A KSL & INDUSTRIES LTD.

v.

M/S ARIHANT THREADS LTD. & ORS.

(Civil Appeal No. 5225 of 2008)

AUGUST 25, 2008

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[C.K. THAKKER AND ALTAMAS KABIR, JJ.]

Recovery of Debts Due to Banks and Financial Institutions Act, 1993; Ss. 19, 20, 30, 34(1) & (2)/Sick Industrial C *Companies (Special Provisions) Act, 1985; s. 22:*

Joint Venture Company – Recovery of loan from company by Industrial Development Bank of India – Debt Recovery Tribunal passed ex-parte final order in favour of IDBI – Fixation of reserve price of property of the Company – D *Challenged by the company by filing appeal No.52 of 2004 – Auction of movable and immovable property – Appellant was declared highest and successful bidder – Company filing an application in the pending appeal for setting aside ex-parte final order – Auction purchaser filing an application for* E *impleadment – DRT allowed appeal No. 52/2004 setting aside auction sale subject to fulfilling of certain conditions by the company with regard to payment of amount, interest etc. – Challenging the conditions imposed by DRT Company filing an appeal and cross appeal filed by auction purchaser – DRAT* F *allowed the appeal of the appellant confirming the auction sale in his favour after depositing the sale price – Challenge to – Allowed by the High Court on ground that s.22 of Sick Industries Companies (Special) Provisions) Act, 1985 is a complete bar to recovery proceedings against sick companies* G *as the Company in question was declared sick company by BIFR – Correctness of.*

Held: Per C.K. Thakker, J:

Conclusion arrived at by High Court that the proceedings

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were barred under S.22 of the SICA not well-founded – S.22 of SICA has two parts which bars initiation of any proceedings for winding up of the company or execution etc. against any property of the Company/appointment of receiver and also filing of money suit for recovery of/enforcing of any security against the Company without the consent of the Board/ Appellate authority – RDDB Act was enacted in 1993 when SICA 1985 was very much in force – Both the Statutes employ non-obstante clause – Applying the tests laid down by Supreme Court, the provisions of 1993 Act should be given priority over 1985 Act – It must be presumed that legislature intentionally inserted non-obstante clause in s. 34(1) of 1993 Act though it was there in the 1985 Act so as to ensure expeditious recovery of debts due to Banks/Financial institutions – Moreover, s.34(2) of 1993 Act declares that the provisions of the Act are in addition and not in derogation of other enactment – Hence, in case of conflict, RDDD Act 1993 will prevail over SICA 1985 so far as recovery of public revenue is concerned – High Court erred in applying provisions of s. 22 of SICA –Hence, the matter remitted to High Court for decisions afresh.

Held: Per Altamas Kabir, J.:

Sub-section(1) of s. 34 of RDDB Act, 1993 clearly provides that the provisions of the Act/Rules made thereunder would be in addition to and not in derogation of certain statutes including SICA – Thus, while the 1993 Act would have an overriding effect over other enactments – Provisions under 1993 Act would be supplemental to those of SICA – Hence, if the situation in a case is covered by the provisions of SICA then view taken by the High Court would have to be upheld else impugned judgment would have to be set aside – In the instant case, final order passed by DRT directing the company to pay dues to IDBI remained unchallenged since neither an appeal under s.20 of 1993 Act was filed nor an application for setting aside the sale under Rule 60 of the Income Tax Act, 1961 filed, thus order of DRT attained finality – Company

filed second Reference before BIFR after order confirming the auction sale in favour of auction purchaser was passed by DRAT – Later, company was declared to be a sick company by BIFR – Thus, provisions under s.22 of SICA invoked by the company after recovery proceedings had been concluded in favour of auction purchaser – Steps taken by the company were far from bonafides and only armed at stalling the auction sale – Even no attempt made by the company to secure a bid higher than the auction purchaser – Hence, High Court erred in applying the provisions of s.22 of SICA when sale had already been confirmed in favour of auction purchaser and first reference rejected by BIFR – Income Tax Act,1961 – Second schedule – Rule 60 – Interpretation of Statutes.

By the Court:

In view of difference of opinion on interpretation of s. 34 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the matter referred to the Chief Justice for appropriate action in the matter.

Respondent No.1 was a Joint Venture Company manufacturing cotton yarn. The company got financed a project from the Industrial Development Bank of India (IDBI) but could not repay the loan amount. IDBI filed an original application before the Debt Recovery Tribunal for recovery of the dues in terms of *Recovery of Debts Due to Banks and Financial Institutions Act, 1993.* **DRT passed an** *ex-parte* **final order in favour of IDBI for recovery of loan amount with interest thereon. The Recovery Officer issued a composit demand notice under Rule 2 of Second Schedule of the Income Tax Act, 1961 against the company demanding certain amount and also directed the company to appear for settling terms and conditions of the proclamation of sale and for disclosure of its movable and immovable property. The Recovery Officer on the basis of valuation report fixed the reserve price of the property and also fixed the date for sale of immovable**

and movable property. Against the order of the Recovery Officer fixing the reserve price, the company filed an appeal before DRT. In the meantime, auction took place in which the appellant was declared as highest and successful bidder, who deposited 25% of the reserve price and later remaining 75% of the amount. However, the company did not handover the possession to receiver appointed by the Tribunal but moved an application for setting aside *ex-parte* final order. Appellant also filed an application to implead it in the pending appeals. The application for impleadment was allowed by DRT. In the meantime, DRT allowed the appeal of the Company setting aside the auction sale subject to certain conditions with regard to payment of interest, expenses etc. However, the Company preferred an appeal objecting the conditions as laid down in the order and the appellant filed a cross appeal. The appellate Tribunal stayed the operation of the order setting aside the *ex-parte* order passed by DRT. The Debt Recovery Appellate Tribunal allowed the appeal filed by the appellant and confirmed the auction sale. The company filed a Reference Petition before the Board of Industrial Finance & Reconstruction which was rejected by BIFR. The Company filed another Reference petition, in which BIFR declared the Company as Sick Company. Aggrieved by the order of DRAT, the company filed writ petitions, which were allowed by the High Court on the ground that s.22 of SICA put a complete bar to recovery proceedings against a sick company. Hence the present appeal.

Appellant-Auction purchaser contended that the proceedings were neither covered by the first part nor by the second part of Section 22 of the SICA and the High Court ought to have decided the case on merits; that Section 34 of RDDB Act has an 'overriding effect' and even on that ground, the matter ought to have been decided; that the appeal preferred by the Company

A against fixation of reserve price was not maintainable under Section 30 of the RDDB Act; that DRT granted interim relief subject to certain conditions, but even those conditions had not been complied with by the Company; that the reserve price fixed by the Recovery Officer was B proper, sufficient and reasonable and DRT ought not to have set aside the order passed by the Recovery Officer; that the High Court ought to have taken into account over all conduct of the Company, particularly when the Company had invoked discretionary and equitable C jurisdiction under Article 226 of the Constitution; that the Company had not come before the High Court with clean hands. It had neither repaid the loan amount nor did it appear before DRT inspite of service of summons; that the Company filed an appeal before DRT against an 'order' D which was not appealable; that it dispossessed the receiver appointed by the Tribunal; that the Company also removed machinery and other movable property from the disputed premises; that it created unlawful tenancy rights in favour of third party by accepting substantial amount from him; and that even if the case E was covered by s.22 of SICA, the High Court, in exercise of extraordinary and special jurisdiction, ought not to have granted relief in favour of the Company.

Respondents-Company submitted that no F opportunity of hearing was afforded to it and the *ex-parte* final order passed by DRT was violative of principles of natural justice and fair play; that the appeal filed against fixation of reserve price before DRT was maintainable under Section 30 of the RDDB Act as the appeal lies against "an order of the Recovery Officer made under the G Act" and an order of fixation of reserve price is also an 'order' within the meaning of the Act; and that the Company was not in a position to comply with the conditions of stay granted by the Tribunal and the directions issued and hence, in accordance with law, it H

challenged the said order by filing an appeal before DRAT. It was the right of the Company to take such action and the appellant cannot object against such course being adopted by the Company.

In view of the difference of opinion on interpretation of Section 34 of the RDDB Act, referring the matter to the Chief Justice, the Court

HELD:

Per C.K. Thakker, J:

1.1 The High Court had disposed of the petitions only on one ground as to applicability of Sick Industrial Companies (Special Provisions) Act and held that the proceedings were barred under Section 22 of the Act. The conclusion arrived at by the High Court is not well-founded and the decision of the High Court on that point deserves to be set aside. (Paras – 17 & 19) [726-F; 727-F]

1.2 Section 22 of SICA is a material provision which relates to suspension of legal proceedings, contracts, etc. Section 32 of SICA gives 'overriding effect' to the provisions of the Act. (Paras – 21 & 22) [728-E; 729-D]

1.3 It is Section 34 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 which allows 'overriding effect' to the provisions of the Act over other laws. (Para – 23) [730-D]

1.4 Section 22 of SICA has two limbs. The first part enacts that "no proceeding 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 shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority. The second part which is independent of the first part declares that no suit for the recovery of money

A 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 B Authority. The two parts use two different expressions; (i) 'proceeding' and (ii) 'suit'. (Para – 25) [731-D,E,F & G]

Kailash Nath Agarwal & Ors. v. Pradeshiya Industrial & Investment Corporation of U.P. Ltd. & Anr., (2003) 4 SCC 305; *Pandurang R. Mandlik v. Shantibai R. Ghatge*, 1989 Supp (2) SCC 627; *Hansraj Gupta v. Dehra Dun – Mussoorie* C *Electric Trameray Co. Ltd.*; 60 IA 13 : AIR 1933 PC 63 – referred to.

1.5 In the instant case, proceedings had been initiated by the Bank not before a Civil Court by invoking Section D 9 of the Code of Civil Procedure, 1908, but before DRT by taking recourse to jurisdiction under RDDB Act. It is, therefore, contended that the proceedings could not be said to be a "suit" falling within the mischief of Section 22 of SICA. In any case, according to the counsel for the E appellant, *ex parte* final order was passed by DRT as back as on July 15, 2003 and hence even if it is assumed that the connotation "suit" should be construed liberally so as to take within its sweep all proceedings including an application before DRT, in view of final order passed by F DRT in 2003, bar envisaged by Section 22 of SICA cannot operate. (Para – 29) [732-E,F,G & H]

2.1 It is well-settled that when any law has been enacted, the Legislature must be presumed to be aware G of all existing laws. When RDDB Act was enacted in 1993, SICA was very much in force since it was enacted in 1985. In spite of that, Parliament was pleased to give 'overriding effect' to RDDB Act by using *non-obstante* clause in Section 34. Sub-section (1) of s.34 expressly states that the provisions of the Act shall have effect notwithstanding H

anything inconsistent therewith contained in any other law for the time being in force. (Paras 46) [739-G & H; 740-A & B]

2.2 Where two statutes employ *non-obstante* clause having 'overriding effect'; such a conflict, as laid down in several cases, may be resolved by judiciary on various considerations. One of the tests applied by Courts is that *normally* a later enactment should prevail over the former. (Paras 47) [740-B & C]

2.3 The law is fairly well settled. A provision beginning with *non-obstante* clause (notwithstanding anything inconsistent contained therein in any other law for the time being in force) must be enforced and implemented by giving effect to the provisions of the Act and by limiting the provisions of other laws. But, it cannot be gainsaid that sometimes one may come across two or more enactments containing similar *non-obstante* clause operating in the same or similar direction. Obviously, in such cases, the Court must attempt to find out the intention of the Legislature by examining the nature of controversy, object of the Act, proceedings initiated, relief sought and several other relevant considerations. It is clear from the various decisions of this Court that Courts have applied several workable tests. They, *inter alia,* include to keep in view whether the Act is 'general' or 'special', whether the Act is a subsequent legislation, whether there is reference to the former law and the *non-obstante* clause therein. The above tests are merely illustrative and by no means they should be considered as exhaustive. It is for the Court when it is called upon to resolve such conflict by harmoniously interpreting the provision of both the competing statutes and by giving effect to one over the other. (Para – 66) [749-E,F,G & H 750-A]

Maharashtra Tubes Ltd. v. State Industrial & Investment Corporation of Maharashtra Ltd. & Anr., (1993) 2 SCC 144; *Deputy Commercial Tax Officer & Ors. v. Corromandal*

A *Pharmaceuticals & Ors.*, **(1997) 10 SCC 649**; *Real Value Appliances Ltd. v. Canara Bank & Ors.*, **(1998) 5 SCC 554**; *Rishabh Agro Industries Ltd. v. P.N.B. Capital Services Ltd.*, **(2000) 5 SCC 515**; *Patheja Bros. Forgings & Stamping & Anr. v. ICICI Ltd. & Ors.*, **(2000) 6 SCC 545**; *Jai Engineering* B *Works Ltd. v. Industry Facilitation Council & Anr.*, **(2006) 8 SCC 677**; *Shri Ram Narain v. Simla Banking & Industrial Co. Ltd.*, **1956 SCR 603**; *Shri Sarwan Singh & Anr. v. Shri Kasturi Lal*, **(1977) 1 SCC 750**; *Sanwarmal Kejriwal v. Vishwa Co-operative Housing Society Ltd & Ors.*, **(1990) 2 SCC 288**; *Life* C *Insurance Corporation of India v. D.J. Bahadur & Ors.*, **(1981) 1 SCC 315**; *Maharashtra Tubes Ltd., ; A.P. State Financial Corporation v. Official Liquidator*, **(2000) 7 SCC 291**; *Allahabad Bank v. Canara Bank & Anr.*, **(2000) 4 SCC 406**; *M/s. Transcore v. Union of India & Anr.*, **(2008) 1 SCC 125**; *Solidaire* D *India Ltd. v. Fairgrowth Financial Services Ltd. & Ors.*, **(2001) 3 SCC 71 and** *Bhoruka Steel Ltd. vs. Fairgrowth Financial Services Ltd.*, **(1997) 89 Comp Cas 547 – referred to.**

2.4 Applying the tests as laid down by this Court in the instance case, it is crystal clear that the provisions of E **RDDB Act should be given priority and primacy over SICA. Though, both the Acts are 'special Acts' in the sense that they have been enacted for a specific purpose and object in view. But RDDB Act is subsequent Act in the point of time being 1993 Act. It must, therefore, be presumed even** F **in absence of any specific provision in the 1993 Act that Parliament was aware of all statutes which had been enacted prior to 1993 including SICA of 1985. Inspite of that, in sub-section (1) of Section 34 of RDDB Act, *non-obstante* clause has been inserted so as to ensure** G **expeditious adjudication and recovery of debts due to banks and financial institutions. But it is not only on the ground that the RDDB Act is a later Act and SICA is a former Act in holding that the RDDB Act will prevail over SICA. There is an additional factor also which is of extreme importance and supports the view. It is sub-section (2) of**

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Section 34 of the Act. Sub-section (2) of Section 34 of RDDB Act declares that the provisions of this Act are "*in addition to and not in derogation of*", certain enactments referred to in the said sub-section. SICA has been expressly mentioned in the said sub-section. RDDB Act, 1993 has been enacted with a view to provide for the establishment of the Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions. All other laws, therefore, whether general or special, prior or subsequent, must be interpreted and applied keeping in view the above object of enacting 1993 Act. Therefore, even though both the conflicting statutes, viz., SICA of 1985 and RDDB Act of 1993 contain *non-obstante* clause but in case of conflict, RDDB Act, 1993 will prevail over SICA, 1985 so far as recovery of public revenue is concerned. (Paras – 67 & 68) [750-B,C,E,F,G & H; 751-A,B & C]

3. The High Court has committed an error of law in invoking and applying provisions of Section 22 of SICA and in dropping proceedings against the Company. The order of the High Court, therefore, deserves to be set aside and ordered accordingly. The matter is remitted to the High Court to decide it afresh on all points including the conduct of the Company after hearing the parties. All contentions of all parties are kept open. (Para – 69) [751-D & E]

4. It is clarified that no opinion has been expressed on other issues and as and when the matter will come up before the High Court, the same will be decided on its own merits without being inhibited by such observations. (Para – 70) [751-G]

Held:

Per Altamas Kabir, J. :

1.1 It may be significant to note that on 3.4.2006 the BIFR rejected the Reference made by the Company and

A that on 15.9.2006 another Reference was filed by the respondent-Company before BIFR. It is in the said Reference that on 22.2.2007 the BIFR declared the Company to be a "sick company" and the respondent No.5 was appointed as the Operating Agency for preparation of
B a rehabilitation scheme. (Para – 12) [756-A & B]

1.2 The writ petitions filed by the respondent-Company were allowed by the High Court on the sole ground that the recovery proceedings under the RDDB Act were barred under Section 22 of the SICA. Having
C once come to the conclusion that the proceedings were barred under Section 22 of the SICA, the High Court did not go into any other question with regard to the merits of the matter and set aside the order of the DRAT confirming the auction sale on that one ground alone.
D (Para – 16) [757-F & G]

1.3 The opening words of Sub-section (1) of Section 34 of the RDDB Act clearly make the provisions thereof subject to the provisions of Sub-section (2) which in unambiguous term provides that the provisions of the
E Act or the Rules made thereunder would be in addition to and not in derogation of, certain statutes indicated therein, including the Sick Industrial Companies (Special Provisions) Act, 1985. It is, therefore, clear that while the RDDB Act would have an over-riding effect over other
F enactments, its provisions would only be supplemental to those of the SICA and consequently the provisions of the SICA would prevail over the provisions of the RDDB Act. Accordingly, if it is held that the situation in this case is covered by the provisions of SICA, then the view taken
G by the High Court would have to be upheld. If, however, it is found that the provisions of SICA do not apply to the facts of this case, then there can be no doubt that the judgment of the High Court would have to be set aside. (Para – 20) [759-A,B,C & D]

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2.1 It will be of interest to note that the proceedings taken by the Company after the passing of the final order by DRT, Chandigarh, on 15.7.2003, were directed against fixation of the reserve price by the Recovery Officer though in Appeal No.52 of 2004 an application was made by the Company for setting aside the final order passed by the DRT Chandigarh. The same was however, of no consequence as the appeal was preferred against the order of the Recovery Officer fixing the reserve price of the Company's assets and not the final order, which, in any event, could not have been challenged in the said proceedings. (Para – 29) [761-A,B & C]

2.2 In effect, the final order passed by the DRT, Chandigarh, directing the respondent-Company to pay the dues of IDBI remained unchallenged and attained finality. The two courses available to the Company for preferring an appeal under Section 20 of the RDDB Act or by way of an application for setting aside the sale under Rule 60 of the Second Schedule of the Income Tax Act, 1961, were not resorted to by the respondent-Company. Instead, it chose to adopt a path restricted to the setting aside of the auction sale on the ground that the reserve price of the Company's assets had not been correctly fixed by the Recovery Officer prior to the auction sale. Consequently, the scope of the appeal preferred by the Company was confined only to the question as to whether the reserve price had been correctly fixed by the Recovery Officer. (Paras – 29 & 30) [761-C,D,E & F]

3.1 The final order was passed by DRT, Chandigarh, at a point of time when no Reference had at all been made by the Company to the BIFR for being declared a "sick company". The auction was held and concluded on 30.10.2004, again before a Reference had been made by the Company to the BIFR. It is only on 21.12.2005 that the Company filed a Reference before the BIFR which was rejected on 3.4.2006. In between, the appeal preferred by

A the Company (No.52 of 2004) before the DRT under Section 30 of the RDDB Act was allowed and the auction sale was set aside, but the final order passed by DRT, Chandigarh, remained untouched. The appeal preferred by the appellant against the order of the DRT allowing B Appeal No.52 of 2004 was subsequently decided in favour of the appellant on 10.2.2006 and the auction sale was confirmed in favour of the appellant with a direction upon the Recovery Officer and the other concerned authorities to complete the sale in favour of the appellant. It is only on C 15.9.2006, after all the aforesaid orders had been passed that a second Reference was filed by the respondent-Company before the BIFR on 15.9.2006 and on 22.2.2007 the Company was declared to be a "sick company" by the BIFR. (Para – 32) [761-H; 762-A,B,C & D]

D 3.2 The final order in the recovery proceedings under Section 19 of the RDDB Act was passed and the auction sale was concluded before the first Reference was filed by the Company with the BIFR and long before the respondent-Company was declared to be a sick E Company. It is, therefore, clear that the provisions of SICA, were sought to be invoked by the Company after the recovery proceedings had been concluded in favour of the appellant who had also deposited the sale price in respect of his offer which had been accepted by the F Recovery Officer. (Para – 34) [762-G & H; 763-A & B]

3.3 For reasons which are obvious, the respondent-Company chose not to take recourse either to Section 20 of the RDDB Act or Rule 60 of the Second Schedule of the Income Tax Act, 1961, and took a chance of filing an G appeal under Section 30 of the RDDB Act with regard to the fixation of the reserve price of the Company's assets by the Recovery Officer for the purposes of the auction sale and the scope of the appeal was limited to such issue alone. (Para – 35) [763-B,C & D]

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3.4 Since the respondent-Company did not challenge the final order of the DRT, the same continued to be in force and was carried to its logical conclusion by the holding of auction sale and confirmation thereof in favour of the appellant. (Para – 36) [763-D & E]

3.5 The order passed by the DRAT on 10.2.2006 confirming the sale in favour of the appellant was made long before the respondent-Company was declared to be a "sick company" on 22.2.2007. The High Court was, therefore, in error in applying the provisions of Section 22 of the SICA when the sale had already been confirmed in favour of the appellant and the purchase price had already been deposited. Furthermore, the first Reference made by the Company was also rejected by the BIFR on 3.4.2006. (Para – 37) [763-E & F]

4. Even on merits, the conduct of the company leaves much to be desired. Without challenging the final order passed by the DRT, Chandigarh, allowing the Bank's claim of Rs.25,26,60,836/- together with interest @ 7.8% per annum, the said respondent questioned the order of the Recovery Officer, fixing the reserve price of the Company's assets for the purposes of the auction sale, under Section 30 of the RDDB Act, having full knowledge of the fact that the final order of the DRT, Chandigarh, could not be challenged in such appeal. The steps taken by the respondent No.1, Company were far from bonafide and were only aimed at stalling the auction sale. Even at the time of auction of the company's assets, no attempt was made by the Company to secure a bid higher than that of the appellant. Hence, nothing further remains to be decided by the High Court. (Paras – 38 & 39) [763-G & H; 764-A,B & C]

Case Law Reference

(2003) 4 SCC 305	referred to	(Para – 26)
1989 Supp (2) SCC 627	referred to	(Para – 28)

A	60 IA 13 : AIR 1933 PC 63	referred to	(Para – 28)
	(1993) 2 SCC 144	referred to	(Para – 36)
	(1997) 10 SCC 649	referred to	(Para – 38)
	(1998) 5 SCC 554	referred to	(Para – 40)
B	(2000) 5 SCC 515	referred to	(Para – 43)
	(2000) 6 SCC 545	referred to	(Para – 44)
	(2006) 8 SCC 677	referred to	(Para – 45)
	1956 SCR 603,	referred to	(Para – 49)
C	(1977) 1 SCC 750	referred to	(Para – 51)
	(1990) 2 SCC 288	referred to	(Para – 53)
	(1981) 1 SCC 315	referred to	(Para - 54)
	(2000) 7 SCC 291	referred to	(Para – 60)
D	(2000) 4 SCC 406	referred to	(Para – 61)
	(2008) 1 SCC 125	referred to	(Para – 62)
	(2001) 3 SCC 71	referred to	(Para – 63)
E	(1997) 89 Comp Cas 547	referred to	(Para – 64)

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5225 of 2008

From the final Judgment and Order dated 23.02.2006 of
F the High Court of Delhi at New Delhi in Civil Writ Petition Nos. 2041 & 2042 of 2006

Harish N. Salve and Shyam Diwan, Paras Kuhad, Hemant Sharma, Prateek Jalan, Gaurav Pachnanda, Ajay Kumar, Prashant V.G. and Indu Sharma for the Appellant.

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C.A. Sunderam, Ranjit Kumar and J.L. Gupta, Rohini Musa, Neha Tandon, B.S. Nagar, Ajay Choudhary, Punit Dutt Tyagi, Sanjeev Sharma, Rajesh K. Sharma, Shalu Sharma and Sanjay Bhatt for the Respondents.

H The Judgment of the Court was delivered by

C.K. THAKKER, J. 1. Leave granted. A

2. The present appeal raises a question of great public importance having far-reaching consequences. The appeal is filed by KSL & Industries Ltd. ('appellant' for short) against final judgment and order passed by the Division Bench of High Court of Delhi on February 23, 2006 in Writ Petition (Civil) Nos. 2041-42 of 2006. By the said judgment, the High Court, set aside the order passed by the Debt Recovery Appellate Tribunal, Delhi ('DRAT' for short) and held that in view of the provisions of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereafter referred to as 'SICA'), no recovery proceedings could be effected against the first respondent-Company in the light of the bar contained therein. B C

Factual Background

3. To understand the controversy in its proper perspective, it is necessary to keep in mind the factual matrix of the case. Respondent No. 1 (M/s. Arihant Threads Ltd.) ('Company' for short) was incorporated as a joint venture with Punjab State Industrial Development Corporation. It set up an export oriented spinning unit for manufacturing cotton yarn in the industrial area of Amritsar District of the State of Punjab. In 1992, Goindwal Sahib Industrial & Investment Corporation allotted Plot No. 454, Flocal Point of Goindwal Sahib Industrial Area by way of lease to the Company for a period of 99 years with a specific condition that the lessee will not transfer the interest in the property for first fifteen years without prior permission of the lessor. The lessee was to enjoy the right of possession so long as it continued paying instalments of the premium by due-date and abide by other terms and conditions of the lease. It was, however, stated that the lessee would be entitled to mortgage lease-hold rights to a Bank, Punjab Financial Corporation or Life Insurance Corporation of India as security for a loan to be raised for construction of factory building, purchase of raw materials, etc. The Industrial Development Bank of India ('IDBI' for short) which was the predecessor of the Stressed Assets Stabilisation Fund D E F G H

A ('SASF' for short), financed the project undertaken by the Company by way of foreign currency loan and also working capital of Rs. 93.1 million.

4. It was the case of the Company that due to overall recession in Textile Industry, the Company suffered huge loss B and could not repay the amount of loan. Since the Company failed to pay instalments, IDBI filed Original Application No. 1368 of 2001 on December 20, 2001 in Debt Recovery Tribunal, Chandigarh ('DRT' for short) for recovery of Rs.25,26,60,836/- under the Recovery of Debts Due to Banks and Financial C Institutions Act, 1993 (hereinafter referred to as the 'RDDB' Act). On June 10, 2002, M/s Roland Exports (successor of Goindwal Industrial & Investment Corporation) cancelled the lease agreement on account of non-payment of lease money amounting to Rs.3,19,94,149/-. The Company did not remain D present before the DRT though duly served. On July 15, 2003, therefore, an *ex-parte* final order in favour of IDBI (SAFS) for recovery of Rs.25,26,60,836/- along with interest @ 7.8% p.a. was passed by DRT.

5. The Tribunal in operative part of the order stated;

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"The application for recovery of a sum Rs.25,26,60,836.00 is decreed against defendant company and the defendant company is ordered to pay:-

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i. A sum of Rs. 25,26,60,836.00 alongwith pendent elite and future interest @ 7.8% per annum with half yearly rests jointly and severally from the date of filing of the suit till realization;

ii. Pay the cost of litigation;

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iii. Pay the said amount within 30 days from the date of receipt of this order.

2. In the event of failure on the part of defendants to pay the above amount within the stipulated period, the applicant bank shall be entitled to recover the said

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amount from the sale of mortgaged properties of the defendants. Even if the said amount is not so realized, it shall be recovered from the sale of personal properties of the defendants.

3. Copy of the judgment be sent to the defendants and the recovery certificate be issued accordingly.

4. Parties to appear before the Recovery Officer, DRT, Chandigarh on 22.8.2003."

6. A recovery certificate was issued against the Company. On September 9, 2003, the Recovery Officer issued a composite demand notice under Rule 2 of Second Schedule of the Income Tax Act, 1961 against the Company demanding payment of Rs.28,60,87,384/-. He also directed the Company to appear on October 23, 2003 for settling terms and conditions of the proclamation of sale and for disclosure of its movable and immovable assets. Harnek Singh, Security Guard who was present at the Company premises was served and he signed the summons in token of acceptance of notice on behalf of the Company. Service Report was filed by one Rajesh Mahajan, Advocate for certificate holder affirming *Dasti* service on the Company. Another service report was also filed along with affidavit by the same advocate on October 6, 2003. On January 3, 2004, Mr. Vivek Verma, Local Commissioner appointed by the Recovery Officer, visited the site and filed his report wherein he stated that two machines were missing. He also recorded that the unit was in running condition. At the instance of SASF, North India Technical Consultancy Association Ltd. ('NITCO' for short) filed a valuation report in January, 2004 assessing the fixed assets at Rs.17.51 crores. It is alleged that on July 1, 2004, the Company created illegal tenancy in favour of M/s Roland Exports. On September 16, 2004, the Recovery Officer fixed the reserve price of the property at Rs.12.50 crores (Rs.4.50 crores for movables and Rs.8.00 crores for immovables). He also fixed the date for sale of immovable property as October 27, 2004 and for movable property as

A October 30, 2004. The auction was, however, adjourned. The Company on October 18, 2004, filed an appeal against the order dated September 16, 2004 fixing reserve price of Rs. 12.50 crores in the DRT being Appeal No. 52 of 2004 under Section 30 of the RDDB Act. On October 27, 2004, DRT allowed B auction sale to proceed but ordered that the sale should not be confirmed till further orders. On October 30, 2004, auction was concluded and the appellant herein was declared the highest and successful bidder at Rs.12.52 crores. It deposited 25% of the reserve price. On November 2, 2004, on an application by C the appellant, DRT appointed representative of the appellant as a receiver to prepare inventory of auctioned property.

7. On November, 11, 2004, the appellant made an application to DRT praying for acceptance of the bank guarantee in lieu of payment of the remaining amount of 75% and also by D refunding the amount deposited (25%). DRT dismissed the said application and the appellant-auction purchaser, on the same day, i.e. November 11, 2004 deposited the balance amount of 75% of the purchase money *i.e.* Rs.9,39,00,000/- by a Bank draft. On December 13, 2004, the receiver lodged a E First Information Report (FIR) and filed an affidavit before DRT complaining that the agent of the Company had forcibly dispossessed him by using criminal force. On December 15, 2004, the Company moved an application for setting aside *ex-parte* final order passed on July 15, 2003 by DRT, Chandigarh F which was registered as M.A. No. 103 of 2004. The appellant filed an application objecting the prayer of the Company with an added prayer to implead it in Appeal No. 52 of 2004 as also in M.A. No. 103 of 2004. The DRT allowed the impleadment application of the appellant vide order dated December 17, 2004. On March 28, 2005, the appellant filed an application for G hearing preliminary issue as to maintainability of appeal filed by the Company (Appeal No. 52 of 2004). On April 8, 2005, a suit for permanent injunction was filed by Roland Exports against the Company in the Civil Court at Tarantaran, District Amritsar. *Status quo* with regard to possession was ordered to be H

maintained by the Court. An appeal against the said order is said to have been pending in the High Court. Meanwhile, the Company got the property valued by Himachal Consultancy Organisation Ltd. ('HIMCO' for short), according to which the realizable value of the property had been increased to Rs.20.22 crores. On July 26, 2005, DRT-I, Delhi allowed Appeal No. 52 of 2004, set aside the auction sale subject to the Company fulfilling terms and conditions with regard to payment of certain amount, interest, expenses etc.

8. The Tribunal, while granting relief to the Company, ordered;

"In my humble opinion, natural justice requires that the appeal be allowed but with some conditions so that further progress of recovery be not stalled by the appellant. In these circumstances, this appeal is allowed, subject to the following conditions:-

(i) That the appellant will pay 5% of the amount deposited by the auction purchaser within 10 days as a penalty as per rule 60 of the Second Schedule of Income Tax Act.

(ii) The appellant will pay an interest on the amount deposited by the auction purchaser @ 9% p.a. calculated from the date of deposit of the same till today. The interest accumulated on the FDRs of auctioned amount till date will be paid to the CH FI who will adjust this amount against the outstanding dues of the appellant.

(iii) The appellant will also bear all the expenditure incurred by the CH FI in conducting the sale. The details of the same will be given by the CH FI within a week and thereafter within 10 days, this amount will be deposited by the appellant with the CH FI.

Failing to comply all the above three conditions, this appeal will be treated as dismissed and the restraint order passed

A by this Tribunal will stand vacated and the Ld. Recovery Officer will be at liberty to pass the necessary orders as per law and if, the above conditions are fulfilled by the appellant, the Ld. Recovery Officer is directed to re-auction this property as early as possible, within 75 days as per B law and release the amount deposited by the auction purchaser immediately. The present appeal bearing Transfer Appeal No. 1/2005 (Appeal NO. 52/04) stands disposed off accordingly. A copy of this order be given dasti to all the parties. A copy of this order be also sent to C the Recovery Officer; DRT, Chandigarh for necessary action and information. RC file be also sent immediately back to the DRT Chandigarh by special messenger along with copy of this order. File be consigned to records".

9. The Company, objecting the conditions imposed by DRT, D filed an appeal against the said order to the DRAT, Delhi being Appeal No. 167 of 2005. The appellant also filed an appeal being aggrieved by the setting aside the sale. DRAT stayed operation of the order dated July 26, 2005 which had set aside *ex-parte* order passed by DRT. It also directed refund of sale E amount to the appellant. Appeals were then heard and the judgment was reserved.

10. Meanwhile, on December 21, 2005, the Company filed a Reference before the Board of Industrial Finance & Reconstruction ('BIFR' for short) under SICA which was F registered as BIFR Case No. 4 of 2006. On February 10, 2006, DRAT dismissed the appeal filed by the Company and allowed the appeal of the appellant and confirmed auction-sale in favour of the appellant on depositing the sale price. DRAT, in the operative part of the order stated;

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"In view of the detailed discussion made on the issues which are relevant for the purpose deciding these appeals, the Miscellaneous Appeal 167/2005 filed by the judgment-debtor shall stand dismissed. The Miscellaneous Appeal 173/2005 filed by the auction purchaser shall stand

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allowed. Consequently, the appeal filed by the judgment-debtor in Appeal 52/2004 before the Presiding Officer, DRT, Chandigarh which is renumbered on transfer to DRT-I, Delhi as Transfer Appeal No. 1/2005 shall stand dismissed. Points formulated for consideration are answered accordingly. No costs.

Since, the appeal filed by the auction-purchaser is allowed, the Recovery Officer, DRT, Chandigarh shall confirm the sale and shall take all steps immediately for handling over the possession of properties in question, to the auction purchaser, if necessary, by taking assistance from all authorities concerned. The auction purchaser, who was permitted to withdraw the auction amount deposited towards sale price without prejudice to its rights during pending of these appeals, shall forthwith deposit the entire amount and thereafter the Recovery Officer shall proceed to complete the other requirements according to law forthwith."

11. By a separate order of even date, DRAT ordered the Recovery Officer, Chandigarh to act upon and execute the directions issued by it. The appellant deposited Rs.12.50 crores on the same day. But the sale could not be confirmed since the Presiding Officer was on leave. The appellant moved an application before DRAT for appointment of Recovery Officer, DRT, Delhi for confirmation of sale. Within three days, however, the Company filed two Writ Petitions being C.W. Nos. 2041 and 2042 of 2006 in the High Court of Delhi on February 13, 2006 against an order of DRAT dated February 10, 2006. The High Court of Delhi, as already mentioned earlier, allowed the writ petitions on February 23, 2006, set aside the order passed by DRAT on the ground that Section 22 of SICA operated as a complete bar to recovery proceedings and no order could have been passed by the Tribunal.

Subsequent development

12. Being aggrieved by the order passed by the High

A Court, the appellant filed Special Leave Petition in this Court on March 6, 2006. Notice was issued on March 27, 2006 by this Court and the appellant was allowed to withdraw sale price without prejudice to its rights and contentions. The matter was, thereafter, adjourned from time to time. It was ordered to be
B heard finally. For completion of record, it may be stated that on April 3, 2006, the BIFR rejected the Reference of the Company. The Company preferred an appeal against the said order which is pending before the Appellate Authority for Industrial & Financial Reconstruction (AAIFR). On September 15, 2006,
C second Reference was filed by the Company which has been registered as BIFR Case No. 18 of 2006. On February 22, 2007, the BIFR declared the Company as a 'sick Company' and appointed LSAS, respondent No. 5 as the Operating Agency to prepare Rehabilitation Scheme.

D *Submissions of the appellant*

13. The Court has heard the learned counsel for the parties. Learned counsel for the appellant raised several contentions. He urged that the High Court has committed an error of law in holding that the proceedings were barred by Section 22 of the
E SICA and DRAT was wrong in issuing directions. The proceedings were neither covered by the first part nor by the second part of Section 22 and the High Court ought to have decided the case on merits. It was also submitted that Section 34 of RDDB Act has an 'overriding effect' and even on that
F ground, the matter ought to have been decided. It was contended that the appeal preferred by the Company against fixation of reserve price was not maintainable under Section 30 of the RDDB Act and could not have been entertained by DRT. So far as *ex-parte* decree passed by DRT is concerned, the counsel
G submitted that the Company was duly served and in spite of that, it failed to appear before the Tribunal. A grievance was also made that in an appeal against fixing reserve price (which was not maintainable), DRT granted interim relief on certain terms and conditions. But even those conditions had not been
H complied with by the Company. Reserve price fixed was proper.

sufficient and reasonable and DRT ought not to have set aside the order passed by the Recovery Officer. A

14. The counsel vehemently contended that the High Court ought to have taken into account over all conduct of the party, particularly when the Company had invoked discretionary and equitable jurisdiction under Article 226 of the Constitution. In exercising writ jurisdiction, submitted the counsel, the conduct of the petitioner is indeed a relevant and extremely important consideration. In the instant case, the Company had not come with clean hands. It had not repaid the loan amount; did not appear before DRT in spite of service of summons; an *ex parte* final order was, therefore, rightly passed against it; the Company filed an appeal before DRT against an 'order' which was not appealable; failed to comply with even the interim order under which protection was obtained and no payment was made; by committing criminal trespass and unlawfully entering the property, it dispossessed the receiver appointed by the Tribunal; the action of taking over possession of the property by act of highhandedness could not be approved; the Company also removed machinery and other movable property from the disputed premises; created unlawful tenancy rights in favour of third party by accepting substantial amount from him, etc. The counsel, therefore, urged that even if the case was covered by SICA and Section 22 got attracted, the High Court, in exercise of extraordinary and special jurisdiction, ought not to have granted relief in favour of the Company. On all these grounds, it was submitted that the appeal deserves to be allowed. B C D E F

15. The learned counsel for the supporting respondents adopted the arguments advanced by the learned counsel for the appellant.

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Submissions of respondent

16. The learned counsel for the Company, on the other hand, supported the order passed by the High Court. According to him, no doubt the High Court was exercising powers under Article 226 of the Constitution. But in exercising constitutional H

A powers, the Court would undoubtedly keep in mind statutory provisions of SICA and precisely that has been done by the Court. If the proceedings could not have been initiated or continued in view of bar of Section 22 of SICA, it cannot be said that the High Court was wrong in passing the impugned
B order. No grievance, hence, can be made against such order. As to *ex-parte* final order said to have been passed by DRT, it was submitted that no opportunity of hearing was afforded to the Company and the order was violative of principles of natural justice and fair play. The appeal filed by the Company against
C fixation of reserve price before DRT was maintainable under Section 30 of the RDDB Act as the appeal lies against "an order of the Recovery Officer made under the Act" and an order of fixation of reserve price is also an 'order' within the meaning of the Act. Regarding non-depositing of amount as per interim
D order, it was submitted that the Company was not in a position to comply with the conditions of stay and the directions issued and hence, in accordance with law, it challenged the said order by filing an appeal before DRAT. It was the right of the Company to take such action and the appellant cannot object against such course being adopted by the Company. It was, therefore,
E submitted that the High Court was wholly justified in allowing the petitions filed by the Company and no case has been made out by the appellant for interference against the said order by this Court.

F *High Court's order*

17. At the outset, it may be noted that the High Court had disposed of the petitions only on one ground as to applicability of SICA and held that the proceedings were barred under Section 22 of the said Act. This is amply clear from paragraph
G 13 of the order which reads as under:

> Several arguments have been advanced before us by learned counsel for the parties, but we are of the opinion that this petition deserves to be allowed on the very first submission of Dr. Abhishek M. Singhvi, learned senior

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counsel for the petitioner, namely that *the proceedings are barred by Section 22 read with Section 32 of the SICA*.

(emphasis supplied)

18. Referring to the relevant provisions of SICA and keeping in view the ratio laid down in the decisions cited before it, the Court ruled that the petition filed by the Company was required to be allowed. Accordingly, in the operative part (para 36), the High Court concluded:

> For the reasons given above, the petition is allowed and the impugned order dated 10.2.2006 passed by the DRAT is set aside and *it is held that no recovery can take place against the petitioner in view of the bar of Section 22 of the SICA*.
>
> (emphasis supplied)

19. As already adverted to, before the Court the arguments had been advanced by all the parties on continuation or otherwise of proceedings and also on the merits of the matter. In view of the fact, however, that the High Court has not entered into merits of the case and disposed of petitions holding that the proceedings could not be continued because of the bar of Section 22 of SICA, I do not wish to enter into allegations and counter allegations levelled by the parties. At the same time, I am of the view that the conclusion arrived at by the High Court that the proceedings were barred under Section 22 of SICA is not well-founded and the decision of the High Court on that point deserves to be set aside.

SICA – Ambit and scope

20. So far as SICA is concerned, it has been stated in the Preamble that the Act has been enacted in public interest "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,

A 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". While interpreting various provisions of the Act, the said object has to be kept in B mind by Courts. Section 2 is in the form of 'declaration' and declares that the Act has been enacted for giving effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of Article 39 of the Constitution. Section 3 defines various terms used in the Act. Chapter II relates to C establishment of Board and Appellate Authority, term of office, conditions of service of officials and working of the Board and Appellate Authority. References, Inquiries and Schemes have been dealt with in Chapter III. Whereas Section 15 provides for Reference to Board, Section 16 speaks of Inquiry into working of sick industrial companies. Section 17 empowers the Board D to make suitable order on the completion of inquiry. Sections 18, 19 and 19A deal with Preparation of Schemes, Rehabilitation and Arrangement for continuing operations during inquiry. Winding up of sick industrial company is found in Section 20. Section 21 allows Operating Agency to prepare inventory. Under E Section 22A, directions can be issued preventing disposal of assets in certain cases.

21. Section 22 is a material provision which relates to suspension of legal proceedings, contracts, etc. Sub-section F (1) is important and may be reproduced;

> 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 G 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 H 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.

....

22. Chapter IV covers potentially sick industrial Companies, misfeasance proceedings, appeals and other miscellaneous matters with which the Court is not concerned in the present case except Section 32 which gives 'overriding effect' to the provisions of the Act. It reads as under:

32. Effect of the Act on other laws.—(1) The provisions of this Act and of any rules or schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law except the provisions of the Foreign Exchange Regulation Act, 1973 (46 of 1973) and the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976) for the time being in force or in the Memorandum or Articles of Association of an industrial company or in any other instrument having effect by virtue of any law other than this Act.

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

owning an industrial undertaking with another company.

RDDB Act – Ambit and scope

23. The RDDB Act (Recovery of Debts Due to Banks and Financial Institutions Act, 1993) has been enacted with a view "to provide for the establishment of Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or incidental thereto". Chapter I is Preliminary in nature and Section 2 defines various terms. Chapter II provides for establishment of Tribunals and Appellate Tribunals, their composition, qualifications and term of office of the staff, salaries, allowances, etc. Jurisdiction, powers and authority of Tribunals are found in Chapter III. The Tribunals are required to follow procedure laid down in Chapter IV. Chapter V relates to 'Recovery of debt determined by the Tribunal'. Section 29 declares that the provisions of the Second and Third Schedules of the Income Tax Act, 1961 will apply to the recovery of amount due under the RDDB Act. Chapter VI is Miscellaneous. One section, however, is of extreme importance. It is Section 34 which allows 'overriding effect' to the provisions of the Act over other laws. It is a crucial provision and may be quoted *in extenso*;

> *34. Act to have overriding effect.*—(1) Save as provided under sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.
>
> (2) The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948, the State Financial Corporations Act, 1951, the Unit Trust of India Act, 1963, the Industrial Reconstruction Bank of India Act, 1984 and *the Sick Industrial Companies (Special Provisions) Act, 1985* and the Small Industries Development Bank of India Act, 1989. (emphasis supplied)

24. According to the Company, there is a bar against initiation or continuation of proceedings under Section 22 of SICA against sick companies. The High Court was, therefore, right in allowing the petitions filed by the Company. The case of the appellant and supporting respondents, on the other hand, is that Section 22 of SICA has no application to the case on hand and the High Court was in error in invoking the said section and denying relief to the auction purchaser as well as other creditors by wrongly extending benefit of the said provision to the Company. The appellant alternatively contended that even if the proceedings pending against the Company are covered by Section 22 of SICA, *non-obstante* clause in Section 34 of RDDB Act, which is a subsequent legislation will operate and recovery could not have been suspended, stalled or arrested.

Interpretation of statutes

25. The question, therefore, is whether the High Court was right in holding that the proceedings were barred under Section 22 of SICA. I have extracted the relevant part of the said section. It has two limbs. The first part enacts that "no *proceeding* 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 ... shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority." The second part which is independent of the first part declares that "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." The two parts use two different expressions; (i) 'proceeding' and (ii) 'suit'.

Case law

26. In *Kailash Nath Agarwal & Ors. v. Pradeshiya Industrial & Investment Corporation of U.P. Ltd. & Anr.*, (2003)

A 4 SCC 305, this Court had an occasion to consider the meaning of these two expressions. The Court noted that sometimes two different words are used in one and the same statute to convey the same meaning, but "that is exception rather than the rule". The general rule is that when two different words are used by
B a statute, *prima facie* one has to construe different words as carrying different meanings.

27. The Court stated;

"The word "suit" and "proceeding" have not been used
C interchangeably in SICA."

28. Referring to *Pandurang R. Mandlik v. Shantibai R. Ghatge,* 1989 Supp (2) SCC 627, the Court observed that in its comprehensive sense, the word 'suit' is understood to apply to any proceeding in a Court of Justice by which an individual
D pursues a remedy which the law affords. The modes of proceedings may be various, but if a right is litigated between parties in a Court of Justice, the proceedings by which the decision of the Court is sought may be a suit. The word 'suit' ordinarily means and, apart from some context, must be taken
E to mean a civil proceeding instituted by the presentation of a plaint". (*vide Hansraj Gupta v. Dehra Dun – Mussoorie Electric Trameray Co. Ltd.;* 60 IA 13 : AIR 1933 PC 63).

29. In the instant case, proceedings had been initiated by the Bank not before a Civil Court by invoking Section 9 of the
F Code of Civil Procedure, 1908, but before DRT by taking recourse to jurisdiction under RDDB Act. It is, therefore, contended that the proceedings could not be said to be a "suit" falling within the mischief of Section 22 of SICA. In any case, according to the learned counsel for the appellant, *ex parte*
G final order was passed by DRT as back as on July 15, 2003 and hence even if it is assumed that the connotation "suit" should be construed liberally so as to take within its sweep all proceedings including an application before DRT, in view of final order passed by DRT in 2003, bar envisaged by Section
H 22 of SICA cannot operate.

30. So far as "proceedings" are concerned, it was submitted by the appellant that the final order had been passed by DRT under RDDB Act. A Certificate had been issued under Section 19 and in accordance with Section 29 of the Act, procedure laid down in Second and Third Schedules to the Income Tax Act, 1961 had been followed. Reserve price was fixed. Sale-proclamation was published. Auction was held. The appellant was found to be the highest bidder and its bid was accepted. Necessary amount was deposited. All actions were thus in conformity with law. If the Company felt aggrieved by auction sale, it ought to have proceeded in accordance with Rules 60 to 62 of the Rules in the Second Schedule. Rule 60 permits a person adversely affected by the sale to apply to the Tax Recovery Officer within thirty days from the date of sale to set aside such sale on his depositing the entire amount with interest thereon and penalty. Admittedly, the Company did not avail the said remedy. Rule 61 allows an application to set aside sale of immovable property on the ground of non-service of notice or material irregularity in publishing or conducting the sale. The said rule also provides for deposit of amount recoverable under the Certificate. The Company failed to do so. Under Rule 62, sale can be set aside when defaulter has no saleable interest. No such case had been put forward by the Company by applying under Rule 62. The Company, therefore, could not make grievance against the auction sale.

31. Strong reliance was placed on behalf of the appellant on Rule 63 which states that where no application is made for setting aside the sale or where such application is made and is dismissed, the Tax Recovery Officer *shall* make an order confirming the sale and thereupon the sale *shall* become absolute. It was submitted that none of the Rules had been invoked by the Company by applying to the Tax Recovery Officer and by depositing the amount. The Tax Recovery Officer, hence, was enjoined to confirm sale as per the mandate of Rule 63. An appeal filed by the Company under Section 30 of RDDB Act before DRT against the order of Tax Recovery Officer fixing

A reserve price was ill-conceived and not maintainable as there was no 'order' within the meaning of RDDB Act which was appealable. Attention of the Court in this connection was invited by the learned counsel to Rule 53 [Contents of proclamation]. It provides that a proclamation of sale shall specify, *inter alia,* B "the reserve price, *if any*, below which the property may not be sold" [Clause (cc)]. It was submitted that fixation of 'reserve price' is not mandatory, condition precedent or *sine qua non* and if reserve price is not fixed, the order cannot be said to be *non est,* contrary to law or unlawful. In any case, when reserve C price was fixed and property was sold not below such price, the only remedy available to the Company or any person whose interest was affected was to apply under Rule 60 or 61 or 62. The appeal before DRT was thus totally misconceived and ought not to have been entertained by the Tribunal.

D 32. According to the Company, reserve price was grossly inadequate. The Company was aggrieved and preferred an appeal under Section 30 of RDDB Act as the order fixing reserve price was also an 'order' within the meaning of the Act. To buttress the submission, the counsel relied upon a decision of E this Court in *Union of India & Anr. v. Delhi High Court Bar Association & Ors.,* (2002) 4 SCC 275. In *Delhi High Court Bar Association,* while upholding the validity of RDDB Act, this Court considered various safeguards and remedies available to the aggrieved party. In paragraph 30 of the decision, it was F *inter alia* observed;

> Furthermore, Section 30, after amendment by the Amendment Act, 2000, gives a right to any person aggrieved by an order of the Recovery Officer, to prefer an appeal to the Tribunal. Thus now an appellate forum G has been provided against any orders of the Recovery Officer which may not be in accordance with law. There is, therefore, sufficient safeguard which has been provided in the event of the Recovery Officer acting in an arbitrary or an unreasonable manner. The provisions of Sections H 25 and 28 are, therefore, not bad in law

33. I express no opinion one way or the other on the controversy. As noted earlier, the High Court allowed the petitions filed by the Company only on the ground of bar of Section 22 of SICA. Since I am of the view that the High Court was not right in coming to that conclusion, the matter must go back to the High Court for deciding all points not dealt and decided.

34. The learned counsel for the Company emphatically argued that Section 32 of SICA is explicitly clear and uses *non-obstante* clause ("Notwithstanding anything inconsistent therewith contained in any other law"). It was urged that SICA is a 'self-contained Code' and makes detailed and exhaustive provisions in respect of sick companies. It is also a 'special law' and effect must be given to the provisions of the Act. The argument of the appellant on the other hand is that Section 34 of RDDB Act is a subsequent legislation which also contains a similar *non-obstante* clause and that Act should prevail over SICA.

35. The learned counsel for the parties, in support of their respective submissions, referred to several decisions. Let us consider few of them.

36. In *Maharashtra Tubes Ltd. v. State Industrial & Investment Corporation of Maharashtra Ltd. & Anr.*, (1993) 2 SCC 144, this Court was called upon to consider the provisions of SICA and State Financial Corporation Act, 1951. Observing that the word 'proceedings' in sub-section (1) of Section 22 of SICA could not be given narrow or restricted meaning to limit the legal proceedings, the Court held that if Section 22(1) is attracted, the proceedings must be held to be barred.

37. Keeping in view the underlying object of enacting SICA, the Court stated;

> Now we come to the impugned decision. The High Court was considerably influenced by the fact that the appellant-company owed crores of rupees to banks and felt that so

A far as such creditors are concerned, different considerations may come into play but the High Court with respect failed to appreciate that the 1985 Act was enacted primarily to assist sick industrial undertakings which inter alia failed to meet their financial obligations. It
B is, therefore, difficult to accept the view of the High Court that where the creditors of a sick industrial concern happen to be Banks or State Financial Corporations different considerations would come into play. It must be realised that in the modern industrial environment large industries
C are generally financed by banks and statutory corporations created specially for that purpose and if they are permitted to resort to independent action in total disregard of the pending inquiry under Sections 15 to 19 of the 1985 Act the entire exercise under the said provisions would be
D rendered nugatory by the time the BIFR is able to evolve a scheme of revival or rehabilitation of the sick industrial concern by : device of the Financial Corporation resorting to Section 29 of the 1951 Act. We are, therefore, of the opinion that where an inquiry is pending under Section 16/17 or an appeal is pending under Section 25 of the
E 1985 Act there should be cessation of the coercive activities of the type mentioned in Section 22(1) to permit the BIFR to consider what remedial measures it should take with respect to the sick industrial company. The expression 'proceedings' in Section 22(1), therefore,
F cannot be confined to legal proceedings understood in the narrow sense of proceedings in a Court of law or a legal tribunal for attachment and sale of the debtor's property.

G 38. In *Deputy Commercial Tax Officer & Ors. v. Corromandal Pharmaceuticals & Ors.*, (1997) 10 SCC 649, this Court held that the embargo under Section 22(1) would not apply to payment of tax collected by the sick industrial company after the date of the sanctioned scheme and legitimately belonged to the Revenue. "Any other construction will be
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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."*

(emphasis supplied)

39. Justice Jeevan Reddy was much more emphatic. In a concurrent judgment, His Lordship stated;

> Looking at the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 [the Act], I was wondering how out of tune the Act has become with the economic policies being pursued now in this country. Since 1991-92, we are launched upon, what is being called, liberalisation of our economy. We have given up the policy of protecting our industries against foreign competition on the ground that it has given rise to an inefficient and outdated industrial system in our country. Our industries are suddenly being asked to compete with foreign companies, many of whom being giant multi-nationals have vast resources at their disposal. [They are merrily gobbling up our poor native companies. Many local industries, unable to stand the said competition are joining the foreign giants in one form of venture or other. Several hundreds of small-scale and medium scale units in telecom sector, for example have suffered enormously because of our love for foreign companies and their capital. The state of several public sector companies is no better. I am not saying that we have totally embraced, what may be called "Reaganism" or "Thatcherism". The fact, however, remains that it is no longer thought advisable to keep alive inefficient and uneconomic industries by injecting public funds or in the name of safeguarding the employment of the workers. And here is this Act, a product of the era of protectionism, seeking to keep alive "sick" companies by pumping in funds - mostly public funds - and by providing various

A concessions. In the process, nobody inquires why a particular industrial company has become sick, viz., whether it is an induced one or whether it is on account of factors beyond their control. The object of the Act is undoubtedly laudatory but it must also provide for
B appropriate measures against persons responsible where it is found that sickness is caused by factors other than circumstances beyond the control of the management. It is also a well-known fact that the proceedings before the Board of Industrial and Financial Reconstruction take a
C long time to conclude and all the while the protective umbrella of Section 22 is held over the company which has reported sick. We have come across cases where unfair advantage is sought to be taken of the provisions of Section 22 by certain industrial companies - and the wide
D language employed in the section is providing them a cover. We are sure Section 22 was not meant to breed dishonesty nor can it be so operated as to encourage unfair practices. The ultimate prejudice to public monies should not be overlooked in the process of promoting industrial progress. We are quite sure that the Government
E is fully alive to the situation and are equally certain that they must be thinking of necessary modifications in the Act. *These few observations are meant merely to record the need for changes in the Act.* (emphasis supplied)

F 40. In *Real Value Appliances Ltd. v. Canara Bank & Ors.*, (1998) 5 SCC 554, a contention was advanced on behalf of the creditors that the conduct of the Company was far from satisfactory and highly objectionable. It suppressed several facts from the Court. Contradictory and inconsistent pleas were taken
G and fraud was practised on the Court.

41. This Court agreed with what was submitted and observed;

This conduct of the appellant, in our view, was certainly very unfair to the High Court and, therefore, the High Court
H

had rightly depreciated the same. In our view, there was a clear attempt to keep the Court in the dark" A

42. The Court, however, proceeded to state that on that count reference-application to the BIFR would not become bad and if the Company was entitled to the benefit of SICA, it could not be denied the said benefit. B

43. In *Rishabh Agro Industries Ltd. v. P.N.B. Capital Services Ltd.*, (2000) 5 SCC 515, this Court held that where conditions precedent for applicability of SICA were satisfied, then notwithstanding that the order for winding up of the Company had been passed, the bar would get attracted. C

44. In *Patheja Bros. Forgings & Stamping & Anr. v. ICICI Ltd. & Ors.*, (2000) 6 SCC 545, this Court held that without requisite sanction under Section 22 of SICA, no suit can be proceeded with. D

45. In *Jai Engineering Works Ltd. v. Industry Facilitation Council & Anr.*, (2006) 8 SCC 677, after referring to all leading decisions on the point and describing 1985 Act as a 'complete Code', this Court stated; E

> The 1985 Act was enacted in public interest. It contains special provisions. The said special provisions had been made with a view to secure the timely detection of sick and potentially sick companies owning industrial undertakings, the speedy determination by a Board of F experts for 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. G

46. In my view, however, the learned counsel for the appellant is right in submitting that RDDB Act is a 'special law' and also a subsequent legislation, i.e. later law. It is well-settled that when any law has been enacted, the Legislature must be presumed to be aware of all existing laws. When RDDB Act H

A was enacted in 1993, SICA was very much in force since it was enacted in 1985. In spite of that, Parliament was pleased to give 'overriding effect' to RDDB Act by using *non-obstante* clause in Section 34. Sub-section (1) expressly stated that the provisions of the Act "shall have effect notwithstanding anything B inconsistent therewith contained in any other law for the time being in force".

47. I am thus at a point where two statutes employ *non-obstante* clause having 'overriding effect'. Such a conflict, as laid down in several cases, may be resolved by judiciary on C various considerations; such as the policy underlying the enactments, the language used, the object intended to be achieved; or mischief sought to be remedied, etc. One of the tests applied by Courts is that *normally* a later enactment should prevail over the former. The Courts would also try to reconcile D both Acts by adopting harmonious interpretation and applying them in their respective fields so that both may operate without coming into conflict with each-other. In resolving the clash, the Court may further examine whether one of the two enactments is *'special'* and the other one is *'general'*. There can also be a E situation in law where one and the same statute may be held to be a 'special' statute *vis-à-vis* one legislation and 'general' statute *vis-à-vis* another legislation. On the basis of one or more tests, the Court will try to salvage the situation by giving effect to *non obstante* clause in both the legislations.

F 48. Let me consider some of the decisions of this Court on this vexed issue.

49. In *Shri Ram Narain v. Simla Banking & Industrial Co. Ltd.*, 1956 SCR 603, two competing statutes came up for G consideration before this Court being the Banking Companies Act, 1949 (as amended by Act 52 of 1953) and the Displaced Persons (Debt Adjustment) Act, 1951. Section 45-A of the Banking Companies Act (introduced by the amending Act of 1953) and Section 13 of the Displaced Persons Act, 1951 both contained a *non-obstante* clause stating that certain provisions H

of the Act shall have effect "notwithstanding anything inconsistent therewith in any other law for the time being in force". This Court resolved the conflict by considering the object and purpose of the two laws and giving primacy to the Banking Companies Act. The Court indicated that when two Acts contain provisions giving overriding effect, it would be a difficult question as to which Act should prevail.

50. The Court stated—

> "It is, therefore, desirable to determine the overriding effect of one or the other of the relevant provisions in these two Acts, in a given case, on much broader considerations of the purpose and policy underlying the two Acts and the clear intendment conveyed by the language of the relevant provisions therein".

51. In *Shri Sarwan Singh & Anr. v. Shri Kasturi Lal,* (1977) 1 SCC 750, two provisions were before this Court. Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956 (as amended by Act 43 of 1964) provided that proceedings for eviction of tenants could not be taken without permission of the competent authority "notwithstanding anything contained in any other law for the time being in force". Section 39 of the Act further declared that the provisions of the Act shall take effect "notwithstanding anything inconsistent therewith contained in any other law". The other statute was the Delhi Rent Control Act, 1958 (as amended by Act 18 of 1976). Section 14-A as inserted by the amendment Act conferred a right on a landlord to recover immediate possession of any premises let out by him in case he was required to vacate any residential premises allotted to him by the Central Government or by a local Authority. The conferment of the right was "notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force". Section 25-B laid down special procedure for enforcement of right conferred by Section 14-A. Section 25-A stated that the provisions in Section 25-B shall have effect "notwithstanding anything inconsistent therewith contained

A elsewhere in this Act or in any other law for the time being in force". The Court held that the right to immediate possession conferred by Section 14-A of the Delhi Rent Act was not controlled by the Slum Clearance Act and the right could be enforced in the manner provided in Section 25-B without B obtaining prior permission of the competent Authority under the Slum Clearance Act.

52. Speaking for the Court Chandrachud, J. (as His Lordship then was) observed:

C "For resolving such *inter se* conflicts, one other test may also be applied though the persuasive force of such a test is but one of the factors which combine to give a fair meaning to the language of the law. That test is that the later enactment must prevail over the earlier one. Section 14A and Chapter IIIA having been enacted with effect from D December 1, 1975 are later enactments in reference to Section 19 of the Slum Clearance Act which, in its present form, was placed on the statute book with effect from February 28, 1965 and in reference to Section 39 of the same Act, which came into force in 1956 when the Act E itself was passed. The legislature gave overriding effect to Section 14A and Chapter IIIA with the knowledge that Sections 19 and 39 of the Slum Clearance Act contained non obstante clauses of equal efficacy. Therefore *the later enactment must prevail over the former*".

F (emphasis supplied)

53. In *Sanwarmal Kejriwal v. Vishwa Co-operative Housing Society Ltd & Ors.*, (1990) 2 SCC 288, this Court applied the test as to 'general' and 'special' Act and held that special law G would have primacy over the general law.

54. In *Life Insurance Corporation of India v. D.J. Bahadur & Ors.*, (1981) 1 SCC 315, before this Court two Acts came up for consideration; (1) Industrial Disputes Act, 1947 (ID Act), and (2) Life Insurance Corporation Act, 1956 (LIC Act). One of the H

questions before the Court was which of the two should be considered as 'special law'. It was urged that the Industrial Disputes Act should be regarded as 'general law' relating to workmen and Life Insurance Corporation Act should be considered as 'special law' in relation to employees engaged by LIC. It was, therefore, submitted that when a complaint is made by an employee of LIC, he cannot invoke the provisions of ID Act and the matter must be decided in accordance with LIC Act.

55. Krishna Iyer, J. described the question as 'crucial' which demanded an answer about the statute being 'general' or 'special'. The well known doctrine of *generalia specialibus non derogant* (general provisions will not abrogate special provisions) was also noted and it was observed that if LIC Act was considered 'special', it must operate over ID Act treating ID Act to be 'general' law. Noticing, however, the long title of LIC Act and its object for providing nationalization of life insurance business in the country and the matters connected therewith, the Court observed that the primary purpose of the Act was to nationalize private insurance business by establishing Life Insurance Corporation of India. Incidentally, the said Act provided for transfer of service of existing employees of the insurers to the Corporation, their conditions of service, etc. But it was 'plain and beyond doubt' that it was not concerned with disputes between employer and employee. The principal object of the Act was nationalization of insurance business and it was a 'special' legislation so far as business purpose was concerned. Disputes between employer and employee had been dealt with by ID Act which was a 'special' law covering that field and if there is dispute between employer and employee in Life Insurance Corporation, LIC Act must be treated as 'general law' *vis-à-vis* ID Act which should be treated as 'special law'.

56. His Lordship, therefore, made the following pertinent observations:

"In determining whether a statute is a special or a general

A one, the focus must be on the principal subject matter plus the particular perspective. *For certain purposes, an Act may be general and for certain other purposes it may be special and we cannot blur distinctions when dealing with finer points of law. In law, we have a cosmos of relativity* B *not absolutes-so too in life".*

(emphasis supplied)

57. It was, therefore, concluded that ID Act was a special statute devoted only to investigation and settlement of industrial C disputes and since LIC Act was a general statute, in cases of disputes between an employer and employee, ID Act would have primacy over LIC Act.

58. In *Maharashtra Tubes Ltd.*, a conflict between provisions of two special statutes, viz. (1) the State Financial D Corporation Act, 1951 and (2) the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) was highlighted. Both contained *non-obstante* clause. The conflict was resolved by this Court by giving overriding effect to SICA on the ground that SICA was a subsequent enactment (1985) and *non-obstante* E clause therein would prevail over the *non-obstante* clause in the State Financial Corporation Act (1951).

59. The Court, speaking through Ahmadi, J. (as His Lordship then was), observed:

F "Having reached the conclusion that both the 1951 Act and the 1985 Act are special statutes dealing with different situations—the former providing for the grant of financial assistance to industrial concerns with a view to boost up industrialisation and the latter providing for revival and G rehabilitation of sick industrial undertakings, if necessary, by grant of financial assistance, we cannot uphold the contention urged on behalf of the respondent that the 1985 Act is a general statute covering a larger number of industrial concerns than the 1951 Act and, therefore, the latter would prevail over the former in the event of conflict. H

Both the statutes have competing non-obstante provisions. Section 46B of the 1951 Act provides that the provision of the statute and of any rule or order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force whereas Section 32(1) of the 1985 Act also provides that the provisions of the said Act and of any rules or schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law. Section 22(1) also carries a non-obstante clause and says that the said provision shall apply notwithstanding anything contained in Companies Act, 1956 or any other law. The 1985 Act being a subsequent enactment, the non-obstante clause therein would ordinarily prevail over the non-obstante clause found in Section 46B of the 1951 Act unless it is found that the 1985 Act is a general statute and the 1951 Act is a special one. In that event the maxim *generalia specialibus non derogant* would apply. But in the present case on a consideration of the relevant provisions of the two statues we have come to the conclusion that the 1951 Act deals with post-sickness situation. It is, therefore, not possible to agree that the 1951 Act is a special statute vis-a-vis the 1985 Act which is a general statute. *Both are special statutes dealing with different situations notwithstanding a slight overlap here and there, for example, both of them provide for grant of financial assistance though in different situations. We must, therefore, hold that in case of sick industrial undertakings the provisions contained in the 1985 Act would ordinarily prevail and govern".*

(emphasis supplied)

60. A similar conflict came to light between two statutes, namely, (i) the State Financial Corporations Act, 1951 and (ii) the Companies Act, 1956 in *A.P. State Financial Corporation v. Official Liquidator,* (2000) 7 SCC 291. The Court treated 1951 Act as a 'special Act' for grant of financial assistance to

A the industrial concerns with a view to boost up industrialization and also recovery of financial assistance if it becomes bad. Likewise, the Companies Act dealt with Companies including winding up of such Companies. The Court, however, held that the proviso to sub-section (1) of Section 529 and Section 529-
B A being a subsequent enactment, the *non-obstante* clause in Section 529-A would prevail over Section 29 of the 1951 Act. Highlighting the underlying object of *non-obstante* clause in Section 529-A of the Companies Act and a social purpose underlying therein to ensure payment of dues to the workmen
C in priority over all other debts, the Court concluded that "if conditions are not imposed to protect the right of the workmen, there is every possibility that the secured creditor may frustrate the above *pari passu* right of the workmen".

61. In *Allahabad Bank v. Canara Bank & Anr.,* (2000) 4
D SCC 406, a similar question was raised before this Court. There the Court considered two Acts, (i) RDDB Act, 1993 and Companies Act, 1956. It was held that even where a winding up petition was pending or a winding up order had been passed against a Company for debt payable to banks and financial
E institutions, governing law was RDDB Act. No leave of Company Court as envisaged under the Company Act, therefore, was necessary. The Court held that though both the laws could be treated as 'special laws' in respect of recovery of dues by banks and financial institutions, it was 1993 Act which should be
F considered as 'special' *vis-à-vis* Company Law.

62. I may refer to a recent decision of this Court in *M/s. Transcore v. Union of India & Anr.,* (2008) 1 SCC 125, wherein this Court considered the provisions of RDDB Act, 1993 and Securitization and Reconstruction of Financial Assets and
G Enforcement of Security Interest Act, 2002. Considering the scheme of both the laws, the Court held that 1993 Act was a 'complete Code' by itself as far as recovery of debt is concerned. It was a 'special law' in the matters of recovery of dues and the provisions of the said Act would prevail over other laws.

H

63. It may also be profitable to refer to a three Judge Bench decision of this Court in *Solidaire India Ltd. v. Fairgrowth Financial Services Ltd. & Ors.*, (2001) 3 SCC 71. In that case, *S* took loan of Rs. one crore from *F*. The amount was not repaid. *F*, therefore, instituted proceedings under the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 for the recovery of the amount. The Special Court came to the conclusion that *S* had not repaid the loan and accordingly ordered *S* to pay the amount with interest. During the pendency of the appeal before this Court, *S* became sick and proceedings were initiated under SICA. One of the contentions raised before this Court by *S* was that in view of special provisions contained in SICA, no proceedings could have been initiated or continued under the Special Court Act. This Court admitted that SICA was a 'special' Act. The Court was also aware of the *non-obstante* clause in Section 32 of SICA. It noted that the effect of the said provision was that SICA will have effect "notwithstanding anything inconsistent therewith contained in any other law for the time being in force". But it noted that there was a similar *non-obstante* clause in Section 13 of the Special Court Act which was as under:

> "13. *Act to have overriding effect.*—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law, other than, this Act, or in any decree or order of any court, tribunal or other authority."

64. The Court then stated; "This Court has laid down in no uncertain terms that in such an event it is the later Act which must prevail". The Court referred to a decision rendered by a Special Court in *Bhoruka Steel Ltd. vs. Fairgrowth Financial Services Ltd.*, [(1997) 89 Comp Cas 547] wherein the Special Court stated:

> "Where there are two special statues which contain non-obstante clauses the later statute must prevail. This is

A because at the time of enactment of the later statute, the Legislature was aware of the earlier legislation and its non-obstante clause. If the Legislature still confers the later enactment with a non-obstante clause it means that the Legislature wanted that enactment to prevail. If the B Legislature does not want the later enactment to prevail then it could and would provide in the later enactment that the provisions of the earlier enactment continue to apply.

The Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, provides in Section C 13, that its provisions are to prevail over any other Act. Being a later enactment, it would prevail over the Sick Industrial Companies (Special Provisions) Act, 1985. Had the Legislature wanted to exclude the provisions of the Sick Companies Act from the ambit of the said Act, the D Legislature would have specifically so provided. The fact that the Legislature did not specifically so provide necessarily means that the Legislature intended that the provisions of the said Act were to prevail even over the provisions of the Sick Companies Act.

E

....

It is a settled rule of interpretation that if one constructions leads to a conflict, whereas on another construction, two Acts can be harmoniously constructed then the latter must F be adopted. If an interpretation is given that the Sick Industrial Companies (Special Provisions) Act, 1985, is to prevail then there would be a clear conflict. However, there would be no conflict if it is held that the 1992 Act is to prevail. On such an interpretation the objects of both G would be fulfilled and there would be no conflict. It is clear that the Legislature intended that public monies should be recovered first even from sick companies. Provided the sick company was in a position to first pay back the public money, there would be no difficulty in reconstruction. The Board for Industrial and Financial Reconstruction H

considering a scheme for reconstruction has to keep in mind the fact that it is to be paid off or directed by the Special Court. The Special Court can, if it is convinced, grant time or instalments." A

65. Approving the above observations, this Court stated: B

"We are in agreement with the aforesaid decision of the case, more so when we find that whenever the legislature wishes to do so it makes appropriate provisions in the Act in that behalf. Mr. Shiraz Rustomjee has drawn our attention to Section 34 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 wherein after giving an overriding effect to the 1993 Act it is specifically provided that the said Act will be in addition to and not in derogation of a number of other Acts including the 1985 Act. Similarly under Section 32 of the 1985 Act the applicability of the Foreign Exchange Regulation Act and the Urban Land Ceiling Act is not excluded." C D

Legal position

66. From the above discussion, in my judgment, the law is fairly well settled. A provision beginning with *non-obstante* clause ("notwithstanding anything inconsistent contained therein in any other law for the time being in force") must be enforced and implemented by giving effect to the provisions of the Act and by limiting the provisions of other laws. But, it cannot be gainsaid that sometimes one may come across two or more enactments containing similar *non-obstante* clause operating in the same or similar direction. Obviously, in such cases, the Court must attempt to find out the intention of the Legislature by examining the nature of controversy, object of the Act, proceedings initiated, relief sought and several other relevant considerations. From the case-law referred to above, it is clear that Courts have applied several workable tests. They, *inter alia,* include to keep in view whether the Act is 'general' or 'special', whether the Act is a subsequent legislation, whether there is reference to the former law and the *non-obstante* clause E F G H

A therein. The above tests are merely illustrative and by no means they should be considered as exhaustive. It is for the Court when it is called upon to resolve such conflict by harmoniously interpreting the provision of both the competing statutes and by giving effect to one over the other.

B *Primacy of RDDB Act*

67. Applying the above tests in the instance case, to me, it is crystal clear that the provisions of RDDB Act should be given priority and primacy over SICA. I may concede that both C the Acts are 'special Acts' in the sense that they have been enacted for a specific purpose and object in view. Whereas SICA has been enacted in the public interest with a view to securing the timely detection of sick or potentially sick companies owning industrial undertakings, the speedy D 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, RDDB Act has been enacted to secure and protect public revenue and for E expeditious adjudication and recovery of debts due to banks and financial institutions. RDDB Act is subsequent Act in the point of time being 1993 Act. It must, therefore, be presumed even in absence of any specific provision in the 1993 Act that Parliament was aware of all statutes which had been enacted F prior to 1993 including SICA of 1985. In spite of that, in sub-section (1) of Section 34 of RDDB Act, *non-obstante* clause has been inserted so as to ensure expeditious adjudication and recovery of debts due to banks and financial institutions.

G 68. But it is not only on the ground that the RDDB Act is a later Act and SICA is a former Act that I am holding that the RDDB Act will prevail over SICA. There is an additional factor also which is of extreme importance and supports the view which I am inclined to take. It is sub-section (2) of Section 34. To recall, sub-section (2) of Section 34 of RDDB Act declares H

that the provisions of this Act (RDDB Act of 1993) are "*in addition to and not in derogation of*", certain enactments referred to in the said sub-section. SICA has been expressly mentioned in the said sub-section. As already adverted to earlier, RDDB Act, 1993 has been enacted with a view "to provide for the establishment of the Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions" (Preamble of the Act). All other laws, therefore, whether general or special, prior or subsequent, must, in my considered view, be interpreted and applied keeping in view the above object of enacting 1993 Act. I have, therefore, no hesitation in holding that even though both the conflicting statutes, (SICA of 1985 and RDDB Act of 1993) contain *non-obstante* clause, in case of conflict, RDDB Act, 1993 will prevail over SICA, 1985 so far as recovery of public revenue is concerned.

Final Order

69. For the aforesaid reasons, I hold that the High Court has committed an error of law in invoking and applying provisions of Section 22 of SICA and in dropping proceedings against the Company. The order of the High Court, therefore, deserves to be set aside and I do accordingly. The matter is remitted to the High Court to decide it afresh on all points including the conduct of the Company after hearing the parties. All contentions of all parties are kept open.

70. Before parting with the matter, I may clarify that any observation on merits which might have been made in this judgment is only for the purpose of deciding the preliminary question as to maintainability of proceedings against the Company since the High Court has allowed the petitions filed by the Company only on that ground. I make it clear that I may not be understood to have expressed any opinion on other issues and as and when the matter will come up before the High Court, the same will be decided on its own merits without being inhibited by such observations.

71. The appeal is accordingly allowed with costs.

A **ALTAMAS KABIR, J.** 1. I have had the benefit of going through the draft judgment prepared by my learned Brother and while I agree with the conclusion arrived at by His Lordship, that the High Court erred in applying the provisions of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985, B and dropping the proceedings against the Company, with utmost respect I find myself unable to accept the legal reasoning on which His Lordship's conclusion is based. I would like to traverse a different route in arriving at the same conclusion as arrived at by my learned brother.

C 2. Since my learned Brother has set out the facts involved in detail, I shall only highlight some of the facts which compel me to pen my views in a separate judgment.

3. The respondent No.1-Company, M/s Arihant Threads D Limited, was incorporated as a Joint Venture Company with Punjab State Industrial Development Corporation. In 1992 the said Company was granted lease of Plot No.454 for 99 years by Goindwal Sahib Industrial and Investment Corporation in the Goindwal Sahib Industrial Area. The lease contained a specific provision disentitling the lessee from transferring its interest in E the demised property for the first 15 years of the lease without the prior permission of the lessor. However, it was also provided that the lessee would be entitled to mortgage its leasehold rights to a Bank, the Punjab Financial Corporation or the Life Insurance Corporation of India as security for development of F the demised premises by constructing factory buildings and for purchase of raw-material etc. In view of the said provision, the Industrial Development Bank of India (hereinafter referred to as 'IDBI'), which was the predecessor of the Stressed Assets Stabilisation Fund (hereinafter referred to as 'SASF'), financed G the project undertaken by the Company.

4. As it appears from the records, the respondent no.1-Company was unable to repay the loan and IDBI filed Original Application No.1368 of 2001 in the Debts Recovery Tribunal, Chandigarh, (hereinafter referred to as 'DRT, Chandigarh') on H

20.12.2001, for recovery of Rs.25,26,60,836/-, under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the 'RDDB Act'). Despite service of notice of the said proceedings, the respondent No.1 Company remained unrepresented before the DRT and on 15.7.2003 an ex-parte final order was passed in favour of IDBI for recovery of Rs.25,26,60,836/- together with interest at the rate of 7.8% per annum and a Recovery Certificate was also issued against the respondent No.1-Company.

5. In keeping with Section 29 of the RDDB Act, the Recovery Officer issued a composite demand notice to the respondent No.1-Company on 9.9.2003 under Rule 2 of the Second Schedule to the Income Tax Act, 1961, demanding payment of Rs. 28,60,87,384/-. A separate direction was given to the Company to appear before the Recovery Officer on 23.10.2003 for settling terms and conditions relating to the proclamation of sale and for disclosure of its movable and immovable assets.

6. A Valuation Report was also obtained from the Local Commissioner, appointed by the Recovery Officer, who in his report indicated that two machines were missing from the Company's factory. A further Valuation Report was obtained from the North-India Technical Consultancy Association Limited in January 2004, wherein the assets of the Respondent No.1-Company was valued at Rs.17.5 crores on 16.9.2004. The reserve price of the property was fixed at Rs.12.50 crores by the Recovery Officer and two separate dates were fixed for sale of the immovable and movable properties of the Company. The respondent No.1 – Company filed an appeal, being Appeal No.52 of 2004, before the DRT on 18.10.2004 under Section 30 of the RDDB Act questioning the fixation of the reserve price by the Recovery Officer at Rs.12.50 crores. The proposed auction sale was, therefore, cancelled till the DRT by its order dated 27.10.2004 allowed the auction sale to proceed but restrained the Recovery Officer from confirming the same till further orders. Consequently, the auction was held and

A concluded on 30.10.2004 and the appellant herein was declared to be the successful bidder. Consequently, as per rules laid down, the appellant deposited 25% of the reserve price immediately. On 11.11.2004, the appellant made an application to the DRT for accepting bank guarantee for the remaining B balance of 75% of the sale price. On the said application being dismissed the appellant-auction purchaser on the same day deposited the balance amount of 75% of the sale price by a bank draft. It is only after the sale had been conducted and concluded on 30.10.2004 that an application was made by the C respondent-Company on 15.12.2004 in the pending appeal for setting aside the ex-parte final order passed by the DRT, Chandigarh, on 15.7.2003 and the same was registered as M.A.No.103/2004. The appellant herein filed an application for being added as a party in Appeal No.52 of 2004 and also in D M.A. No.103 of 2004 to enable it to oppose the prayer of the Company for setting aside the final order passed by the DRT, Chandigarh, on 15.7.2003. Such prayer for impleadment was allowed by the DRT by its order dated 17.12.2004.

7. At this juncture it may be indicated that on 10.6.2002 M/ E s Roland Exports, which had succeeded to the interests of Goindwal Sahib Industrial Corporation, cancelled the lease of the respondent No.1-Company on account of non-payment of lease dues amounting to Rs.3,19,94,149/-. On 8.4.2005 M/s Roland Exports filed a suit for permanent injunction against the F respondent No.1-Company in the Civil Court at Tarantaran, District Amritsar, wherein an order of status-quo with regard to possession was passed.

8. On 26.7.2005, DRT-I, Delhi, allowed Appeal No.52 of 2004 and set aside the auction sale subject to the Company G fulfilling certain terms and conditions laid down in the order. One of the conditions imposed by the Tribunal was that the Company would have to pay 5% of the amount deposited by the auction purchaser within 10 days as penalty in terms of Rule 60 of the Second Schedule of the Income Tax Act, 1961. H Objecting to the said terms and conditions imposed by the

DRT the Company filed an appeal with DRAT, Delhi, being Appeal No.167 of 2005. The appellant herein also filed an appeal against the setting aside of the auction sale. The DRAT stayed the operation of the order dated 26.7.2005 by which the DRT-I, Delhi, had allowed Appeal No.52 of 2004 and had set aside the auction sale. The DRAT also directed refund of the sale amount to the appellant.

9. While the matter was pending before the DRAT, the respondent-Company filed a Reference before the Board for Industrial and Financial Reconstruction (hereinafter referred to as 'BIFR'), on 21.12.2005 under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985, and the same was registered as BIFR Case No.4 of 2006.

10. On 10.2.2006 the DRAT dismissed the appeal filed by the Company and allowed the appeal of the appellant and confirmed the auction sale in favour of the appellant, subject to its depositing the sale price. By a separate order passed on the same day the DRAT ordered the Recovery Officer, Chandigarh, to implement the directions issued by it. However, despite the appellant depositing the full purchase price on the very same day, the sale could not be confirmed as the Presiding Officer was on leave. The appellant moved the DRAT for appointment of a Recovery Officer for confirmation of the sale. While the said matters were pending, the respondent-Company filed two writ petitions being C.W. Nos.2041 and 2042 of 2006, in the High Court of Delhi, against the order dated 10.2.2006 passed by DRAT dismissing the Company's appeal. The Delhi High Court allowed the writ petitions filed by the respondent-Company and by its order dated 23.2.2006 set aside the order passed by the DRAT on the ground that Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 operated as a complete bar for taking recovery proceedings and no order could therefore have been passed by the Tribunal confirming the sale.

11. It is against the said order of the Delhi High Court that

A the Special Leave Petitions were filed on 26.3.2006 wherein leave has since been granted.

12. It may be significant to note at this stage that on 3.4.2006 the BIFR rejected the Reference made by the Company and that on 15.9.2006 another Reference was filed B by the respondent-Company which was registered as BIFR Case No.18 of 2006. It is in the said Reference that on 22.2.2007 the BIFR declared the Company to be a "sick company" and the respondent No.5 was appointed as the Operating Agency for preparation of a rehabilitation scheme.

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13. Learned counsel for the appellant submitted that the High Court had erred in law in holding that the recovery proceedings initiated under the provisions of the RDDB Act were barred by Section 22 of the SICA. It was submitted that D Section 22 of SICA was not attracted to the proceedings and the High Court should have decided the matter on merits. It was also submitted on behalf of the appellant that Section 34 of the RDDB Act had an overriding effect over the provisions of SICA and that the High Court should have decided the matter on merits on such grounds as well. It was further contended that E the appeal preferred by the respondent-Company under Section 30 of the RDDB Act, against the order of the Recovery Officer fixing the reserve price at Rs.12.5 crores, was not maintainable and ought not to have been entertained by the DRT-I,Delhi.

F 14. As has been indicated by my learned Brother in his judgment, it had been forcefully contended on behalf of the appellant that when the respondent-Company had invoked the discretionary and equitable jurisdiction of the High Court under Article 226 of the Constitution, the High Court should have taken G into account the overall conduct of the party as the respondent-Company had not come to the writ court with clean hands. Not only had it not repaid the loan amount, but it did not appear before the DRT inspite of service of summons and the ex-parte final order was, therefore, rightly passed on the Original Application filed by the IDBI. The respondent- Company also

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filed an appeal against the order of the Recovery Officer before the DRT-I, Delhi, under Section 30 of the RDDB Act, and failed to comply with the directions contained in the interim order under which directions for payment were made, but no payment was made as directed. To make matters worse, the respondent-Company forcibly entered the property in question and dispossessed the Receiver appointed by the Tribunal and removed machinery and other movable properties from the said premises and created an unlawful tenancy in favour of a third party. In such background it was submitted that even if the case was covered under Section 22 of SICA, the High Court, in exercise of its extra-ordinary jurisdiction, ought not to have allowed the writ petition filed by the Company.

15. Learned counsel for the respondent No.1-company submitted that the appeal preferred by the Company under Section 30 of the RDDB Act against the order of the Recovery Officer fixing the reserve price, was maintainable since the same was an order passed by the Recovery Officer under the Act. It was contended that since such a course of action was available to the respondent-Company it was not incumbent upon the Company to deposit the amounts indicated in the order of the DRT-I, Delhi, while allowing appeal No.52 of 2004 as a pre-condition for setting aside the auction sale. It was contended that the High Court was fully justified in allowing the writ petitions filed by the respondent-Company in keeping with the bar imposed under Section 22 of SICA.

16. As has been pointed out by my learned Brother, the writ petitions filed by the respondent-Company were allowed by the High Court on the sole ground that the recovery proceedings under the RDDB Act were barred under Section 22 of the SICA. Having once come to the conclusion that the proceedings were barred under Section 22 of the SICA, the High Court did not go into any other question with regard to the merits of the matter and set aside the order of the DRAT confirming the auction sale on that one ground alone.

A 17. My learned brother has discussed in detail the relevant provisions of SICA and the RDDB Act and has observed that Section 34 of the RDDB Act is of extreme importance since it allows "overriding effect" to the provisions of the Act over other laws. Inasmuch as my learned Brother's judgment is based on
B an interpretation of Section 34 of the RDDB Act in relation to Section 22 of SICA, the same is reproduced hereinbelow to consider the effect thereof :

> "34. Act to have over-riding effect-(1) Save as otherwise provided in sub-section (2), the provisions of this Act shall
> C have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument have effect by virtue of any law other than this Act
>
> D (2) The provisions of this act or the rules made thereunder shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial Corporations Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984), the Sick Industrial
> E Companie (Special Provisions) Act, 1985 and the Small Industries Development Bank of India Act, 1989."

18. My learned Brother has relied on the non-obstante provision contained in Sub-section (1) of Section 34 in arriving
F at a finding that the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, would have an overriding effect over other enactments. Since the Sick Industrial Companies (Special Provisions) Act, 1985, also contains a similar non-obstante clause in Section 22, His Lordship has considered in
G detail the effect of the two non-obstante clauses in the two separate enactments governing the same field and has held that since the RDDB Act was a later Act it would prevail over the SICA which was an earlier Act.

19. It is at this point that I am unable to travel the same
H path which my learned Brother has chosen to traverse.

20. The opening words of Sub-section (1) of Section 34 of the RDDB Act clearly make the provisions thereof subject to the provisions of Sub-section (2) which in unambiguous term provides that the provisions of the Act or the Rules made thereunder would be in addition to and not in derogation of, certain statutes indicated therein, including the Sick Industrial Companies (Special Provisions) Act, 1985. It is, therefore, clear that while the RDDB Act would have an over-riding effect over other enactments, its provisions would only be supplemental to those of the SICA and consequently the provisions of the SICA would prevail over the provisions of the RDDB Act. Accordingly, if it is held that the situation in this case is covered by the provisions of SICA, then the view taken by the High Court would have to be upheld. If, however, it is found that the provisions of SICA do not apply to the facts of this case, then there can be no doubt that the judgment of the High Court would have to be set aside.

21. During the course of arguments, counsel for the parties did make submissions with regard to the merits of the matter, which may have to be considered in the light of the view which I am inclined to take in the matter. Furthermore, if it is found that the provisions of SICA, and consequently Section 22 thereof, are not attracted to the facts of this case, the discussion with regard to the RDDB Act being a later Act having an overriding effect over the SICA becomes redundant for the purposes of deciding this appeal. For the aforesaid purpose it would be necessary to consider a few dates which have been mentioned hereinbefore.

22. The first date which is relevant for our purpose is 15.7.2003 when the ex-parte final order was passed by the DRT, Chandigarh, for recovery of the sum claimed by IDBI, along with interest @ 7.8% per annum, and a Recovery Officer was appointed.

23. The second relevant date is 9.9.2003 when the Recovery Officer issued a demand notice under Rule 2 of the

A Second Schedule of the Income Tax Act, 1961, to the respondent-Company for payment of a sum of Rs.25,26,60,836/- as directed by the DRT, Chandigarh, in its final order. It is only after the Recovery Officer fixed the reserve price for the auction sale of the Company's assets that the respondent-Company B filed an appeal before the DRT on 18.10.2004 under Section 30 of the RDDB Act against the said order of the Recovery Officer. It has also to be noted that on 27.10.2004 the DRT allowed the auction sale to proceed but directed that the sale should not be confirmed until further orders.

C 24. The next relevant date is 30.10.2004 when the auction was concluded and the appellant was declared to be the highest bidder and the entire sale price was deposited by the appellant auction purchaser on 11.11.2004.

D 25. It is significant to note that in the appeal, being Appeal No.52 of 2004 under Section 30 of the RDDB Act, an application was moved by the respondent-Company on 15.12.2004 for setting aside the ex-parte final order passed on 15.7.2003 and the appellant also filed an application for impleadment to enable it to oppose the prayer for setting aside the final order.

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26. The next date of significance is 26.7.2005 when Appeal No.52 of 2004 filed by the respondent-Company under Section 30 of the RDDB Act against the order of the Recovery Officer fixing the reserve price of the Company's assets was allowed F by DRT-I, Delhi, subject to the Company fulfilling certain terms and conditions as indicated in the order.

27. It is only thereafter on 21.12.2005 that the respondent-Company filed a Reference before the BIFR which was registered as BIFR case No.4 of 2006 and the same came to G be dismissed on 3.4.2006.

28. In the meantime, the appeal preferred by the respondent-Company before the Debts Recovery Appellate Tribunal against the order of DRT-I, Delhi, allowing the Company's Appeal No.52 of 2004 was dismissed and the sale

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in favour of the appellant herein was confirmed, subject to deposit of the entire sale price.

29. It will be of interest to note that the proceedings taken by the respondent-Company after the passing of the final order by DRT, Chandigarh, on 15.7.2003, were directed against fixation of the reserve price by the Recovery Officer though in Appeal No.52 an application was made by the Company for setting aside the final order passed by the DRT Chandigarh. The same was however, of no consequence as the appeal was preferred against the order of the Recovery Officer fixing the reserve price of the Company's assets and not the final order, which, in any event, could not have been challenged in the said proceedings. In effect, the final order passed by the DRT, Chandigarh, directing the respondent-Company to pay the dues of IDBI remained unchallenged and attained finality. The two courses available to the respondent No.1-Company for preferring an appeal under Section 20 of the RDDB Act or by way of an application for setting aside the sale under Rule 60 of the Second Schedule of the Income Tax Act, 1961, were not resorted to by the respondent-Company. Instead, it chose to adopt a path restricted to the setting aside of the auction sale on the ground that the reserve price of the Company's assets had not been correctly fixed by the Recovery Officer prior to the auction sale.

30. Consequently, the scope of the appeal preferred by the respondent-Company was confined only to the question as to whether the reserve price had been correctly fixed by the Recovery Officer.

31. This brings us to the next question regarding the applicability of Section 22 of SICA in the proceedings initiated by IDBI for recovery of its dues under the provisions of the RDDB Act, 1993.

32. As will be seen from what has been indicated hereinabove, the final order was passed on 15.7.2003 by DRT, Chandigarh, at a point of time when no Reference had at all

A been made by the respondent-Company to the BIFR for being declared a "sick company". The auction was held and concluded on 30.10.2004, again before a Reference had been made by the respondent-Company to the BIFR. It is only on 21.12.2005 that the Company filed a Reference before the BIFR which was
B rejected on 3.4.2006. In between, the appeal preferred by the respondent-Company (No.52 of 2004) before the DRT under Section 30 of the RDDB Act was allowed and the auction sale was set aside, but the final order passed by DRT, Chandigarh, remained untouched. The appeal preferred by the appellant
C herein against the order of the DRT allowing Appeal No.52 of 2004 was subsequently decided in favour of the appellant on 10.2.2006 and the auction sale was confirmed in favour of the appellant with a direction upon the Recovery Officer and the other concerned authorities to complete the sale in favour of
D the appellant herein. It is only on 15.9.2006, after all the aforesaid orders had been passed that a second Reference was filed by the respondent-Company before the BIFR on 15.9.2006 and on 22.2.2007 the Company was declared to be a "sick company" by the BIFR.

E 33. The above dates will amply show that the proceedings had been taken by the IDBI under Section 19 of the RDDB Act and the final order had been passed therein long before the BIFR came on to the scene. Even the auction sale was concluded in favour of the appellant before the first Reference
F was made by the Company to the BIFR. The sale was confirmed by the DRAT before the writ petitions were allowed by the High Court on the ground that the recovery proceedings were barred under Section 22 of SICA. Ultimately, the Company's first Reference was rejected by the BIFR and only upon a second
G reference filed by the respondent-Company on 15.9.2006 was the Company declared by the BIFR to be a "sick company" on 22.2.2007.

34. In other words, the final order in the recovery proceedings under Section 19 of the RDDB Act was passed
H and the auction sale was concluded before the first Reference

was filed by the respondent-Company with the BIFR and long before the respondent-Company was declared to be a sick Company on 22.2.2007. It is, therefore, clear that the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985, were sought to be invoked by the respondent No.1-Company after the recovery proceedings had been concluded in favour of the appellant who had also deposited the sale price in respect of his offer which had been accepted by the Recovery Officer.

35. For reasons which are obvious, the respondent-Company chose not to take recourse either to Section 20 of the RDDB Act or Rule 60 of the Second Schedule of the Income Tax Act, 1961, and took a chance of filing an appeal under Section 30 of the RDDB Act with regard to the fixation of the reserve price of the Company's assets by the Recovery Officer for the purposes of the auction sale and the scope of the appeal was limited to such issue alone.

36. Since the respondent-Company did not challenge the final order of the DRT, Chandigarh, the same continued to be in force and was carried to its logical conclusion by the holding of auction sale and confirmation thereof in favour of the appellant herein.

37. The order passed by the DRAT on 10.2.2006 confirming the sale in favour of the appellant was made long before the respondent-Company was declared to be a "sick company" on 22.2.2007. The High Court was, therefore, in error in applying the provisions of Section 22 of the SICA when the sale had already been confirmed in favour of the appellant and the purchase price had already been deposited. Furthermore, the first Reference made by the respondent-Company was also rejected by the BIFR on 3.4.2006.

38. Apart from the above, even on merits, the conduct of the respondent No.1-company leaves much to be desired. Without challenging the final order passed by the DRT, Chandigarh, allowing the Bank's claim of Rs.25,26,60,836/- together with interest @ 7.8% per annum, the said respondent

A questioned the order of the Recovery Officer, fixing the reserve price of the Company's assets for the purposes of the auction sale, under Section 30 of the RDDB Act, having full knowledge of the fact that the final order of the DRT, Chandigarh, could not be challenged in such appeal. The steps taken by the respondent B No.1, Company were far from bona fide and were only aimed at stalling the auction sale. Even at the time of auction of the company's assets, no attempt was made by the Respondent No.1-Company to secure a bid higher than that of the appellant.

39. Having regard to the above, in my view nothing further C remains to be decided by the High Court.

40. The appeal is accordingly allowed and the order of the High Court impugned in the appeal is set aside with costs assessed at Rs.50,000/-.

D ORDER

Although, both of us held that the appeal deserves to be allowed and the order of the High Court is to be set aside, in view of the difference of opinion on interpretation of Section 34 of the Recovery of Debts Due to Banks and Financial Institutions E Act, 1993, the Registry is directed to place the papers before the Hon'ble the Chief Justice of India for taking appropriate action in accordance with law.

S.K.S. Matter referred.