A RISHABH AGRO INDUSTRIES LTD.

v.

P.N.B. CAPITAL SERVICES LTD.

MAY 9, 2000

B [M.B. SHAH AND R.P. SETHI, JJ.]

Sick Industrial Companies (Special Provisions) Act, 1985:

Sections 15, 16 and 16(3) Explanation—Enquiry—Commencement of—
C *Deemed date—For purposes of S.22—Held: Is the date of submission of reference under S.15.*

Section 22—Applicability of—High Court ordered winding up of company on account of non—payment of amounts due to its creditors—After
D *making only a part-payment company filed reference under S.15(1) before BIFR—Thereafter, the company moved an application before Division Bench under S.22 for staying the proceedings—But application rejected—Correctness of—Held: S.22 is applicable even after winding up order is passed if conditions prescribed under it are satisfied—Mere apprehension that an unscrupulous litigant may take an undue advantage of the provision does not justify a*
E *contrary view—Reference to BIFR is not* **mala fide** *only because it was initiated after making only part-payment—Hence, High Court erred in rejecting the application.*

Section 15(1)—Board of Directors—Power to move BIFR—After winding up order of company and appointment of liquidator—Power of Board of
F *Directors—Held: Board of Directors has power to move BIFR even in such cases.*

Companies Act, 1956: Sections 441 and 481.

Company Judge—Proceedings before—Commencement and end of—
G *Winding up order of company—Held: Winding up order is not the culmination but commencement of the proceedings—Dissolution of the company is the ultimate order:*

Words and phrases:

"Deemed"—Meaning of—In the context of S.441 of the Companies Act,
H *1956.*

The appellant-company was directed to be wound up by a Single Judge of the High Court as it was unable to pay the amounts due to the respondent. A Liquidator was appointed to take charge of the assets and other properties of the appellant-company. The notice of the winding up order was directed to be published in certain newspapers. However, the Division Bench stayed the operation of the order of the Single Judge.

Thereafter, the appellant-company filed Reference under Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 before the Board for Industrial and Financial Reconstruction (BIFR). The appellant then moved an application in the High Court under Section 22 of the Act with a prayer for staying the proceedings arising out of the Company Petition which was the subject matter of the Company Appeal before the Division Bench. This application was rejected on the ground that no such proceedings were pending even on the date of passing of the said order by the Division Bench in that appeal and only on the basis of a Reference made to the BIFR the proceedings of winding up petition could not be ordered to be held in abeyance. Hence this appeal.

On behalf of the respondent it was contended that as no enquiry under Section 16 of the act was pending at the time the order of the winding up of the company was passed, the proceedings for winding up of the company could not be stayed; that a contrary view would defeat the ends of justice and make the petitions under the Companies Act, 1956 infructuous inasmuch as any unscrupulous litigant, after suffering an order of winding up, may approach BIFR merely by filing a petition and consequently get the proceedings in the Company Case stayed; that the action of the appellant was *mala fide* inasmuch as it sought time from the court to make the payment of the amount due and after seeking indulgence malafidely made the reference to BIFR; and that after the order of winding up and appointment of the liquidator, the Board of Directors had no jurisdiction to move BIFR by passing a resolution.

Allowing the appeal, this Court

HELD: 1.1. The object of the Sick Industrial Companies (Special Provisions) Act, 1985 is to afford maximum protection of employment, optimise the use of financial resources, salvaging the assets of production, realising the amounts due to the Banks and to replace the existing time-consuming and inadequate machinery by efficient machinery for expeditious determination by a body of experts to safeguard the economy of the country and protect viable sick units. [44-F]

A **1.2. Sections 15, 16 and Explanation to Section 16(3) of the Act clearly show that from the date of submission of reference under Section 15, an enquiry shall be deemed to have been commenced for the purposes of Section 22 of the Act. [45-B]**

Real Value Appliances Ltd. v. *Canara Bank,* **[1998] 5 SCC 554, relied** B **on.**

Shanmugam v. *Maharashtra State Co-operative Cotton Growers Federation Ltd.* **(1991) 70 Comp. Case 440 (Kant), referred to.**

Industrial Finance Corpn. of India v. *Maharashtra Steels Ltd.,* **(1990)** C **67 Comp. Case 412 (All); *Sponge Iron India Ltd.* v. *Neelima Steels Ltd.,* (1990) 68 Comp. Case 201 (AP) and *Orissa Sponge Iron Ltd.* v. *Rishab Ispatt Ltd.,* (1993) 78 Comp. Case 264 HP, cited.**

2.1. The respondent's contention that an unscrupulous litigant after the D **winding up order may approach BIFR may be justified and having substance but in view of the language of Sections 15 and 16 of the Act particularly Explanation to Section 16(3), this Court has no option but to adhere to its earlier decision taken in *Real Value Appliances.* While interpreting, this Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of the process of law, it is for the legislature** E **to amend, modify or repeal it by having recourse to appropriate procedure, if deemed necessary. [46-C]**

Real Value Appliance Ltd. v. *Canara Bank,* **[1998] 5 SCC 554, referred to.**

F **2.2. It is true that for invoking the applicability of Section 22 it has to be established that an inquiry under Section 16 is pending or any scheme referred to under Section 17 is under preparation or sanctioned Scheme is under implementation or an appeal under Section 25 to an Industrial Company is pending. But it cannot be said that despite existence of any of the aforesaid** G **exigencies the provisions of Section 22 would not be attracted after the order of winding up of the company is passed. The words 'no proceeding for winding up..... shall lie or *be proceeded with further* leave no room for doubt that the effect of the Section would be applicable even after the winding up order is passed. [48-H; 49-A]**

H **3.1. The contentions of the appellant that the reference to BIFR was**

malafidely made and that once the winding up order was passed and the liquidator appointed the Board of Directors had no jurisdiction to move BIFR cannot be accepted. In a winding up petition the liquidator is appointed to protect the assets of a company for the benefit of its creditors, secured and unsecured and others. It is not the function of the official liquidator to start the process of rehabilitation of the company as is aimed at under the Act. Despite appointment of the official liquidator, the Board of Directors continues to hold all residuary powers for the benefit of the company, which includes the power to take steps for its rehabilitation. The Board of Directors in the instant case was not in anyway, by any judicial order, debarred from taking recourse to the provisions of the Act for the purposes of rehabilitation of the company. If there existed a power, its exercise cannot be termed to be *mala fide* only because it was initiated after availing the opportunity to make the payment of the amounts due and passing of the order of winding up of the company. [49-D-F]

3.2. Further, winding up order passed under the Companies Act, 1956 is not the culmination of the proceedings pending before the Company Judge but is in effect the commencement of the process. The ultimate order to be passed in such a petition is the dissolution of the company in terms of Section 481 of the Companies Act. The words "shall be deemed to commence" in Section 441 of the Companies Act clearly show the intention of the legislature that although the winding up of a petition does not in fact commence at the time of presentation of the petition itself but it shall be presumed to commence from that stage. The word "deemed" used in the Section would thus mean, "supposed", "considered", "construed", "thought", "taken to be" or "presumed." [49-G-H; 50-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4709 of 1998.

From the Judgment and Order dated 18.4.98 of the Punjab & Haryana High Court in C.M. No. 88/97 in Company Appeal No. 26 of 1997.

Gopal Subramaniam, Anurag Kr. Agarwal, Rohit Kumar and Pawan Kumar for the Appellant.

Jagdeep Kishore, Ms. Rekha Gupta, Nikhil Nayar and M.T. George for the Respondent.

The Judgment of the Court was delivered by

SETHI, J. On being satisfied that the appellant-company was unable

A to meet the obligations of making the payment of the amounts due to the creditors, the learned Single Judge of the High Court vide his order dated 5th September, 1997 directed its winding up. Official Liquidator attached to the Court was appointed as Liquidator of the company with directions to take charge of the assets and other properties of the appellant-company. The notice of the winding up order was directed to be published in the Indian B Express and Dainik Tribune. The operation of the order of the learned Single Judge was stayed by the Division Bench of the High Court in Civil Appeal No.26 of 1997 on 18.9.1997. The appellant thereafter filed Reference under Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as the 'Act') before the Board for Industrial and C Financial Reconstruction (hereafter referred to as "the Board"). The appellant then moved an application in the High Court under Section 22 of the Act with a prayer for staying the proceedings arising out of the Company Petition No.111 of 1985 which was the subject matter of Company Appeal No.26 of 1997. The application was rejected by the Division Bench of the High Court vide the order impugned herein. After holding that as no proceedings under D the Act of 1985 were pending on the date of passing of the winding up order, the application under Section 22 of the Act was misconceived. It was further found that no such proceedings were pending even on the date of passing of the said order by the Division Bench in Company Appeal No.26 of 1997 and only on the basis of a Reference made to the Board the proceedings of E winding up petition could not be ordered to be held in abeyance. Not satisfied with the order of the Division Bench of the High Court, the appellant-company has preferred this appeal.

Some of the facts relevant for the purpose of determining the controversy in this appeal are that the respondent-bank filed a Company Petition No. 111/ F 95 on 30.9.1995 under Section 433(e)&(f) and Section 434 of the Companies Act, 1956 for winding up of the appellant-company on the ground that the company had been unable to pay the loan of Rs.50 lacs and the agreed rate of interest thereon. On 14.12.1995 a compromise was arrived at between the parties whereby the appellant company agreed to pay monthly instalments as G per stipulations made in the compromise deed. In pursuance to the compromise arrived at between the parties, the appellant-company claimed to have paid the instalments and completed the full payment of principal amount of Rs.50 lacs. Regarding interest, the company referred to further transactions between the bank and its other sister concerns. However, instead of agreeing with the request of the company to return the collateral security of 5 lacs shares of H Rs.10 each aggregating to Rs.50 lacs, the respondent- bank is stated to have

insisted for payment of instalment for the months of October and November, 1996 as per compromise. It is contended that having failed to get the security the appellant-company per force had defaulted the payment of balance amount towards interest with the result that the respondent-bank moved an application before the Company Judge in Company Petition No.111/95 praying for revival of the winding up petition. The learned Single Judge admitted the petition for hearing and passed an order for issuance of publication vide its orders dated 14.3.1997. Feeling aggrieved, the appellant herein preferred a special leave petition in this Court which was withdrawn on 28th August, 1997 purportedly with a view to approach the learned Company Judge with fresh proposal of settlement. An application was moved before the learned Company Judge wherein the appellant proposed to pay alleged balance principal amount of Rs.14,11,010 and the amount of Rs.7,06,120 as interest thereon in monthly instalment of Rs.2 lacs each to be paid on or before 7th day of each English calendar month together with future interest at the rate of 12% per annum thereon on a reducing balance basis till the liquidation of the entire amount. The aforesaid application was dismissed by the learned Company Judge on 5th September, 1997 when he directed the winding up of the company. As noticed earlier, during the pendency of the appeal filed against the order of the learned Company Judge, a petition for Reference under Section 15(1) of the Act was preferred before the Board on 30th September, 1997.

Shri Anurag Kumar Aggarwal, the learned counsel appearing for the appellant has submitted that the Division Bench of the High Court committed a mistake of law in interpreting Section 22 of the Act and by holding that the proceedings appearing in Section 22(1) of the Act, meant the proceeding upto the stage of passing of winding up order by the Court and not thereafter. It is contended that the High Court completely ignored the mandate of the Section which provided that no proceedings for the winding up of the industrial company shall lie or be proceeded with further in respect of the industrial company when an enquiry under Section 16 is shown to be pending or any claim referred to under Section 17 or under preparation or consideration of sanctioned scheme or under the implementation or when an appeal under Section 25 relating to an industrial company was pending. According to the learned counsel, after the filing of the application under Section 15 an enquiry under Section 16 of the Act is deemed to be pending warranting the stay of the proceedings in terms of Section 22 of the Act.

Shri Jagdip Kishore, the learned counsel who appeared on behalf of the respondent-bank submitted that the reasoning of the High Court was based

A upon proper appreciation of the legal position and as no enquiry under Section 16 of the Act was pending at the time the order of the winding up of the company was passed, the proceedings for winding up of the company, could not be stayed. Relying upon the judgment of the *Karnataka High Court in Shanmugam* v. *Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd.,* (1991) 70 Comp. Cases 440, the learned counsel B has tried to make a distinction between the stage prior to the passing of order of winding up and thereafter. The Karnataka High Court had held:

> "The Court must not fail to notice that there is always a difference between an order in winding up and an order of winding up of a C company. Generally understood, an order in winding up is any order made by the company court from the time the company petition is presented till the final order of winding up the company is made. An order of winding up is the culmination of the petition presented to the Court either under Section 398 or section 433 or section 583. Therefore, the distinction is only at the stage at which the order is made by the D Court."

The Act is shown to have been made, 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 E 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. The object of the Act appears to be to afford maximum protection of employment, optimise the use of financial resources, salvaging the assets of production, realising the amounts due to the Banks and to replace the existing F time consuming and inadequate machinery by efficient machinery for expeditious determination by a body of experts to safeguard the economy of the country and protect viably sick units. Chapter III deals with the reference, enquiries and claims. Section 15 provides that when an industrial company becomes a sick industrial company as defined under Section 2(o) of the Act, G the Board of Directors of the Company, shall, within 60 days from the date of finalisation of the duly audited accounts of the company for the financial year make a reference to the Board for determination of the measures which shall be adopted with respect to the company. Section 16 obliges the Board to make such enquiry as it may deem fit for determining whether any industrial company had become a sick industrial company in accordance with the H procedure prescribed therein. Explanation to Sub-section (3) of Section 16 was

inserted by Act No. 12 of 1994 which provides: A

> "Explanation—For the purposes of this sub-section, an inquiry shall be deemed to have commenced upon the receipt by the Board of any reference or information or upon its own knowledge reduced to writing by the Board."

B

It follows, therefore, that from the date of submission of reference under Section 15, an enquiry shall be deemed to have been commenced for the purposes of Section 22 of the Act. This Court dealt with this aspect of the matter in *Real Value Appliances Ltd.* v. *Canara Bank & Ors.*, [1998] 5 SCC 554 and held as under:

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> "In our view, when Section 16(1) says that the BIFR can conduct the inquiry 'in such manner as it may deem fit', the said words are intended only to convey that a wide discretion is vested in the BIFR in regard to the procedure it may follow for conducting an inquiry under Section 16(1) and nothing more. In fact once the reference is D registered after scrutiny, it is, in our view, mandatory for the BIFR to conduct an inquiry. If one looks at the format of the reference as prescribed in the Regulations, it will be clear that it contains more than fifty columns regarding extensive financial details of the Company's assets, liabilities, etc. Indeed, it will be practically impossible for the BIFR to reject a reference outright without calling for information/ E documents or without hearing the Company or other parties. Further, the Act is intended to revive and rehabilitate sick industries before they can be wound up under the Companies Act, 1956. Whether the company seeks a declaration that it is sick or some other body seeks to have it declared as a sick company, it is, in our opinion, necessary F that the Company be heard before any final decision is taken under the Act. It is also the legislative intention to see that no proceedings against the assets are taken before any such decision is given by the BIFR for in case the Company's assets are sold, or the company wound up it may indeed become difficult later to restore the status quo ante. Therefore, in our view, the High Court of Allahabad in G *Industrial Finance Corpn. of India* v. *Maharashtra Steels Ltd.*, (1990) 67 Comp Case 412 (All), the High Court of Andhra Pradesh in *Sponge Iron India Ltd.* v. *Neelima Steels Ltd.*, (1990) 68 Comp Case 201 (AP), the High Court of Himachal Pradesh in *Orissa Sponge Iron Ltd.* v. *Rishab Ispatt Ltd.*, (1993) 78 Comp Case 264 (HP) are right in rejecting H

A such a contention and in holding that the inquiry must be treated as having commenced as soon as the registration of the reference is completed after scrutiny and that from that time, action against the Company's assets must remain stayed as stated in Section 22 till final decisions are taken by the BIFR."

B Learned counsel appearing for the respondent has submitted that such an interpretation would defeat the ends of justice and make the petitions under the Companies Act, infructuous inasmuch as any unscrupulous litigant, after suffering an order of winding up, may approach the Board merely by filing a petition and consequently get the proceedings in the Company Case C stayed. Such a grievance may be justified and the submission having substance but in view of the language of Sections 15 and 16 of the Act particularly Explanation to Section 16 inserted by Act No. 12 of 1994, this Court has no option but to adhere to its earlier decision taken in *Real Value Appliances* (Supra). While interpreting, this Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of D process of law, it is for the Legislature to amend modify or repeal it by having recourse to appropriate procedure, if deemed necessary.

Hence, we find it difficult to agree with the findings of the High Court to the effect:

E "The expression 'proceeding' appearing in Section 22, sub- section (1) of the Act means the proceeding upto the stage of passing of winding up order by the Court. In terms of Section 22(1) the proceedings for winding up of the company cannot be proceeded with and all such proceedings shall remain stayed till the conclusion of the proceedings F before the BIFR if an enquiry is pending under Section 16 of 1985 Act or any scheme is framed under Section 17 of the said Act. This provision is not attracted in a case in which the order of winding up has already been made because once the winding up of the company comes to an end, and other provisions in the Companies Act, 1956, relating to the company in liquidation comes into play and the official G liquidator, after taking possession of the assets of the company in liquidation has to discharge the functions as specified in various provisions of the Companies Act, relating to the company in liquidation."

H Section 22 of the Act provides:

"Suspension of legal proceedings, contracts, etc.—(1) Where in respect of an industrial company, an inquiry under section 16 is pending or any scheme referred to under section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (I of 1956), or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advances 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.

(2) Where the management of the sick industrial company is taken over or changed in pursuance of any scheme sanctioned under section 18, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or in the memorandum and articles of association of such company or any instrument having effect under the said Act or other law—

(a) it shall not be lawful for shareholders of such company or any other person to nominate or appoint any person to be a director of the Company;

(b) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the Board.

(3) Where an enquiry under section 16 is pending or any scheme referred to in section 17 is under preparation or during the period of consideration of any scheme under section 18 or where any such scheme is sanctioned thereunder, for due implementation of the scheme, the Board may by order declare with respect to the sick industrial company concerned that the operation of all or any of the contracts, assurances of property, agreement, settlements, awards standing orders or other instruments in force, to which such sick industrial company is a party or which may be applicable to such sick industrial company immediately before the date of such order, shall remain suspended or

A that all or any of the rights, privileges, obligations and liabilities accruing or arising thereunder before the said date, shall remain suspended or shall be enforceable with such adoptions and in such manner as may be specified by the Board.

Provided that such declaration shall not be made for a period exceeding
B two years which may be extended by one year at a time so, however, that the total period shall not exceed seven years in aggregate.

(4) Any declaration made under sub-section (3) with respect to a sick industrial company shall have effect notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law, the memorandum and
C articles of association of the company or any instrument having effect under the said Actor other law or any agreement or any decree or order of a court, tribunal, officer or other authority or of any submission, settlement or standing order and accordingly, —

D (a) any remedy for the enforcement of any right, privilege, obligation and liability suspended or modified by such declaration, and all proceedings relating thereto pending before any court, tribunal, officer or other authority shall remain stayed or be continued subject to such declaration; and

E (b) on the declaration ceasing to have effect—

(i) any right, privilege, obligation or liability so remaining suspended or modified, shall become revived and enforceable as if the declaration had never been made; and

F (ii) any proceeding so remaining stayed shall be proceeded with, subject to the provisions of any law which may then be in force, from the stage which had been reached when the proceedings became stayed.

G (5) In computing the period of limitation for the enforcement of any right, privilege, obligation or liability, the period during which it or the remedy for the enforcement thereof remains suspended under the section shall be excluded."

It is true that for invoking the applicability of Section 22 it has to be established that an inquiry under Section 16 is pending or any scheme referred to under Section 17 is under preparation or sanctioned scheme is
H under implementation or an appeal under Section 25 to an industrial company

is pending. But it cannot be said that despite existence of any of the aforesaid exigencies the provision of Section 22 would not be attracted after the order of winding up of the company is passed. The words "no proceeding for winding up of the industrial company or for execution distress or the like against any of the properties of the industrial company or for the appointment of receiver in respect thereof shall lie or *be proceeded with further,* leave no doubt in our mind that the effect of the section would be applicable even after the winding up order is passed as no proceeding even thereafter *can be proceeded* with further under the Companies Act. The High Court appears to have not taken note of the aforesaid words i.e. to *be proceeded with further.* As the impugned judgment is based upon wrong assumption of the provision of law and completely ignoring the vital words noticed hereinabove, the same cannot be sustained.

It has been further suggested on behalf of the respondent-bank that the action of the appellant was *malafide* inasmuch as it sought time from the court to make the payment of the amount due and after seeking indulgence malafidely made the reference to the BIFR on 30th September, 1997. It is contended that after the order of the winding up and appointment of the liquidator, the Board of Directors had no jurisdiction to move the BIFR by passing a resolution. Such a submission cannot be accepted. In a winding up petition the liquidator is appointed to protect the assets of a company for the benefit of its creditors, secured and unsecured and others. It is not the function of the official liquidator to start the process of rehabilitation of the company as is aimed at under the Act. Despite appointment of the official liquidator, the Board of Directors continue to hold all residuary powers for the benefit of the company which includes the power to take steps for its rehabilitation. The Board of Directors in the instant case were not in any way by any judicial order debarred from taking recourse to the provisions of the Act for the purposes of rehabilitation of the company. If there existed a power, its exercise cannot be termed to be *malafide* only because it was initiated after availing the opportunity to make the payment of the amounts due and passing of the order of winding up of the company.

It may also be noticed that winding up order passed under the Companies Act is not the culmination of the proceedings pending before the Company Judge but is in effect the commencement of the process. The ultimate order to be passed in such a petition is the dissolution of the company in terms of Section 481 of the Companies Act. The words "shall be deemed to commence" in Section 441 of the Companies Act clearly show the intention

A of the legislature that although the winding up of a petition does not in fact commence at the time of presentation of the petition itself but it shall be presumed to commence from that stage. The word "deemed" used in the Section would thus mean, "supposed", "considered", "construed", "thought", "taken to be" or "presumed".

B During the course of the proceedings it was pointed out that as the application filed by the appellant under Section 15 of the Act has been dismissed by the Board on merits, the proceedings before the Company Judge cannot be stayed. However, the learned counsel appearing for the appellant placed on record the copy of the order passed by the Board which shows that the application has not been dismissed on merit but on the ground:

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> "A perusal of the facts of the case and the various orders passed by the Punjab & Haryana High Court as also the Supreme Court revealed the position that the Punjab & Haryana High Court had passed an order of winding up the company on 5.9.97 i.e. before the company's reference to the BIFR. Further, the Supreme Court had ordered that no
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> D further proceedings in winding up shall be taken before the High Court. The Bench observed that the winding up order had not been quashed which could have resulted in the restoration of the position as it stood on the date of passing of the order which had been quashed. The stay of the order meant that the orders which had been
>
> E stayed would not be operative from the date of the passing of the stay order and it did not mean that the order had been wiped out from existence. In the circumstances, the Bench held that since the company had been ordered to be wound up before its reference to BIFR, the Board no longer had the jurisdiction to continue with further proceedings."

F

It is further submitted that an appeal against the aforesaid order has been filed before the AAIFR, which is still pending.

In the light of what has been noticed hereinabove we are of the opinion that the order of the High Court impugned in this appeal cannot be sustained.

G The appeal is accordingly allowed by setting aside the order of the High Court with a direction that the proceedings pending before the Company Judge shall remain in abeyance till the disposal of the application/appeal before the authorities under the Act.

No costs.

H V.S.S. Appeal allowed.