal (supra) are : -*
> *(i) The proceedings which are affected by Section 22(1) are proceedings in the nature of execution, distress or the like.*
> *(ii) It depends on facts of each case as to whether the suit is hit by Section 22 i.e. all suits including of recovery, are not hit by Section 22(1).*
> *(iii) Only those suits which have the effect of execution, distress or like action against the properties of the sick company are hit by Section 22 i.e. where a suit is simply for recovery of moneys, and the properties of a sick company are not threatened by the proceedings including interim proceedings such as appointment of receiver, execution, distress or the like, such suits can continue without permission under Section 22.*
>
> *7. Learned counsel for the defendant no. 2 sought to place reliance on the following three judgments to argue that permission under Section 22 is a sine qua non.*
> *(i) Managing Director, Bhoruka Textiles Ltd. v. Kashmiri Rice Industries (2009) 7 SCC 521;*
> *(ii) Tata Davy Ltd. v. State of Orissa (1997) 6 SCC 669;*
> *(iii) Dr. B.K. Modi v. Morgan Securities and Credits Pvt. Ltd. and Morgan Securities and Credits Pvt. Ltd. v. Dr. B.K. Modi MANU/DE/2779/2012*
>
> *8. In my opinion, all the three judgments, which have been cited on behalf of defendant no. 2 have no application because the legal position is sufficiently elaborated by the Supreme Court in the judgment of Raheja Universal (supra).*
>
> *9. None of the aforesaid judgments cited on behalf of defendant no. 2 deal with the issue of interpretation of Section 22 of SICA as has been done by the Division Bench of three Judges in the case of Raheja Universal (supra) and which holds that unless the suit*

proceedings are in the nature of 'execution, distress or the like', the suit can continue. The judgments relied upon by the defendant no. 2 are judgments which simply hold that once a company is a sick company, permission is required under Section 22 of the SICA, however, none of the judgments cited on behalf of the defendant no. 2 deal with the proposition as incorporated in the later judgment of the Division Bench of three Judges of the Supreme Court in the case of Raheja Universal (supra). Accordingly, it is held that the suit is maintainable.

10. In the present suit for recovery it cannot be said that the suit is of a nature which has impact of or threat to the properties of the defendant No. 1 sick company to affect the scheme of revival. The suit is a simple suit for recovery under Order 37 CPC not having proceedings, whether interim or final, of execution, distress or the like and hence the suit is not hit by Section 22 of SICA. So far as defendant No. 2/guarantor is concerned, the suit against him will not surely hit any assets of the sick company and hence is not barred under Section 22 of SICA."

(Emphasis supplied)

96. In one recent decision of the Delhi High Court in ***Chhattisgarh Distilleries Ltd. v. Percept Advertising Limited*** reported in 2023 SCC OnLine Del 6417, while considering the question on applicability of Section 22(1) of the 1985 Act, it was held thus:

"8. It is well settled that there was legal duty cast upon the appellant/defendant to bring it to the notice of the Court that it had qualified for the protection under the SICA, and this obligation was not discharged. There is no gainsaying that the aforesaid provision has been interpreted in umpteen number of cases decided by the Apex Court as well as this Court. In the cited case of Saketh India Limited (supra), it was observed that the phrase "recovery of money" must be construed ejusdem generis and accordingly recovery proceedings in the nature of execution or any other coercive enforcement that has been ordained to be not maintainable. There is nothing in the said provision so as to hold the legal proceedings to be not maintainable, or liable to be

> *halted, even if the debt sought to be proved in the plaint has not been admitted. Furthermore, it was observed that there can be no logic in denying legal recourse to a party for proving its debt. The said decision was relied upon by this Court again in the decision of Ralson Industries Ltd. (now known as Da Rubber Industries Ltd) (supra), wherein it was categorically held that the proceedings that can be halted by invoking Section 22 of the SICA should be in the nature of execution, distress or the like."*
>
> (Emphasis supplied)

97. From the aforesaid discussion, the position of law on the first issue before us appears to be that for the applicability of Section 22(1) of the 1985 Act, three aspects need to be considered –

I. *First*, an inquiry under Section 16 of the 1985 Act must be pending; or any scheme referred to in Section 17 of the 1985 Act must be under preparation or consideration or a sanctioned scheme must be under implementation; or an appeal under Section 25 of the 1985 Act must be pending – in relation to the company against whom the legal proceedings sought to be suspended have been initiated.

II. *Secondly*, the proceedings must be one from amongst the six types as described in paragraph 65 of this judgment, or of a similar nature, i.e. *ejusdem generis* to the said six types of proceedings.

III. *Thirdly*, the proceedings must have the effect of threatening the assets of the sick company and interfering with the formulation, consideration, finalisation or implementation of the scheme.

98. Applying the aforesaid tests to the facts of the present case, we have already observed that requirement (i) is fulfilled. The proceeding in question being a suit for recovery of money, requirement (ii) is also satisfied. However, we are of the considered opinion that the third requirement is not fulfilled. We say so because the suit for recovery was not of a nature which could have proved to be a threat to the properties of the defendant sick company or would have adversely impacted the scheme of revival. The suit was a simple suit for recovery of money towards the dues arising under the alleged illegal deductions under the contract. This cannot be said to be a proceeding in the nature of execution, distress or the like and hence the suit was not hit by Section 22(1) of the 1985 Act.

99. By no stretch of imagination could it be said that the legislature intended to include even the proceedings for the adjudication of the liabilities not admitted by a sick company within the protective ambit of Section 22(1) of the 1985 Act. Such an adjudicatory process only determines the liability of the defendant towards the plaintiff, and does not threaten the assets of the sick company or interfere with the formulation of the scheme unless execution proceedings are initiated pursuant to the completion of such adjudicatory process. In the case of ***Jay Engineering*** (supra), it was rightly observed by this Court in the context of arbitration proceedings under the 1993 Act for the adjudication of claims, that while the execution of an award would definitely

be suspended under Section 22(1) of the 1985 Act, the adjudicatory process for arriving at such an award cannot be said to be suspended by the said provision. This position also seems to be justified in light of the fact that the proceedings before the BIFR under the 1985 Act were generally long-drawn and time consuming and it would subserve the interest of justice if a party was prevented even from proving the debt/liability of the sick company for the entirety of that lengthy period.

100. We may also look at Section 22(1) of the 1985 Act by applying the mischief rule of interpretation. G.P. Singh in his authoritative commentary on the interpretation of statutes describes the mischief rule of construction as follows:

> *"The rule which is also known as 'purposive construction' or 'mischief rule', enables consideration of four matters in construing an Act: (i) What was the law before the making of the Act, (ii) What was the mischief or defect for which the law did not provide, (iii) What is the remedy that the Act has provided, and (iv) What is the reason of the remedy. The rule then directs that the courts must adopt that construction which "shall suppress the mischief and advance the remedy."*"

101. Applying the aforesaid rule to Section 22(1) of the Act, we find that there was a vacuum in the legal framework to deal with sick industrial companies and provide ameliorative steps for their revival. The 1985 Act was thus enacted to fill in this vacuum. The mischief which was sought to be dealt with by the enactment of Section 22 was any such legal proceeding which could impact the assets of the sick company and in-turn negatively impact the

formulation and implementation of the rehabilitative scheme. This provision was inserted to provide a remedy by ensuring that the multiple recourses available under the law for recovery of debts, etc. were suspended for the period during which the sick company was under the ameliorative shelter of the BIFR. Finally, it can be said that the reason for the remedy was to shield the formulation and implementation of the revival scheme from any impediments thereby maximising the chances of revival of sick company, which was the ultimate object sought to be achieved by the Act.

102. The original defendants have placed strong reliance on 3 decisions of this Court in ***Jay Engineering*** (supra), ***Bhoruka Textiles*** (supra) and ***Tata Motors*** (supra) respectively. We have discussed in the foregoing parts of this judgment as to how this Court in ***Jay Engineering*** (supra) expressly observed that it was not the adjudicatory process, but the execution of an award which would be restricted by Section 22(1) of the 1985 Act. This judgment, thus, only furthers the line of reasoning we have adopted to negate the contention of the original defendants on the applicability of Section 22(1) of the 1985 Act.

103. The decision in ***Bhoruka Textiles*** (supra) dealt with the specific facts in that case and should be read alongwith the decision in ***Raheja Universal*** *(supra)* wherein the scope of Section 22(1) of the 1985 Act was considered in

detail by a three-Judge bench. We would also like to observe that the reliance placed by this Court in ***Bhoruka Textiles*** (supra) on the decision in ***Tata Motors*** (supra) seems to be misplaced. The relevant paragraph of ***Bhoruka Textiles*** (supra) is reproduced hereinbelow:

> *"10. Section 22 of the Act must be interpreted giving a plain meaning to its contents. An enquiry in terms of Section 16 of the Act by the Board is permissible upon receipt of a reference. Thus, reference having been made on 27-12-2001 and the suit having been filed on 17-12-2002, the receipt of a reference must be held to be the starting period for proceeding with the enquiry.*
>
> *11. The effect of the provisions of the Act has been considered by a three-Judge Bench decision of this Court in Tata Motors Ltd. v. Pharmaceutical Products of India Ltd. [(2008) 7 SCC 619] wherein it, in no uncertain terms, held that SICA is a special statute and, thus, overrides other Acts like the Companies Act, 1956, stating: (SCC p. 635, paras 31-33)*
>
> > *"31. 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.*
> >
> > *32. 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.*
> >
> > *33. The jurisdiction of the civil court is, thus, barred in respect of any matter for which the Appellate Authority or the Board is empowered. The High Court may not be a civil court but its jurisdiction in a case of this nature is limited."*
>
> *12. If the civil court's jurisdiction was ousted in terms of the provisions of Section 22 of the Act, any judgment rendered by it would be coram non judice. It is a well-settled principle of law that a judgment and decree passed by a court or tribunal lacking*

> *inherent jurisdiction would be a nullity. In Kiran Singh v. Chaman Paswan [AIR 1954 SC 340] this Court held: (AIR p. 342, para 6)*
>
> > *"6. ... It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties."*
> > *(See also Chief Engineer, Hydel Project v. Ravinder Nath [(2008) 2 SCC 350 : (2008) 1 SCC (L&S) 940] , SCC p. 361, para 26.)"*

104. A perusal of the above indicates that in ***Tata Motors*** (supra), it was Section 26 and not Section 22 of the 1985 Act which was under consideration. As opposed to Section 26 of the Act, which bars the jurisdiction of the civil courts in respect of those matters for which the BIFR or the AAIFR are empowered, Section 22 only places a temporary embargo on the initiation or continuation of legal proceedings in respect of certain matters mentioned therein. Further, unlike Section 22, where the said suspension can be revoked by seeking express permission of the BIFR or the AAIFR, no such permission can be sought under Section 26 of the 1985 Act. Again, in any view of the matter, the adjudication and determination of a contested liability under a contract is undoubtedly the domain of the civil court or an arbitral tribunal and not that of the BIFR or the AAIFR.

v. ISSUE NO. 2: Whether the High Court was correct in granting 24% Compound Interest on the Principal Decretal Amount in favour of the original Plaintiff?

105. The High Court in its impugned judgment considered, as a separate issue, whether the original plaintiff was entitled to claim 24% compound interest from the original defendants on the delayed payments.

a. Concept of Interest

106. When interest is awarded by the Court, our normal feeling is that it is so awarded by way of penalty or punishment. But interest in all cases is not granted by way of penalty or punishment. In this regard, reference may be made to the decision of this Court in the case of ***Alok Shanker Pandey v. Union of India***, reported in 2007 AIR (SC) 1198, wherein the concept of grant of interest has been explained in the following manner:

> *"It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital. For example, if A had to pay B a certain amount, say ten years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B ten years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence equity demands that A should not only pay back the principal but also interest thereon to B."*

107. The above-noted decision of this Court makes it clear that interest on the delayed payment of the claim amount accrues due to the continuing wrong

committed by the wilful withholding of the payment towards the claim, resulting in a continuous injury until such payment is made, or in other words, until the claim is realised.

108. The High Court relied upon the provisions of the 1993 Act to hold that as per Sections 4 and 5 respectively of the said legislation, the original plaintiff, which was a small-scale industrial undertaking, was entitled to claim compound interest @ 24% per annum from the original defendants. As a result, the High Court set aside the decree of the trial court which granted 12% simple interest in favour the original plaintiff.

109. The original defendants are aggrieved by the awarding of 24% interest in favour of the original plaintiff, which they contend has resulted in the principal decretal amount getting inflated exorbitantly. The original plaintiff, on the other hand, has argued that the impugned judgment of the High Court insofar as it deals with the issue of interest cannot be said to suffer from any infirmity and was arrived at after due consideration of relevant material viz. the Handbook of Statistics of Indian Economy published by the Reserve Bank of India, etc. and after hearing the parties at length.

110. The original plaintiff has further submitted that the High Court considered the floor rate charged by the SBI for the financial year 1993-1994, which was

19%, as observed under the Table 74 on Structure of Interest Rates in the Handbook of Statistics of Indian Economy published by the Reserve Bank of India.

111. We shall briefly consider the object and scope of the 1993 Act for a better understanding of the issue before us. The Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Ordinance, 1992 was promulgated by the President of India on 23.09.1992. To replace this ordinance, the 1993 Act was enacted on 02.04.1993 and came into force with retrospective effect from 23.09.1992. Subsequently, the 1993 Act was repealed by the Micro Small and Medium Enterprises Development Act, 2006 ("**MSMED Act, 2006**"). The statement of objects and reasons to the 1993 Act reads as under:

> *"A policy statement on small scale industries was made by the Government in Parliament. It was stated at that time that suitable legislation would be brought to ensure prompt payment of money by buyers to the small industrial units.*
>
> *2. Inadequate working capital in a small scale or an ancillary industrial undertaking causes serious and endemic problems affecting the health of such undertaking. Industries in this sector have also been demanding that adequate measures be taken in this regard. The Small Scale Industries Board, which is an apex advisory body on policies relating to small scale industrial units with representatives from all the States, governmental bodies and the industrial sector, also expressed this view. It was, therefore, felt that prompt payments of money by buyers should be statutorily ensured and mandatory provisions for payment of interest on the outstanding money, in case of default, should be made. The buyers,*

if required under law to pay interest, would refrain from withholding payments to small scale and ancillary industrial undertakings.

3. An Ordinance, namely, the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Ordinance, 1992, was, therefore, promulgated by the President on the 23rd September, 1992.

4. The Bill seeks to replace the said Ordinance and to achieve the aforesaid objects."

112. It is evident from the aforesaid statement of objects and reasons that the legislature desired to bring about a legislation which would ensure prompt payment of money to small scale units, as the absence of working capital may have severe impacts on the functioning of small scale and ancillary industries. The 1993 Act envisaged that there should be minimal delay in payments to small scale units. Section 2 of the 1993 Act provides for the certain important definitions which are reproduced hereinbelow:

"(b) "appointed day" means the day following immediately after the expiry of the period of thirty days from the date of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier;

Explanation.—For the purposes of this clause,—

(i) "the day of acceptance" means,—

(a) the day of the actual delivery of goods or the rendering of services; or

(b) where any objection is made in writing by the buyer regarding acceptance of goods or services within thirty days from the day of the delivery of goods or the rendering of services, the day on which such objection is removed by the supplier;

> *(ii) "the day of deemed acceptance" means, where no objection is made in writing by the buyer regarding acceptance of goods or services within thirty days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services;*
>
> *(c) "buyer" means whoever buys any goods or receives any services from a supplier for consideration;*
>
> *xxx xxx xxx*
>
> *(f) "supplier" means an ancillary industrial undertaking or a small scale industrial undertaking holding a permanent registration certificate issued by the Directorate of Industries of a State or Union territory and includes,—*
>
> *(i) the National Small Industries Corporation, being a company, registered under the Companies Act, 1956 (1 of 1956);*
>
> *(ii) the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956 (1 of 1956).]"*

113. Section 3 of the 1993 Act provides for the liability of the buyer to make payment to the small-scale industries whereas Section 4 and 5 respectively of the said Act pertain to the date from which and the rate at which interest is payable. Section 5 of the 1993 Act also stipulates that the buyer shall be liable to pay compound interest. Sections 3, 4 and 5 respectively of the 1993 Act, as existing at the time when the dispute between the parties arose, are reproduced thus: -

> *"**3. Liability of buyer to make payment** - Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day.*

> ***4. Date from which and rate at which interest is payable -*** *Where any buyer fails to make payment of the amount to the supplier, as required under section 3, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay interest to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at such rate, which is five per cent points above the floor rate for comparable lending.*
>
> *Explanation: For the purposes of this section, "floor rate for comparable lending" means the highest of the minimum lending rates charged by scheduled banks (not being co-operative banks) on credit limits in accordance with the directions given or issued to banking companies generally by the Reserve Bank of India under the Banking Regulation Act, 1949 (10 of 1949).*
>
> ***5. Liability of buyer to pay compound interest*** *- Notwithstanding anything contained in any agreement between a supplier and a buyer or in any law for the time being in force, the buyer shall be liable to pay compound interest (with monthly interest) at the rate mentioned in section 4 on the amount due to the supplier."*

114. On a perusal of Section 3 of the 1993 Act, we find that where any supplier supplies any goods, the buyer shall make payment on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day. In the instant case, as per the terms of the NIT, payment was to be made within 20 days from the receipt of the goods.

115. As discussed in the preceding paragraphs of this judgment, the High Court has awarded 24% compound interest on the amounts due to the original plaintiff from the date the amounts were determined to have become due till the date of their realisation by the original plaintiff. While there is no doubt

that the rate of interest applicable to the dues of the original plaintiff as determined by the High Court is correct, we think it is necessary to examine if the compound interest can be said to have continued to accrue even when FCIL was declared a sick company and was awaiting its revival before the BIFR. In other words, it is not the rate of interest but the period for which it is applicable, is the question that is to be determined.

116. We have discussed at length in the foregoing paragraphs of the judgment the object behind the enactment of the 1985 Act. Sickness of industrial companies was considered to be a problem that affected the country at large, and thus the 1985 Act was enacted as per the policy directions contained in Article 39 of the Constitution to provide, *inter alia*, ameliorative steps for the revival of sick companies, and for the expeditious detection of potentially sick companies. In particular, we would like to mention that Section 19 of the 1985 Act provides that the scheme for rehabilitation of a sick company may provide for financial assistance to the sick company by way of loans, advances, reliefs or concessions or sacrifices from the Central Government, a State Government, a public financial institution etc.

117. In the present case, in pursuance of Section 19 of the Act, a number of decisions were taken by the CCEA on 09.05.2013 including the waiver of loans and interest thereon by the Central Government which ran into

thousands of crores. As per the document F.No. 18055/13/2012-FCA-1 titled "Gist of the CCEA decisions dated 09th May, 2013" published by the Ministry of Chemicals and Fertilizers, it appears that the dues of the major unsecured creditors were settled at 30% of their dues as on 31.03.2003. Further, the dues of some other parties were settled without any interest or penalty, as otherwise the entire process of revival might have gotten derailed.

118. We have also discussed how Section 22(1) of the 1985 Act suspends any legal proceedings of the nature specified therein if they can potentially interfere with the consideration, sanction or execution of the rehabilitation scheme. The intention behind the sanction and execution of a rehabilitation scheme, without a doubt, is to increase the chances of the revival of the sick company in public interest.

119. Thus, on one hand we have the beneficial provisions of the 1985 Act, enacted to maximise the chances of revival of sick industrial companies, while on the other, we have the 1993 Act, which was enacted with the intention to ensure that small-scale industries are paid their dues in time. This object of the 1993 Act was sought to be achieved by providing a high interest rate, with monthly compounding, so as to act as a deterrent for the buyers.

120. A preliminary contention was raised by the original defendants that the original plaintiff chose to institute a civil suit for recovery of money, rather

than following the process prescribed under Section 6 of the 1993 Act, which provides for the referring of a dispute arising under the 1993 Act to arbitration before the Industry Facilitation Council, and thus for this reason, the suit for recovery, which is expressly suspended under Section 22(1) of the Act, should be held as not maintainable. It was also argued that even otherwise no interest should be granted on the amount claimed as due since the mechanism prescribed under Section 6(2) of the 1993 Act was not followed.

121. Section 6 of the 1993 Act reads as follows:

> *"**6. Recovery of amount due -***
>
> *(1) The amount due from a buyer, together with the amount of interest calculated in accordance with the provisions of sections 4 and 5, shall be recoverable by the supplier from the buyer by way of a suit or other proceeding under any law for the time being in force.*
>
> *(2) Notwithstanding anything contained in sub-section (1), any party to a dispute may make a reference to the Industry Facilitation Council for acting as an arbitrator or conciliator in respect of the matters referred to in that sub-section and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such dispute as if the arbitration or conciliation were pursuant to an arbitration agreement referred to in sub-section (1) of section 7 of that Act."*

122. We do not find any force in this contention of the original defendants. Section 6 merely provides that for the purpose of recovery of the amounts due under the 1993 Act, a supplier may make a reference to the Industries Facilitation Council, which is established under Section 7A of the 1993 Act.

First, at the time of the institution of the suit by the original plaintiff, the Industries Facilitation Councils didn't exist as the provision for their establishment was only brought in *vide* an amendment in 1998. *Secondly*, even otherwise, Section 6(2) of the 1993 Act merely provides for an alternate avenue to the supplier in addition to a suit or any other legal proceedings as mentioned in Section 6(1) of the 1993 Act.

123. It is also pertinent to mention that in the absence of the express permission of the BIFR, Section 22(1) of the 1985 Act suspends any legal proceedings in the nature of execution during the pendency of the scheme before the BIFR, as execution would necessarily result in negatively impacting the assets of a sick company, thereby affecting the preparation, sanction or implementation of scheme and as a net effect, would bring down the chances of revival of the sick company.

124. In the present case, the suit was decreed in favour of the original plaintiff by the trial court *vide* its judgment dated 19.09.2001. However, while the adjudication of the suit of the original plaintiff could not have been said to be barred under Section 22(1) of the 1985 Act as it was for the mere determination of liability of the parties *inter-se*, the execution of decree obtained as a result thereof was expressly suspended during the period as

mentioned in the said provision, unless the requisite permission from the BIFR or the AAIFR could be obtained.

125. Interest of justice requires that both the 1985 Act and the 1993 Act, which are in the nature of beneficial enactments, should be read harmoniously so as to impart a meaningful construction to the language of each of the enactments. It was held in ***Jay Engineering*** (supra) on the interplay between the two Acts as follows:

> *"13. The 1993 Act was enacted to provide for and regulate the payment of interest on delayed payments to small-scale and ancillary industrial undertakings and for matters connected therewith.*
>
> *14. The provisions of the 1993 Act, therefore, do not envisage a situation where an industrial company becomes sick and requires framing of a scheme for its revival."*
>
> (Emphasis supplied)

126. In our opinion, it would defy logic to hold that even for the period when the principal decretal amount awarded by the civil court under a decree could not have been realised in lieu of the suspension of execution proceedings, interest would continue to mount on the principal decretal amount. Thus, while there is a stay on proceedings in the nature of distress and execution, etc. against the properties of the sick company, to safeguard its assets, awarding interest for that very same period, though not expressly barred under any provision of the Act, could not have been the intention of the legislature.

127. Any other interpretation would only lead to an absurd result that as soon as a sick company is revived after the steps taken by the BIFR, and concessions, financial support, etc. provided by the government, it would be prone to the liability of having to pay exorbitant interest that would have accrued on any decree which can be put to execution after the end of BIFR proceedings.

128. The net effect would be that a freshly revived sick company would potentially be saddled with huge amounts, as has happened in the present case because of the impugned judgment, and be at a risk of being rendered sick again, thus defeating the very purpose of the 1985 Act.

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).

131. The decree awarded by the trial court was contested by both the parties before the High Court. No material was placed before us to show whether any steps were taken by the original plaintiff to obtain the permission of the BIFR for the execution of the decree of the trial court, or for the inclusion of the said

decree in the rehabilitation scheme. At the same time, the original defendants too failed to bring anything on record to show if any steps were taken by them for the inclusion of the dues of the original plaintiff in the rehabilitation scheme.

132. Although the facts of the case on hand are different from the facts in ***Modi Rubber*** (supra), we are of the opinion that the general principles enunciated in that case are equally applicable in the present case. Thus, only for the reason that the dues of the original plaintiff were not a part of the scheme and thus could not be settled at a scaled-down value, it cannot be held that it will now be open for the original plaintiff to recover its dues along with compound interest for the entire period in a manner that will saddle the defendant company with enormous liability, thereby possibly rendering the entire process of its revival futile. This, in our view, could never have been the object of the 1985 Act and the provisions of the 1993 Act thus have to be harmonised so as to give effect to the true object of the 1985 Act.

133. We also had the occasion to look into the decision of a 2-Judge bench of this Court in ***LML Limited v. Union of India & Others*** reported in (2014) 13 SCC 375 wherein this Court was considering the purport of Section 19 of the

MSMED Act, 2006 which is in *pari-materia* to the Section 7 of the 1993 Act. The provisions read as under:

MSMED Act, 2006	The 1993 Act
"**19. Application for setting aside decree, award or order.** No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by anyf court unless the appellant (not being a supplier) has deposited with it seventy-five per cent. of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such court: Provided that pending disposal of the application to set aside the decree, award or order, the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case, subject to such conditions as it deems necessary to impose."	"**7. Appeal –** No appeal against any decree, award or other order shall be entertained by any court or other authority unless the appellant (not being a supplier) has deposited with it seventy-five per cent. of the amount in terms of the decree, award or, as the case may be, other order in the manner directed by such court or, as the case may be, such authority."

134. In the aforesaid case, the petitioner therein, having become a sick company, filed a reference to the BIFR under Section 15(1) of the 1985 Act. Around the same time, one of the respondents filed a claim petition before the Industries Facilitation Council under Section 6 of the 1993 Act. The 1993 Act was replaced by the MSMED Act, 2006 during the pendency of the proceedings. While the reference of the company remained pending before the BIFR, the Industries Facilitation Council passed an award in the favour of the said respondent, which the petitioner sought to appeal under the Section 34 of the Arbitration and Conciliation Act, 1996. However, both the District Court and

the High Court dismissed the challenge petition for not complying with the Section 19 of the MSMED Act, 2006, which mandates that 75% of the decretal/award amount has to be deposited by the appellant before the appeal can be entertained by the appellate court.

135. However, this Court set aside the dismissal orders and held as follows:

> *"9. Having regard to the above position, we are satisfied that this is not a case where we should go into the legal question noted by us in the beginning of our order. We are satisfied that interest of justice shall be subserved if it is directed that failure to deposit the amount as directed by the District Judge, Kanpur Nagar in its order dated 12-5-2011 would not result in dismissal of the arbitration petition filed by the petitioner under Section 34 of the 1996 Act challenging the award dated 22-12-2008. The said arbitration petition may remain pending with the District Judge until the finalisation of scheme by BIFR under Section 18 of the 1985 Act. We order accordingly.*
>
> *10. The special leave petition is disposed of as above. Respondent 3 is granted liberty to apply to BIFR to hear it before finalisation of the scheme. We observe that if such an application is made, BIFR shall hear Respondent 3 before finalisation of the scheme or any other order that may be passed by BIFR terminating the proceedings under 1985 Act."*
>
> (Emphasis supplied)

136. We would also like to advert to the principle of harmonious construction to understand the interplay between the 1985 Act and the 1993 Act. Simply put, the doctrine of harmonious construction is based on the principle that the legislature would not lightly take away from one hand what it had given with the other. Thus, this doctrine provides, that as far as possible, two seemingly

conflicting provisions within a statute, or the seemingly conflicting provisions of one statute vis a vis another, should be construed in a manner so as to iron out any conflict.

137. Section 10 of the 1993 Act provides for an overriding effect to the provisions of the said Act to the extent of inconsistency with any other statute. Similarly, Section 32 of the 1985 Act provides overriding effect to the provisions of the said Act except for the enactments specified therein. Dealing with a case involving the apparent conflict between the two statutes containing overriding provisions, this Court in ***Sarwan Singh v. Shri Kasturi Lal*** reported in (1977) 1 SCC 750 held as follows:

> *"When two or more laws operate in the same field and each contains a non obstante clause stating that its provisions will override those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration."*
>
> (Emphasis supplied)

138. Similarly, in ***Jay Engineering*** (supra), it was observed by this Court thus:

> *"31. The endeavour of the court would, however, always be to adopt a rule of harmonious construction."*

139. We would also like to refer to a recent decision of the Madras High Court in ***Metafilms India Ltd. v. Assistant Commissioner (CT) (Addl.),***

Amaindakarai Assessment Circle, Chennai and Others reported in (2022) 96 GSTR 272. Although the said decision was rendered in the peculiar facts of the case therein, yet the reasoning behind the same appears to have been similar to the one that we have employed. The relevant parts of the judgment are extracted hereinbelow:

> *"27. Hence, the question would be, in the facts and circumstances of the present case, what is the date, on which, the repayment is due. As we have mentioned earlier, the case on hand is very peculiar and appears to have not arisen in any of the earlier litigations and therefore, it requires to be dealt with in a different manner and obviously on such a reasoning, any observation or direction, which we may issue in this judgment, cannot be treated as a precedent.*
>
> *28. As mentioned above, the appellant was de-registered by the BIFR on February 5, 2013. The first demand notice was issued on March 20, 2013. However, the appellant paid the dues only on April 25, 2015. The question would be, in the facts and circumstances, what would be the date, on which, the repayment of the loan is due.*
>
> *29. The Department's contention is that it should be the date, on which, the default occurred. If that is to be reckoned as the date, then an order of cancellation of the agreement followed by recovery proceedings should have been taken by the Department, which admittedly has not been done. This is presumably for the reason that from 2003 to 2013, the appellant was before the Board and it was declared as a sick industrial company and in terms of section 22 of the SICA, the respondent-Department was prohibited from proceeding with any recovery against the appellant and this is a statutory prohibition, which binds the respondent-Department.*
>
> *30. From the representation given by the appellant to the Government dated August 5, 2014, we find that the Sales Tax Department did not appear before the Board on several dates when the case was heard. Be that as it may, the due date for repayment could have never occurred, in the facts and*

> *circumstances, between August 1, 2003 when the appellant was referred to the BIFR and May 31, 2006, the appellant was declared as a sick industrial company till its net worth turned positive and it was discharged from the Board on February 5, 2013.*
>
> *31. Thus, on facts, we hold that the date, on which, the repayment became due for the appellant's case shall be fixed on February 6, 2013. Admittedly, the appellant cleared the entire sales tax on April 25, 2015. Hence, for the period from February 6, 2013 to April 25, 2015, the appellant is liable to pay interest."*
>
> (Emphasis supplied)

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.

141. Thus, in view of our aforesaid discussion, we deem it fit to exclude the period commencing from the date when FCIL was declared to be a sick company under the 1985 Act going up to the date when it was discharged by the BIFR and declared to be no longer a sick industrial company from the purview of the applicability of the interest provision under the 1993 Act. Thus, while the applicability of the 1993 Act to the dues of the original plaintiff is

not disputed, such interest shall not be calculated for the period between 06.11.1992 and 27.06.2013.

E. CONCLUSION

142. The net effect of the aforesaid discussion and findings is as follows:

I. The suit instituted by the original plaintiff before the trial court was not hit by the embargo envisaged under Section 22(1) of the 1985 Act. Thus, the decree awarded in favour of the original plaintiff by the trial court and modified by the High Court, cannot be said to be *coram non-judice.*

II. The High Court committed no error in awarding 24% interest to the original plaintiff on its dues as per the provisions of the 1993 Act. However, the period during which the defendant company was a sick company as per the 1985 Act should be excluded for the purposes of calculation of interest.

143. As a result, the impugned judgment and order of the High Court is upheld subject to the modification of the period for which interest may be granted as discussed aforesaid. To clarify, the interest will be calculated at 24% p.a. with monthly compounding.

144. The appeals are disposed of in the aforesaid terms. The final amount that may be determined in accordance with the final decree shall be paid to the

original plaintiff within a period of 4 weeks from today, failing which interest at the rate of 36% p.a. with monthly compounding shall accrue.

145. Pending application(s), if any, shall stand disposed of.

146. Parties to bear their own costs.

..... J.
(J.B. Pardiwala)

..... J.
(Sandeep Mehta)

New Delhi
26th April, 2024