

A INDUSTRIAL INVESTMENT BANK OF INDIA LTD.

v.

M/S JAIN CABLES PVT. LTD. & ORS.

(Civil Appeal No. 8123 of 2004)

B JANUARY 05, 2011

[AFTAB ALAM AND R.M. LODHA, JJ.]

- Industrial Reconstruction Bank of India Act, 1984 – s. 40 – Enforcement of claims by the Reconstruction Bank – Industrial concern defaulting in repayment of loan given by the Reconstruction Bank (IRBI) – Subsequent, transfer of undertakings of IRBI to Industrial Investment Bank of India Ltd. (IIBIL) in 1997 – Recalling of loan by IIBIL – Non-payment of loan by industrial concern – Application by IIBIL against industrial concern u/s. 40 of the 1984 Act before the High Court – Maintainability of – Held: Application is maintainable – Sub-section (4) of Section 4 read with Sub-Section (2)(b) of Section 13 of the 1997 Act makes it clear that any cause of action by IRBI in relation to its undertakings existing immediately before March 27, 1997 may be continued and enforced by IIBIL as it might have been enforced by IRBI if the 1997 Act had not been enacted – Provisions of Chapter VIII of the 1984 Act, that include s. 40 would continue to be applicable in respect of the arrangements entered into by IRBI with an industrial concern u/s. 18 of the 1984 Act and the IIBIL would be able to enforce the same as fully and effectually as if the 1997 Act had not been enacted – Industrial Reconstruction Bank (Transfer of Undertaking and Repeal) Act, 1997 – ss. 4(4), 13(2)(b).*
- G The Industrial Reconstruction Bank of India (IRBI) sanctioned certain loan in favour of respondent No. 1 who defaulted in repayment of the loan amount. The IRBI told respondent No. 1 to make payment as per an amended

schedule but respondent No. 1 did not adhere to the same. Thereafter, the Industrial Reconstruction Bank (Transfer of Undertaking and Repeal) Act, 1997 came into force and the undertakings of the IRBI were transferred to and vested in the Industrial Investment Bank of India Ltd. (IIBIL). The IIBIL gave a notice to respondent No. 1 to make the payment but respondent No. 1 did not make the payment. The IIBIL then filed an application before the High Court under Section 40 of the Industrial Reconstruction Bank of India Act, 1984. The High Court held that the application was not maintainable as it was filed under the provision no longer in existence. Therefore, the appellant filed the instant appeal. A  
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Allowing the appeal, the Court

HELD: 1.1 A plain reading of Sub-section (4) of Section 4 coupled with Sub-Section (2) (b) of Section 13 of the Industrial Reconstruction Bank (Transfer of Undertaking and Repeal) Act, 1997 would make it manifest and clear that any cause of action by the IRBI in relation to its undertakings existing immediately before March 27, 1997 may be continued and enforced by the IIBIL as it might have been enforced by the IRBI if the 1997 Act had not been enacted. The provisions of Chapter VIII of the Industrial Reconstruction Bank of India Act, 1984, that include Section 40, would continue to be applicable in respect of the arrangements entered into by the IRBI with an industrial concern under Section 18 of the 1984 Act and the IIBIL would be able to enforce the same as fully and effectually as if the 1997 Act had not been enacted. [Para 10] [92-G-H; 93-A-B] D  
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1.2 The High Court in the impugned judgment referred to Section 13 of the 1997 Act, but failed to notice the true import of Sub-section 2(b) of Section 13 as also overlooked the provisions of Sub-Section (4) of Section H

A 4 of the 1997 Act; and as a result arrived at a conclusion  
that is patently erroneous and cannot be sustained. On  
the basis of the provisions contained in Section 4 (4) and  
Section 13(2)(b) of the 1997 Act, there is no doubt that the  
application filed by the appellant under Section 40 of the  
B 1984 Act for the enforcement of its claim against  
respondent No.1 was perfectly maintainable before the  
High Court. The order passed by the High Court is set  
aside. [Paras 11 and 12] [93-C-F]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No.  
8123 of 2004.

From the Judgment and Order dated 01.11.2002 of the  
High Court of Judicature of Rajasthan at Jodhpur in S.B.C.  
Misc. Application No. 40 of 1999.

D Sanjay Bhatt and Amit Wadhwa (for Shobha for the  
Appellant.

Dr. Manish Singhvi, AAG, Sahil S. Chauhan and P.V.  
Yogeswaran for the Respondents.

E The Judgment of the Court was delivered by

F AFTAB ALAM, J. 1. The appellant, Industrial Investment  
Bank of India Limited ("IIBIL" for short), is the successor of the  
Industrial Reconstruction Bank of India ("IRBI" for short)  
constituted under section 3(1) of the Industrial Reconstruction  
Bank of India Act, 1984, ("the 1984 Act" for short).

G 2. In the year 1985, the IRBI had sanctioned a loan of  
rupees twenty two lakhs (Rs.22,00,000/-) in favour of M/s Jain  
Cables Pvt. Ltd., respondent no.1. Out of the sanctioned amount  
a sum of rupees twenty lakhs (Rs.20,00,000/-) was actually  
disbursed in the year 1991 and the balance amount of the loan  
was cancelled. The repayment of the loan was secured by  
mortgage of the immovable properties of the borrower company  
H and by creating the charge of hypothecation over its immovable

properties in favour of the IRBI. The borrower company defaulted in repayment of the loan and in 1994, on its request, the IRBI granted to it an amended schedule of payment under which the last installment of the loan amount was to be paid on February 15, 1996. The respondent no.1 did not adhere even to the rescheduled payment plan.

3. On March 27, 1997, the Industrial Reconstruction Bank (Transfer of Undertaking and Repeal) Act, 1997 ("the 1997 Act" for short) came into force and by virtue of notification, S.O. 242 (E), dated March 25, 1997 the undertakings of the IRBI were transferred to and vested in the IIBIL with effect from March 27, 1997.

4. On August 14, 1997, the IIBIL gave a notice to respondent no.1 under section 38 of the 1984 Act recalling the loan. The notice did not bring any payments from respondent no.1 and after about 2 years from the date of the notice, in the year 1999, the IIBIL filed an application before the Rajasthan High Court, under section 40 of the 1984 Act. The application filed by the IIBIL was registered in the High Court as S.B.C. Misc. Application No.40/99. The High Court issued notice on the application but after hearing the other side, rejected it by order dated November 1, 2002 holding that the application was not maintainable as it was filed under the provision of a repealed Act. The High Court in its brief order referred to section 40 of the 1984 Act and the repeal and saving provision as contained in section 13 of the 1997 Act and took the view that the provision of section 40 of the 1984 Act was purely procedural and it simply provided the IRBI with an additional forum besides those available under section 39 of the 1984 Act and section 69 of the Transfer of Property Act. On the other hand, the provision of repeal contained in section 13 of the 1997 Act was definite and categorical and the provision of section 40 of the 1984 Act was not saved by sub-section (2) of section 13 of the 1997 Act. In other words, according to the High Court, the application was filed under a provision that was

A no longer in existence. In this connection, the High Court held and observed as follows:

B "Thus, to put it in other words, the rights and liabilities of the Company, as they existed on the appointed day, are saved, obviously substantive rights qua the other persons, and the liabilities. Section 40 does not confer any such substantive right, as it is only procedural provision providing an additional forum to be available to the Company for effecting recovery of its outstandings by praying for taking up & different course than the one available under Section 39 of that Act, or Section 69 of Transfer of Property Act.

D As such, the provisions of section 40 or more remain available to the petitioner. An overall reading of the repealing Act of 1997 also does show that it predominantly comprehends the rights and liabilities of Industrial Investment Bank of India, which are to devolve on Industrial Reconstruction Bank of India, as the Act is to provide for transfer and vesting of the Undertakings to the Company to be formed and registered as company under the Companies Act, and for matters concerned therewith, or incidental thereto, and also to repeal the 1984 Act."

F 5. For the sake of the record, it may also be noted that during the pendency of the proceeding before the High Court, the IIBIL also moved the Debt Recovery Tribunal. But its application to the Debt Recovery Tribunal was against the guarantor alone and no relief was claimed against respondent no.1, the borrower company. The application against the guarantor was decreed *ex parte* but the decree has so far not borne any fruits as it was a personal guarantee and there were no assets against which the decree may be executed.

H 6. The IIBIL has now brought this matter in appeal, by grant of special leave, against the order of the High Court dated November 1, 2002 rejecting its application filed against the

borrower company, respondent no.1, under section 40 of the 1984 Act. A

7. At this stage, it will be useful to take a look at some of the provisions of the 1984 Act and the 1997 Act. Section 2(a) of the 1984 Act defined "assistance" to mean any direct or indirect financial, managerial or technical assistance granted by the Reconstruction Bank in pursuance of its business referred to in section 18. Section 2(c) defined "assisted industrial concern" to mean any industrial concern to which any assistance was given by the Reconstruction Bank. Chapter VIII of the Act contained sections 36 to 51 dealing with the "Special Powers of the Reconstruction Bank". Section 38, in that chapter, authorized the IRBI, under certain conditions enumerated in clauses (a) to (f), to ask, by notice in writing, any industrial concern to which it had granted any assistance to forthwith discharge in full its entire dues and also discharge its other liabilities to the Bank. The statutory provision expressly overrode anything contained in any agreement to the contrary. Section 39 dealt with the rights of the IRBI in case of default by any assisted industrial concern. Section 40 of the 1984 Act provided for the enforcement of claims by the IRBI and in so far as relevant for the present it is as under: B  
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**"40. Enforcement of claims by the Reconstruction Bank-** (1) (a) Where an assisted industrial concern makes any default in the payment of any dues to, or in meeting its obligation in relation to any other assistance given by the Reconstruction Bank or otherwise fails to comply with the terms of agreement with that Bank, or F

(b) where the Reconstruction Bank makes an order under section 38 requiring the assisted industrial concern to make immediate repayment of any assistance granted to it and the industrial concern fails to make such repayment, G

then, without prejudice to the provisions of section 39 of H

A this Act and of section 69 of the Transfer of Property Act, 1882, any officer of the Reconstruction Bank generally or specially authorised by the Board in this behalf, may apply to the concerned High Court for one or more of the following reliefs, namely :—

B (i) for an order for the sale or lease of the property assigned, charged, hypothecated, mortgaged or pledged to the Reconstruction Bank as security for the assistance granted to it, or for the sale or lease of any other property, of the industrial concern; or

C (ii) \*\*\*\*\*

D (iii) for an *ad interim* injunction restraining the industrial concern from transferring or removing its machinery, plant or equipment from the premises of the industrial concern without the previous permission of the Board, where such transfer or removal is apprehended; or

E (iv) for an order for the appointment of a receiver where there is apprehension of the machinery, equipment or any other property of substantial value which has been assigned, charged, hypothecated, mortgaged or pledged to the Reconstruction Bank, being removed from the premises of the industrial concern or of being transferred without the previous permission of the Reconstruction Bank.

F (2) \*\*\*\*\*

G (3) Where an application is for any relief mentioned in sub-clause (i) of sub-section (1), the High Court may,—

H (a) by an order, authorise the Reconstruction Bank to grant lease of such property to such person and on such terms and conditions as may be specified in the said order; or

(b) pass an order calling upon the person whose property has been assigned, charged, hypothecated, mortgaged or pledged to the Reconstruction Bank to show cause, on a date to be specified in the notice, as to why an order for the sale of such property or so much of such property, as would, on being sold, realise, in its estimation, an amount equivalent in value to the outstanding dues of the industrial concern to the Reconstruction Bank, together with costs of the proceedings taken under this section, shall not be made; or

(c) pass an *ad interim* order attaching any property of the industrial concern which has not been assigned, charged, hypothecated, mortgaged or pledged to the Reconstruction Bank, or so much of such property, as would on being sold, realise, in its estimation, an amount equivalent in value to the outstanding dues of the industrial concern to the Reconstruction Bank, together with costs of the proceedings taken under this section, and pass an order calling upon the industrial concern to show cause on a date to be specified in the notice as to why such order of *ad interim* attachment shall not be made absolute.

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(5) Where an application is for the relief mentioned in sub-clause (iii) of sub-section (1), the High Court shall grant an *ad interim* injunction restraining the industrial concern from transferring or removing its machinery or other equipment and issue a notice calling upon the industrial concern to show cause, on a date to be specified in the notice, as to why such *ad interim* injunction shall not be made absolute.

(6) Where an application is for the relief mentioned in sub-clause (iv) of sub-section (1), the High Court shall pass an *ad interim* order appointing a receiver in respect of the property assigned, charged, hypothecated,

A mortgaged or pledged and shall issue a notice calling upon the industrial concern to show cause, on a date to be specified in the notice, as to why the *ad interim* order appointing the receiver shall not be made absolute.

B (7) \*\*\*\*\*

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C (10) \*\*\*\*\*

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(12) \*\*\*\*\*

D (13) \*\*\*\*\*

8. Then comes, the 1997 Act. Section 2(a) of the 1997 Act defines "appointed day" which is March 27, 1997 vide notification dated March 25, 1997 issued by the Central Government and published in the Gazette of India, Extra., of that date. Section 2(b) defines "company" to mean the Industrial Development Bank of India Ltd to be formed and registered under the Companies Act. Section 2(c) defines "Reconstruction Bank" to mean the Industrial Reconstruction Bank of India established under sub-section (1) of section 3 of the 1984 Act. Section 3 of the 1997 Act provides that on the appointed date (March 27, 1997) the undertakings of the Reconstruction Bank shall be transferred to and vest in the Company. Section 4 of the 1997 Act deals with the effect of vesting of undertaking in the Company and provides as follows:

G "4. **General effect of vesting of undertaking in Company-(1)** The Central Government, being the shareholder of the Reconstruction Bank immediately before the appointed day, shall be deemed to be registered, on and from the appointed day, as a shareholder of the Company.

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(2) The undertakings of the Reconstruction Bank which are transferred to, and which vests in, Company under Section 3 shall be deemed to include all business, assets, rights, powers, authorities and privileges and all properties, movable and immovable, real and personal, corporeal and incorporeal, in possession or reservation, present or contingent of whatever nature and whatsoever situate including lands, buildings, vehicles, cash balances, deposits, foreign currencies, disclosed and undisclosed reserves, reserve fund, special reserve fund, benevolent reserve fund, any other fund, stocks, investments, shares, bonds, debentures, security, management of any industrial concern, loans, advances and guarantees given to the industrial concerns, tenancies, leases and book debts and all other rights and interests arising out of such property as were immediately before the appointed day in the ownership, possession or power of the Reconstruction Bank in relation to its undertakings, within or without India, all books of account, registers, records and documents relating thereto and shall also be deemed to include all borrowings, liabilities and obligations of whatever kind within or without India then subsisting of the Reconstruction Bank in relation to its undertakings.

(3) All contracts, deeds, bonds, guarantees, powers of attorney, other instruments and working arrangements subsisting immediately before the appointed day and affecting the Reconstruction Bank shall cease to have effect or to be enforceable against the Reconstruction Bank shall be of as full force and effect against or in favour of the Company in which the undertakings of the Reconstruction Bank have vested by virtue of this Act and enforceable as fully and effectually as if instead of the Reconstruction Bank, the Company had been therein or had been a party thereto.

(4) Any proceeding or cause of action pending or existing immediately before the appointed day by or against the

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A *Reconstruction Bank in relation to its undertakings may,*  
as from the appointed day, *be continued and enforced by*  
or against the Company in which the undertakings of the  
B *Reconstruction Bank have vested by virtue of this Act as*  
it might have been enforced by or against the  
Reconstruction Bank if this Act had not been enacted and  
shall cease to be enforceable by or against the  
Reconstruction Bank.”

(Emphasis added)

C 9. Section 13 of the 1997 Act containing the repeal and  
saving clause is as follows:

D “13. **Repeal and saving of Act 62 of 1984-**(1) On the  
appointed day, the Industrial Reconstruction Bank of India  
Act, 1984 shall stand repealed.

(2) Notwithstanding the repeal of the Industrial  
Reconstruction Bank of India Act, 1984-

E (a) the Company shall, so far as may be, comply with  
the provisions of Chapter VII of the Act so repealed for any  
of the purposes related to the annual accounts and audit  
of the Reconstruction Bank;

F (b) *the provisions of Chapter VIII of the Act so*  
*repealed will continue to be applicable in respect of the*  
*arrangements entered into by the Reconstruction Bank*  
*with an industrial concern under section 18 thereof up to*  
*the appointed day and the Company will be entitled to*  
*act upon and enforce the same as fully and effectually*  
*as if this Act had not been enacted.”*

G 10. A plain reading of sub-section (4) of section 4 coupled  
with sub-section (2) (b) of section 13 of the 1997 Act would  
make it manifest and clear that any cause of action by the IRBI  
in relation to its undertakings existing immediately before March

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27, 1997 may be continued and enforced by the IIBIL as it might have been enforced by the IRBI if the 1997 Act had not been enacted. And further, that the provisions of Chapter VIII of the 1984 Act, that include section 40, would continue to be applicable in respect of the arrangements entered into by the IRBI with an industrial concern under section 18 of the 1984 Act and the IIBIL would be able to enforce the same as fully and effectually as if the 1997 Act had not been enacted.

11. The High Court in the impugned judgment referred to section 13 of the 1997 Act, but failed to notice the true import of sub-section 2(b) of section 13. Further, the High Court completely overlooked the provisions of sub-section (4) of section 4 of the 1997 Act and as a result arrived at a conclusion that is patently erroneous and cannot be sustained for a moment.

12. On the basis of the provisions contained in section 4 (4) and section 13(2)(b) of the 1997 Act, we do not have the slightest doubt that the application filed by the appellant under section 40 of the 1984 Act for the enforcement of its claim against respondent no.1 was perfectly maintainable before the High Court. We, accordingly, accept the appeal and set aside the order dated November 1, 2002 passed by the High Court. As a result, S.B.C. Misc. Application No.40/99 is restored to its file and the High Court shall now proceed to examine it on merits and dispose it of in accordance with law.

N.J.

Appeal allowed.