

A RAHEJA UNVIERSAL LIMITED
v.
NRC LIMITED & ORS.
(Civil Appeal No. 1920 of 2012)

B FEBRUARY 07, 2012

**[S.H. KAPADIA, CJI., K.S. RADHAKRISHNAN AND
SWATANTER KUMAR, JJ.]**

C *Sick Industrial Companies (Special Provisions) Act,*
1985:

D ss. 22, 22(3), 22A, 17(3) – Sale of assets of sick
company – Rehabilitation scheme – Determination of the
right of purchaser – Jurisdiction of BIFR to restrain transfer
of sick industrial company's property – Respondent-Company
entered into memorandum of understanding and agreement
for sale of its land to appellant-Company to obtain funds for
financial restructuring and received part payment from the
appellant-Company – Failure of appellant-Company to pay
third instalment and financial position of respondent-
E Company not improved – Proposal by respondent-Company
to the consortium of banks for Corporate Debt Restructuring
(CDR) – Approval of scheme of rehabilitation – Prior to
implementation of the scheme, the respondent-Company
F sought declaration from BIFR that it was a 'sick company' and
for adoption of the rehabilitation scheme approved by creditor
banks – BIFR by order u/s. 17(3) adopted rehabilitation
Scheme and directed that the sale of assets including
investments would require prior approval of the BIFR –
Thereafter, execution of second Supplementary Agreement
G by respondent-Company and possession of land given to the
appellant-Company, without the prior approval of the BIFR –
Appeal before AAIFR – AAIFR permitted the land to be sold
– High Court quashed the order of AAIFR – On appeal, held:
Memorandum of understanding and agreement to sell the

land was signed prior to the presentation of the scheme before the BIFR – However, second supplementary agreement was executed subsequent to the presentation of the scheme before the BIFR as also after the BIFR had passed an order u/s. 17(3) – Asset of the company and/or its sale proceeds received under the agreements had been integral part of the formation and finalization of the revival scheme, and as such transaction cannot be stated to be beyond the ambit and scope of s. 22(3) whereby all these instruments to which the sick industrial company is a party, would be subject to the orders of BIFR – Further, in view of the provisions of s. 53A, even if the part performance of the agreement is accepted, yet no title is created in favour of the appellant-Company – As regards the issue of jurisdiction, BIFR had the jurisdiction to issue prohibitory order which was passed clearly at the stage of the consideration of the revival scheme for the formulation of which asset was duly taken into consideration – Prohibitory orders were issued by the BIFR within the ambit and scope of ss. 22(1), 22(3) and 22A – Further, there was no jurisdictional or other error in the order of the High Court in restoring the order of the BIFR – Land being the primary asset of the respondent-Company, could not be permitted to be dissolved by sale or otherwise without the consent and approval of the BIFR – BIFR is the authority proprio vigore and required to oversee the entire affairs of a sick industrial company – Thus, order of the BIFR, which merged into the order of the High Court upheld – Transfer of Property Act, 1882 – ss. 53A, 54.

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ss. 22 and 22A – Scope and ambit of – Held: Section 22 deals with the suspension of legal proceedings, execution and distress sale etc. against the assets of a sick company while Section 22A deals with restrictions and prohibitory orders which the BIFR can pass, all for the purposes of preparation of the scheme and proper implementation and effective management of the revival of the sick industrial company – Section 22 operates from the presentation of the scheme, its

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- A *consideration, preparation, finalization and ultimately the implementation of the said scheme and consequent rehabilitation of the sick industrial company, while Section 22A operates only during the preparation or consideration of the scheme, or upto the commencement of the proceedings*
- B *for winding up before the concerned High Court, in the event the BIFR recommends winding up proceedings – These provisions primarily ensure that the scheme prepared by the BIFR does not get frustrated because of certain other legal proceedings and to prevent untimely and unwarranted disposal of the assets of the sick industrial company – These Sections operate at different stages and in different fields.*

- ss. 22 and 22A – Powers of BIFR under – Held: Sections 22 and 22A specify the complete jurisdiction and authority of the BIFR in relation to preparation, consideration, finalization and implementation of a revival scheme in relation to a sick industrial company – BIFR is vested with the power to issue directions in the interest of the company or even in public interest, to prevent the disposal of assets of the company during the period of preparation, consideration or implementation of the scheme – Also, BIFR is expected to ensure proper implementation by appropriately monitoring the scheme during the entire relevant period.

- Overriding effect of the 1985 Act – Whether the provisions of the 1985 Act would prevail over the provisions of the Transfer of Property Act, 1882 – Held: Provisions of the 1985 Act would prevail over the provisions of the 1882 Act – 1882 Act is a general law controlling and operating in a very wide field, enacted for and related to transfer of immovable property in India and to decide the disputes as well as to resolve the confusion and conflict, in existence – It does not have application to a particular situation or class of persons – However, the 1985 Act is a special legislation providing for imperative functioning of specialized bodies like the BIFR and AAIFR and is intended to apply to a sick industrial company

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- It has no application even to other different kinds of companies within the purview of the Companies Act - Legislature gave an overriding effect to the provisions of the 1985 Act and even the jurisdiction of the civil courts is restricted - Transfer of Property Act, 1882. A

Legislative scheme and object of - Held: Is to develop the mechanism of revival and rehabilitation of sick industrial units and channelization of the complete administrative-cum-quasi judicial process within the framework of the Act -The Act empowers the quasi-judicial body-BIFR, to take appropriate measures for revival and rehabilitation of the potentially viable sick industrial companies and for liquidation of non-viable companies within the time specified - It is regulatory only to a limited extent - As regards matters covered under the Act as also matters allied to the formulation and sanction of the scheme, the jurisdiction of the civil courts is ousted and has to be decided by the BIFR itself. B
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Respondent-Company faced a financial crunch. The consortium of banks sanctioned loan against the current assets as well as fixed assets of the respondent-Company including the surplus land. Thereafter, the respondent-Company sought to dispose of the surplus land so as to bring in additional funds required for financial restructuring. They entered into memorandum of understanding and other agreements with appellants-Company for the sale of land and receiving payment of the sale consideration in instalments from the appellants. The appellants-Company failed to pay the third instalment and as such the respondent-Company could not attain the object of financial restructuring. The parties executed Supplementary Agreement for pre-ponement of the instalments payable in terms of the agreement as well as giving of possession of the land to the appellants-Company. The respondent-Company then submitted a proposal to the consortium of banks for Corporate Debt Restructuring (CDR). The scheme of rehabilitation in E
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A relation to the sick industrial company was approved by
the CDR. Prior to the complete implementation of the
revival scheme, the respondent-Company applied to the
BIFR under Section 15 of the Sick Industrial Companies
(Special Provisions) Act, 1985 for being declared as a
B 'sick company' and for acceptance and adoption of the
rehabilitation scheme approved by the CDR. BIFR by an
order under Section 17(3) of the 1985 Act, adopted the
rehabilitation Scheme, appointed an operating agency,
fixed the cut-off date for financial revival and directed that
C the sale of assets including investments would require
prior approval of the BIFR. Thereafter, the parties
executed second Supplementary Agreement and
possession of the land was given to the appellant-
Company, without the prior approval of the BIFR.
D Aggrieved, appellant-Company as well as the respondent-
Company filed appeal before the Appellate Authority for
Industrial and Financial Reconstruction (AAIFR). AAIFR
set aside the certain findings of the BIFR permitting the
land though an asset of the company to be sold. The
E High Court quashed the order of the AAIFR holding that
the order of the BIFR was within the scope of Section
22(3) of the 1985 Act; and that the order of the AAIFR
permitting the sale of the land in furtherance to the
agreement between the parties was not sustainable.
F Therefore, the appellant-Company filed the instant
appeals.

Dismissing the appeals, the Court

G HELD: 1.1. The Sick Industrial Companies (Special
Provisions) Act, 1985 basically and predominantly is
remedial and ameliorative in so far as it empowers the
quasi-judicial body, the BIFR, to take appropriate
measures for revival and rehabilitation of the potentially
viable sick industrial companies and for liquidation of
non-viable companies. It is regulatory only to a limited
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extent. The provisions of the Act of 1985 impose an obligation on the sick industrial companies and potentially sick industrial companies to make references to the BIFR within the time specified under the Act of 1985. Default thereof is punishable under the provisions of the Act of 1985. Largely, the proceedings before the BIFR are specific to rehabilitation or winding up of the sick company and the Act of 1985 hardly contemplates adversarial proceedings. The bodies constituted under the Act of 1985 would least exercise their jurisdiction to a *lis* between any party or upon the rival interests of the parties. With regard to the matters covered under the Act of 1985, the jurisdiction of the civil courts is ousted and the matters which are even allied to the formulation and sanction of the scheme would have to be decided by the BIFR itself. [Para 11] [420-E-H; 421-A]

1.2. The BIFR has been vested with wide powers and, being an expert body, is required to perform duties and functions of wide-ranged nature. If one looks into the legislative intent in relation to a sick industrial company, it is obvious that the BIFR has to first make an effort to provide an opportunity to the sick industrial company to make its net worth exceed the accumulated losses within a reasonable time, failing which the BIFR has to formulate a scheme for revival of the company, even by providing financial assistance in cases wherein the BIFR in its wisdom deems it necessary and finally only when both these options fail and the public interest so requires, the BIFR may recommend winding up of the sick industrial company. So long as the scheme is under consideration before the BIFR or it is being implemented after being sanctioned and is made operational from a given date, it is the legislative intent that such scheme should not be interjected by any other judicial process or frustrated by the impediments created by third parties and even by the management of the sick industrial company, in relation

A to the assets of the company. In other words, the object
 and purpose of the Act of the 1985 is to ensure smooth
 sanctioning of the scheme and its due implementation.
 Both these stages, i.e., pre and post sanctioning of the
 scheme by the BIFR, are equally material stages where
 B the provisions of Sections 22 and 22A read with Section
 32 of the Act of 1985 would come into play. Such an
 approach would also be acceptable as otherwise the
 entire scheme under Chapter III of the Act of 1985 would
 be frustrated. Doctrine of frustration envisages that an
 C exercise of special jurisdiction in futility, is neither the
 requirement of legislature nor judicial dictum. [Para 22]
 [434-D-H; 435-A]

1.3. The relevant provisions of the Act of 1985 clearly
 demonstrate that BIFR is vested with the power to issue
 D directions in the interest of the company or even in public
 interest, to prevent the disposal of assets of the company
 during the period of preparation, consideration or
 implementation of the scheme. Not only this, BIFR is
 expected to ensure proper implementation by
 E appropriately monitoring the scheme during the entire
 relevant period. Sections 22 and 22A thus, specify the
 complete jurisdiction and authority of the BIFR in relation
 to preparation, consideration, finalization and
 implementation of a revival scheme in relation to a sick
 F industrial company. [Para 30] [441-E-G]

1.4. The powers of the BIFR under Section 22(3) can
 be segregated under two different heads. Firstly, the
 power to suspend simplicitor the operation of all or any
 of the contracts, assurances of property, agreements,
 G settlements, awards, standing orders or any other
 instrument in force, to which the sick industrial company
 is a party or which may be applicable to the sick industrial
 company before the date of such order. Secondly, any
 rights, privileges, obligations or liabilities accruing or
 H arising before the said date, shall be enforceable with

such adaptation and in such manner as may be specified by the BIFR. Section clearly demonstrates the intent of the framers of law, that the BIFR has the power to even make changes in such instruments, documents etc. which create rights and liabilities vis-à-vis the sick industrial company, and before permitting them to be enforced. Such an approach alone can be justified, as otherwise the expression 'shall be enforceable with such adaptation and in such manner as may be specified by the BIFR would be meaningless. It is a settled principle of interpretation of statutes that every word and expression used by the legislature has to be given its proper and effective meaning as the legislature uses no expression without purpose or meaning. The maxim *Lex Nil Frusta Jubet i.e. Law Commands nothing vainly* further elucidates this principle. Of course, the power to make this declaration is controlled by limitation of time as specified in the proviso to the Section. Lifting of such declaration by lapse of time or otherwise or in accordance with the provisions of Section 22(4) shall bring the *status quo ante* as if such declaration had never been made. Section 22A is obviously a power over and above the wide powers vested in BIFR under the provisions of Section 22 of the Act of 1985. [Paras 27 and 28] [439-B-H; 440-A]

1.5. All these provisions which fall under Chapter III of the Act of 1985 have to be read conjointly and that too, along with other relevant provisions and the scheme of the Act of 1985. It is a settled canon of interpretation of statutes that the statute should not be construed in its entirety and a sub-section or a section therein should not be read and construed in isolation. Chapter III, in fact, is the soul and essence of the Act of 1985 and it provides for the methodology that is to be adopted for the purposes of detecting, reviving or even winding up a sick industrial company. Provisions under the Act of 1985

A also provide for an appeal against the orders of the BIFR
before another specialised body, i.e., the AAIFR. This is
a self-contained code and because of the *non obstante*
provisions, contained therein, it has an overriding effect
over the other laws. As per Section 32 of the Act of 1985,
B the Act is required to be enforced with all its vigour and
in precedence to other laws. [Para 21] [433-G-H; 434-A-
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1.6. The intent of introducing Section 22A was to
empower the BIFR to issue any direction to the sick
C industrial company, its creditors and shareholders, in the
interest of the company or even in public interest,
directing the company not to dispose of any assets,
except with the consent of the BIFR. The directions so
issued are to remain in force during the preparation and
D consideration of the scheme. Section 22 is the reservoir
of the statutory powers empowering the BIFR to
determine a scheme, right from its presentation till its
complete implementation in accordance with law, free of
interjections and interference from other judicial
E processes. Section 22(1) deals with the execution,
distress or the like proceedings against the company's
properties, including appointment of a Receiver. It also
specifically provides that even a winding up petition
would not be instituted and no other proceedings shall
F lie or proceed further, except with the consent of the
BIFR. In contradistinction to this power, Section 22(3)
states that pending an enquiry or a scheme under the
provisions of the Act of 1985 and even where the scheme
is sanctioned, for the due implementation of such
G scheme, the BIFR may, by an order, declare with respect
to the sick industrial company concerned that the
operation of all or any of the contracts, assurances of
property, agreements, settlements, awards, standing
orders or other instruments in force to which such sick
H 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 that all or any of the rights or privileges, obligations and liabilities accruing or arising thereunder before the said date, shall remain suspended and shall be enforceable with such adoption and in such a manner as may be specified by the BIFR. In other words, all those instruments to which the sick industrial company is a party, will be subject to the orders of the BIFR. Further, such proceedings can even be modified by the BIFR, of course, for the limited purpose of implementing the scheme. The declarations made by the BIFR under Section 22(3) are subject to the restrictions of time as stated under the proviso to this section. The maximum period for which such a declaration in aggregate can continue is seven years. The legislative intent of giving an over-riding effect to the declarations of the BIFR, as contemplated under Section 22(3) of the Act of 1985, is further fortified by the language of Section 22(4), which states that any declaration made under Section 22(3) shall take effect notwithstanding anything contained in the Companies Act, 1956 or any other law, the memorandum and articles of association of the company or any instrument, decree, order of a court, settlement etc. Any remedy for enforcement of a right which may be available to a third party and any such proceedings before any court or tribunal shall remain stayed or be continued subject to such declaration. Section 22(4)(b) brings *status quo ante* and in fact, makes it clear that on cessation of such a declaration, the right, privilege, obligation or liability which was suspended shall become revived and enforceable as if the declaration had never been made. The proceedings will continue from the stage at which they were stayed. It can safely be perceived that the provisions of Section 22 of the Act of 1985 are self-explanatory. They would cease to operate within their own limitations and not by force of any other law, agreement, memorandum or even

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A articles of association of the company. The purpose is so
 very clear that during the examination, finalization and
 implementation of the scheme, there should be no
 impediment caused to the smooth execution of the
 scheme of revival of the sick industrial company. It is only
 B when the specified period of restrictions and declarations
 contemplated under the provisions of the Act of 1985 is
 over, that the *status quo ante* as it existed at the time of
 the consideration and finalization of the scheme, would
 become operative. This is done primarily with the object
 C that the assets of the company are not diverted, wasted,
 taken away and/or disposed of in any manner, during the
 relevant period. [Para 26] [437-B-H; 438-A-H; 439-A-B]

1.7. Section 22A of the Act of 1985 empowers the
 BIFR to pass injunctive or restraint orders in the interest
 D of the sick industrial company or even in public interest
 requiring the sick industrial company not to dispose of,
 except with the consent of the BIFR, any asset during the
 period of preparation or consideration of the scheme
 under Section 18 of the Act of 1985 and during the period
 E beginning with the recording of opinion for winding up
 of the company under Section 20(1) of the Act of 1985 by
 the BIFR upto commencement of the proceedings relating
 to winding up before the High Court. These injunctive
 orders are to be in operation during the period of
 F preparation or consideration of the scheme under
 Section 18 of the Act of 1985. Section 22A, thus, has a
 narrower scope than Section 22. Section 22 operates
 from the presentation of the scheme, its consideration,
 preparation, finalization and ultimately the
 G implementation of the said scheme and consequent
 rehabilitation of the sick industrial company, while
 Section 22A operates only during the preparation or
 consideration of the scheme, or upto the commencement
 of the proceedings for winding up before the concerned
 High Court, in the event the BIFR recommends winding
 H up proceedings. [Paras 20, 29] [433-E-F; 440-C-E]

1.8. Section 22 and 22A of the Act of 1985 primarily ensure that the scheme prepared by the BIFR does not get frustrated because of certain other legal proceedings and to prevent untimely and unwarranted disposal of the assets of the sick industrial company. These Sections clearly state certain restrictions which would impact upon the implementation of the scheme as well as on the assets of the company. These Sections operate at different stages and in different fields. [Para 20] [432-G-H]

1.9. Sections 22(1), (3) and 22A have to be read along with the provisions of Section 26 of the Act of 1985 which ousts the jurisdiction of the civil courts and vests exclusive jurisdiction for the specified purposes with the BIFR. Section 32 of the Act of 1985, gives an overriding effect to the provisions of the Act of 1985 over the other laws in force except the law specifically stated therein. Sections 22, 22A, 26 and 32 have to be read and construed conjointly. A common thread of legislative intent to treat this law as a special law, in contradistinction to the other laws except the laws stated in the provisions and to ensure its effective implementation with utmost expeditiousness, runs through all these provisions. It also mandates that no injunction shall be granted by any court or authority in respect of an action taken or to be taken in pursuance of the powers conferred to or by under this Act. [Para 31] [441-B-E]

1.10. The provisions of Sections 22(1) and 22(3) of the Act are the provisions of wide connotation and would normally bring the specified proceedings, contractual and non-contractual liabilities, within the ambit and scope of the bar and restrictions contained in Sections 22(1) and 22(3) of the Act of 1985 respectively. The legislative intent is explicit that the BIFR has wide powers to impose restrictions in the form of declaration and even

- A prohibitory/injunctive orders right from the stage of consideration of a scheme till its successful implementation within the ambit and scope of Sections 22(3) and 22A of the Act. Section 22 of the Act of 1985 is very significant and of wide ramifications and application.
- B More often than not, the jurisdiction of the BIFR is being invoked, necessitated by varied actions of third parties against the sick industrial company. The proceedings, taken by way of execution, distress or the like, may have the effect of destabilizing the finalization and/or implementation of the scheme of revival under consideration of the BIFR. It appears that, the Legislature intended to ensure that no impediments are created to obstruct the finalization of the scheme by the specialized body. To protect the industrial growth and to ensure revival, this preventive provision has been enacted. The provision has an overriding effect as it contains *non obstante* clauses not only vis-à-vis the Companies Act but even qua any other law, even the memorandum and articles of association of the industrial company and/or any other instrument having effect under any other Act or law. These proceedings cannot be permitted to be taken out or continued without the consent of the BIFR or the AAIFR, as the case may be. The expression 'no proceedings' that finds place in Section 22(1) is of wide spectrum but is certainly not free of exceptions. The framers of law have given a definite meaning to the expression 'proceedings' appearing under Section 22(1) of the Act of 1985. These proceedings are for winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a Receiver in respect thereof. The expression 'the like' has to be read *ejusdem generis* to the term 'proceedings'. The words 'execution, distress or the like' have a definite connotation. These proceedings can have the effect of nullifying or obstructing the sanctioning or implementation of the
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revival scheme, as contemplated under the provisions of the Act of 1985. This is what is required to be avoided for effective implementation of the scheme. The other facet of the same Section is that, no suit for recovery of money, or for enforcement of any security against the industrial company, or any guarantee in respect of any loan or advance granted to the industrial company shall lie, or be proceeded with further without the consent of the BIFR. Again, the intention is to protect the properties/assets of the sick industrial company, which is the subject matter of the scheme. It is difficult to state with precision the principle that would uniformly apply to all the proceedings/suits falling under Section 22(1) of the Act of 1985. Firstly, it will depend upon the facts and circumstances of a given case, it must satisfy the ingredients of Section 22(1) and fall under any of the various classes of proceedings stated thereunder. Secondly, these proceedings should have the impact of interfering with the formulation, consideration, finalization or implementation of the scheme. Once these ingredients are satisfied, normally the bar or limitation contained in Section 22(1) of the Act of 1985 would apply. [Para 35] [443-C-H; 444-A-G]

Gram Panchayat & Anr. v. Shree Vallabh Glass Works Ltd. & Ors. (1990) 2 SCC 440; 1990 (1) SCR 966; Deputy Commercial Tax Officer & Ors. v. Corromandal Pharamaceuticals & Ors. (1997) 10 SCC 649; 1997 (2) SCR 1026; Jay Engineering Works Ltd. v. Industry Facilitation Council & Anr. AIR 2006 SC 3252; 2006 (6) Suppl. SCR 189; Maharashtra Tubes Ltd. v. State Industrial and Investment Corporation of Maharashtra (1993) 2 SCC 144: 1993 (1) SCR 340; Tata Davy Ltd. v. State of Orissa AIR 1998 SC 2928; 1997 (3) Suppl. SCR 232 – referred to.

1.11. The land was one of the major assets of the Respondent Company and in the event the said asset

A was kept outside the scope of the scheme or its sale was permitted by the BIFR, probably the company could never be revived and any effort in that direction *de hors* such asset of the company would be in futility. Besides, the fact that the statutory protection contained in Section
 B 22(3) was available to the company, it could be stated with more emphasis that the BIFR could even adopt and permit the transaction with such adoption as it may have deemed appropriate. The imperative nature of the functions of the BIFR under the provisions of the Act of
 C 1985 and the overriding effect of its provisions fully support such a view. [Para 36] [445-E-G]

D 2.1. The provisions of the Act of 1985 shall normally override the other laws except the laws which have been specifically excluded by the Legislature under Section 32 of the Act of 1985. The Act of 1985 has been held to be a special statute vis-à-vis the other laws. [Para 39] [447-E]

E 2.2. The Act of 1882 is a general law and controls and operates in a very wide field. It was an Act enacted for and related to transfer of immovable property in India and to decide the disputes as well as to resolve the confusion and conflict, which was in existence, as the courts were forced to decide the disputes according to their own notions of justice and fair play. The Act of 1882 does not
 F have application to a particular situation or class of persons. On the contrary, the Act of 1985 is a special legislation providing for imperative functioning of specialized bodies like the BIFR and AAIFR and is intended to apply to a very specific situation, i.e., where
 G a company is a sick industrial company. It has no application even to other different kinds of companies within the purview of the Companies Act, except sick industrial companies. The Legislature has undoubtedly given an overriding effect to the provisions of the Act of
 H 1985 and even restricted the jurisdiction of the civil courts,

as is demonstrated from the language of Sections 26 and 32 of the Act of 1985. Thus, the provisions of the Act of 1985 shall prevail over the provisions of the Act of 1882. [Para 40] [448-A-D] A

Tata Davy Ltd. v. State of Orissa AIR 1998 SC 2928: 1997 (3) Suppl. SCR 232; *Tata Motors Ltd.* (2008) 7 SCC 619; 2008 (9) SCR 267; *NGEF Ltd. v. Chandra Developers (P) Ltd. and Anr.* (2005) 8 SCC 219; 2005 (3) Suppl. SCR 747- referred to. B

3.1. The submission that in view of the provisions of Sections 53A and 54 of the Act of 1882, the title in the property in question is vested in the Respondent-Company and they are entitled to transfer of the property, free from any restrictions or limitations, and as such, the order of the High Court is liable to be set aside and that of the AAIFR be restored, cannot be accepted entirely or even in part for that matter. Section 54 defines 'Sale' as a transfer of ownership in exchange for price paid or promised or part-paid and part-promised. Such a transfer of tangible immovable property of the value of Rs.100/- and upwards can be made only by a registered instrument. On a plain reading of Section 54, it is clear that an agreement for sale or an agreement to sell itself does not create any interest or charge in such property. [Paras 43 and 44] [450-E-G; 451-C] C D E

'Transfer of Property Act' by Mulla, 9th Edn, p 181 – referred to. F

3.2. The provisions of Section 53A of the 1882 Act recognize a right of a transferee, where a transferor has given and the transferee has taken possession of the property or any part thereof. Even Section 53A does not create title of the transferee in the property in question but gives him a very limited right, that too, subject to the satisfaction of the conditions as stated in Section 53A of the Act of 1882 itself. Thus, even if the part performance G H

A of the agreement is accepted, still no title is created in
favour of the Respondent-Company. Provisions of
Section 53A would also not, in any way, alter the position
of the Act of 1985 having an overriding effect vis-à-vis the
provisions of the Act of 1882. The provisions of Act of
B 1985 shall have precedence and overriding effect over the
provisions of the Act of 1882. [Paras 47, 48] [456-B, F]

State of U.P. v. District Judge and Ors. AIR 1997 SC 53:
1996 (7) Suppl. SCR 513 – referred to.

C 3.3. The memorandum of understanding and
agreement to sell the land belonging to the company
between the appellant and the respondent-company was
signed prior to the presentation of the scheme before the
BIFR. However, second supplementary agreement was
D executed not only subsequent to the presentation of the
scheme before the BIFR but even after the BIFR had
passed an order under Section 17(3) of the Act of 1985.
It cannot be disputed that even the sale proceeds
received under the agreements have been utilized for the
revival of the company to a large extent. The agreement
E with the workers dated 5th September, 2008 stands
testimony to this fact. Once the asset of the company and/
or its sale proceeds have been integral part of the
formation and finalization of the revival scheme, such
transaction by any stretch of imagination cannot be
F stated to be beyond the ambit and scope of Section 22(3)
of the Act of 1985. Thus, BIFR has the power to issue
declarations in relation to contracts, agreements,
settlements, awards, standing orders or even other
instruments in force to which the sick industrial company
G is a party. The power to suspend or power to enforce the
same subject to such adaptations as the BIFR may
consider appropriate is a power of great magnitude and
scope, the only restriction thereupon is as contemplated
in the proviso to Section 22(3) of the Act of 1985. [Para
H 46] [454-D; 455-A, G]

3.4. The BIFR after declaring the Respondent- Company as a sick company and appointing the Punjab National Bank as the Operating Agency, had fixed the cut off date as 30th July, 2007, as indicated in the CDR Scheme. The CDR scheme had been approved, after taking into consideration the agreement to sell and the sale proceeds likely to be received therefrom. The BIFR had passed certain directions/declarations in the order passed under Section 17(3) of the Act of 1985 requiring the company to state clearly the details of the land to be sold including survey numbers as well as the remaining land with the company and confirming if the remaining land was adequate for functioning and viability of the company on long term basis. The BIFR raised the query whether all the secured creditors who had charge over the land, had approved the sale of 350 acres of land belonging to the respondent-company for a sum of Rs.166.40 crore and for entering into memorandum of understanding with the appellant company in that behalf. Besides issuing a directive that assets including investments would require prior approval of the BIFR as the company was under the purview of SICA, it also issued a clear prohibitory order requiring the secured creditors not to take any coercive steps against the company without prior permission of the BIFR. This order of the BIFR was therefore, passed clearly at the stage of the consideration of the revival scheme which had been approved by the CDR Group as well as the secured creditors. The scheme for revival of the company on long term basis, thus, was primarily dependent upon the sale proceeds of the land in question on the one hand and the utility of the remaining land for revival of the company on the other. The land was the paramount asset of the company for its revival and successful implementation of the scheme in accordance with law. The asset was duly taken into consideration in formulation of the scheme as contemplated under

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A Sections 17 and 18 of the Act of 1985 and appropriate
directions, prohibitory orders were issued within the
ambit and scope of Sections 22(1), 22(3) and 22A of the
Act of 1985. In view of the clear statement of law and facts
of the instant case, there is no merit in the submission
B of the Respondent-Company that the BIFR had no
jurisdiction to pass such directives. [Para 49] [457-B-H;
458-A]

3.5. AAIFR had disturbed the order of BIFR and held
that the contract between the parties could not be
C suspended under Section 22(3) and it was not in the
interest of the Respondent-Company. It had permitted the
sale to be completed without any restriction. The High
Court set aside the said order and restored the order of
D the BIFR. There is no jurisdictional or other error in the
order of the High Court in restoring the order of the BIFR.
The land being the primary asset of the Respondent-
Company, could not be permitted to be dissolved by sale
or otherwise without the consent and approval of the
BIFR. The BIFR is the *authority proprio vigore* and
E required to oversee the entire affairs of a sick industrial
company and to ensure that the same are within the
framework of the scheme formulated and approved by
the Board for revival of the company in accordance with
the provisions of the Act of 1985. On facts as well, neither
F the BIFR nor the High Court had exceeded its jurisdiction
in passing the impugned orders. It is not that the
Respondent-Company has been divested of its right by
the BIFR. All that has been done was to suspend the final
transfer of the property in its favour in accordance with
G the provisions of the Act and the limitations imposed
therein. Once the scheme is implemented or the period
specified under the provisions of Sections 22(3) and 22(4)
expires, the declaration would cease to exist and the
appellant would be entitled to enforce its rights in
accordance with law as if no such declaration or
H restriction ever existed. [Para 50] [458-C-G]

3.6. The principle of law that emerges, which consistently has judicial benediction, is that a scheme for rehabilitation or restructuring of a sick industrial company undertaken by a specialized body like the BIFR/AAIFR should, as far as legally permissible, remain obstruction free and the events should take place as pre-ordained, during consideration and successful implementation of the formulated scheme. Wide jurisdiction is vested in BIFR/AAIFR to issue directives, declarations and prohibitory orders within the rationalized scope and limitations prescribed under Section 22(1), 22(3) and 22A of the Act of 1985. [Para 51] [458-H;459-A-B]

3.7. The order of the BIFR dated 16th July, 2009 which has merged into the order of the High Court dated 29th July, 2011 is maintained while that of the AAIFR dated 28th May, 2010 is set aside. The parties are directed to appear before the BIFR which would proceed with the matter in accordance with law. [Para 54] [459-F-G]

Shree Sajjan Mills Limited & Ors. v. Municipal Corporation, Ratlam (2009) 17 SCC 665; M/s. Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association, Madras AIR 1992 SC1439: 1992 (2) SCR 999; Rambaran Prosad vs. Ram Mohit Hazra AIR 1967 SC 744: 1967 SCR 293; Dharma Naika v. Rama Naika AIR 2008 SC 1276: 2008 (2) SCR 451; Mrs. Saradamani Kandappan vs. Rajalakshmi & Ors. JT 2011 (8) SC 129; Shalini Shyam Shetty & Anr. v. Rajendra Shankar Patil (2010) 8 SCC 329: 2010 (8) SCR 836

Case Law Reference:

1990 (1) SCR 966	Referred to	Para 11, 13, 17, 23, 32
1997 (2) SCR 1026	Referred to	Para 12, 23, 33

A	2006 (6) Suppl. SCR 189	Referred to	Para 14, 16, 23, 34, 37
	(2009) 17 SCC 665	Referred to	Para 15
	1993 (1) SCR 340	Referred to	Para 32
B	1997 (3) Suppl. SCR 232	Referred to	Para 32, 37
	1992 (2) SCR 999	Referred to	Para 35
	2008 (9) SCR 267	Referred to	Para 37
C	2005 (3) Suppl. SCR 747	Referred to	Para 38
	1967 SCR 293	Referred to	Para 44
	1996 (7) Suppl. SCR 513	Referred to	Para 45
D	2008 (2) SCR 451	Referred to	Para 45
	JT 2011 (8) SC 129	Referred to	Para 45
	2010 (8) SCR 836	Referred to	Para 53

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1920 of 2012.

From the Judgment & Order dated 29.07.2011 of the High Court of Judicature at Bombay in Civil Writ Petition No. 6450 of 2010.

F With

C.A. Nos. 1921, 1922 & 1923 of 2012.

G H.N. Salve, Gopal Subramaniam, Mukul Rohotagi, S. Ganesh Shyam Divan, Colin Gonsalves, Mahesh Agarwal, Rishi Agarwal, Bharat Zaveri, Gaurav Goel, E.C. Agrawala, U.A. Rana, Devina Sehgal, Saurabh Sinha, S. Kumar, Rohit Singh, Anuradha, Jayshree, Jyoti Mendiratta for the appearing parties.

H The Judgment of the Court was delivered by

SWATANTER KUMAR, J. "Leave granted all cases." A

1. An interesting question of law as to the ambit and scope of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short, the 'Act of 1985') and its overriding application over the provisions of Transfer of Property Act, 1882 (for short, the 'Act of 1882'), with particular reference to Section 53A and Section 54 of the latter Act, arises for consideration in the present case. B

Reference to the basic facts which give rise to this proposition of law would be necessary and are as follows: C

Facts:

2. NRC Limited is a company which was originally incorporated under the name and style of 'National Rayon Corporation Limited' in the year 1946. However, subsequently, by an appropriate resolution of the Board of Directors, its name was changed to 'NRC Limited' on 4th August, 1994 (hereinafter referred to as the 'Respondent-Company'). The Respondent-Company was engaged in the manufacture of viscos filament yarn, chemicals and allied products with its factory at Mohane, Kalyan, District Thane. As per the facts on record, the Respondent-Company was declared a 'sick industrial company' in the year 1987, but as its net worth turned positive, vide order dated 10th January, 1994 passed by the Board for Industrial and Financial Restructuring (for short, the 'BIFR'), it was discharged from the purview of the Act of 1985. The Respondent-Company had arranged finances and invested nearly Rs.86 crore in the financial year 2005-06 whereafter it started incurring losses because reduction in the customs duty seriously affected its business. Because of the financial crunch faced by the Respondent-Company, a consortium of five nationalized banks comprising of Punjab National Bank, Dena Bank, Canara Bank, Indian Overseas Bank and the Bank of Baroda had sanctioned a term loan as well as a working capital loan, secured by the current assets as well as the fixed assets H

A of the Respondent-Company including the land in question. The total outstanding amount of loan, as on 31st March, 2006, was approximately Rs.147 crore. The Respondent-Company intensified its efforts to dispose of the surplus land so as to bring in additional funds required for financial restructuring. A

B Memorandum of Understanding was signed on 13th April, 2006 with 'K. Raheja Universal Limited' renamed as 'Raheja Universal Limited' (hereinafter referred to as the 'Appellant-Company') for sale of about 344 acres of land for a total consideration of Rs.166.40 crore. After obtaining 'No Objection

C Certificates' from the lending banks, an agreement dated 1st March, 2007 was signed between the parties and a sum of Rs.25 crore was paid by the Appellant-Company to the Respondent-Company. The balance consideration of Rs.141.40 crore was to be paid as per the terms of the agreement. In

D terms of the said agreement, the Appellant-Company was to pay the second instalment of Rs.25 crore, as and when required, to be utilized only to remove the first charge on the saleable land, the third instalment of Rs.48.90 crore was to be paid on receipt of 'No Objection Certificate' from the labour, Kalyan Dombivli Municipal Corporation and, on completion of fencing

E and the vacant possession of non-colony land and the fourth and final instalment of Rs.72.50 crore was to be paid subsequent thereto.

3. The Agreement dated 1st March, 2007 had postulated

F payment of the sale consideration in instalments. The parties continued further negotiations in regard to payment of the balance sale consideration. The Respondent-Company had requested the Appellant-Company to advance the payment of instalments. Thereafter, the parties came to an understanding

G and, in furtherance to such understanding, a supplementary deed to the agreement was signed on 29th September, 2007. As already noticed, the Appellant-Company had declined to pay the third instalment of the consideration payable, causing impediment to payments towards labour costs and other

H expenses of the Respondent-Company. Then, the parties, by

mutual agreement, signed a second supplementary agreement dated 17th August, 2010. This agreement referred to the principal agreement and besides advancing the payment of instalments, the possession of the property was also given to the Appellant-Company.

4. There is some dispute between the parties with regard to the manner and time in which these payments were or were not made. On failure to attain the object of restructuring, the Respondent-Company submitted a proposal to the consortium of banks for Corporate Debt Restructuring (CDR) and improving the performance and to achieve positive results during the year 2006-07. The CDR mechanism used the land sale proceeds. Upon making the proposal, the Respondent-Company discontinued its production activity in the nylon plant. The CDR Empowered Group approved the package for restructuring of debts on 21st January, 2008 but still it could not improve the financial business position of the Respondent-Company till the period ending on 30th June, 2008. On or about 24th September, 2008, the consortium banks released their interest over the property. An agreement with the recognized employees' unions was also entered into on 5th September, 2008 but then it ran into problems, as it was contended by the Labour Unions that their dues should be cleared first and on transfer of land, Appellant-Company should provide 18 acres of land for a proposed employee's colony. An early retirement scheme was also introduced and out of the total strength of 3725 employees, about 577 employees opted to take the benefit of this scheme. The Respondent-Company then negotiated with the Appellant-Company sometime in September 2008 for payment of the third instalment of Rs.48.90 crore. However, simultaneously, the Labour Unions raised the question of payment of bonus which adversely affected the revival plans. The chemical plant of the company was re-started. On 3rd December, 2008, the Respondent-Company moved an application before the BIFR in Case No. 55 of 2008 under Section 15(1) of the Act of 1985. The Appellant-Company

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A refused to release the third instalment and resultantly, even the dues of 577 employees, who had taken the benefit of the early retirement scheme, could not be cleared. The BIFR, vide its order dated 16th July, 2009, fixed the cut-off date as 30th July, 2007. It directed that the sale of assets, including investments, will require prior approval of the BIFR. It also appointed the Punjab National Bank as the Operating Agency under Section 17(3) of the Act of 1985.

5. As per Section 18(8) of the Act of 1985, the cut-off date is the date of coming into operation of the sanctioned scheme, or any provisions thereof. In other words, all matters relating to the company would, after this date, be within the ambit and scope of the provisions of the Act of 1985 and, as already noticed, the BIFR had declared the cut-off date to be 30th July, 2007. Vide its order dated 16th July, 2009, which was passed under Section 17(3) of the Act of 1985, the following directions were given:

“(i) The Company shall submit a fully tied up DRS to the OA (Punjab National Bank) (PNB) within a period of three months. The sale of 350 acres of land stated to be approved by the CDR Empowered Group (EG) and the secured creditors may form part of the DRS. The details of the land to be sold including survey numbers should be clearly specified. The company shall give similar details of the remaining land and conform that it is adequate for the functioning and viability of the company on long term basis. The OA (PNB) shall convene a joint meeting of all concerned and submit a fully tied up DRs, if it emerges, along with the minutes of the joint meeting within a further period of one month.

(ii) Bank of Baroda (BOB) shall submit an authenticated copy of the CDR scheme approved by consortium of banks within a period of 15 days.

(iii) PNB (OA) shall confirm to the Board within a period

of 15 days under copy to the company that all the secured creditors who had charge over the land had approved sale of 350 acres of land belonging to the company at Kalyan, Thane Dist. To K. Raheja Universal Pvt. Ltd. For a sum of Rs. 166.40 crore. The secured creditors who had charge over the land shall clearly indicate whether the company had obtained their approval before entering into MOU and agreement for sale of 350 acres of land with K. Raheja Universal Ltd. under copy to the company the OA (PNB) and the Board. Secured creditors shall also similarly submit copy of their approval for sale of investments, giving details of the investments. OA shall also submit copies of the approvals given by the secured creditors for the sale of the said land along with the copies of valuation report and the details of the valuer and the procedure followed based on which the sale consideration of Rs.166.40 crores was arrived at. OA shall also submit a copy of the approvals by secured creditors for sale of investment giving details of the investments. The company shall fully co-operate with the OA in furnishing the documents/details required by them.

(iv) The company shall submit within 15 days under copy to the OA (PNB) copies of the No Objection Certificates for sale of land and release of charge issued by all the charge holder lenders and the State Government in respect of 350 acres of land for which MOU and agreement of sale are stated to be entered into in 2006 and 2007 respectively with K. Raheja Universal Pvt. Ltd. under copy to the PNB (OA). The company should also submit certified copies of the Board resolutions of the company authorizing these transactions to the OA with a copy to the Board. The company shall similarly submit full details of the investments to be sold under the CDR scheme. It is reiterated that sale of assets including investments will require the prior approval of BIFR as the company is now under the purview of SICA.

A (v) The company shall submit a copy of the clearance stated to have been received from Hon'ble High Court of Bombay for sale of 350 acres of land under copy to the OA (PNB).

B (vi) The secured creditors are directed u/s 22(1) of SICA not to take any coercive action against the company without prior permission of BIFR."

C 6. As is evident from the above-noted directions, the BIFR treated the land as an investment and has put certain restrictions thereupon, including that of sale of assets, which required the prior approval of BIFR as the Respondent-Company was under the purview of the Act of 1985. With reference to the land, it was directed that Capacity Valuation Report should be placed on record to show how the sale D consideration of Rs.166.40 crore was arrived at. Aggrieved from this order, the Appellant-Company as well as the Respondent-Company, both have preferred an appeal before the Appellate Authority for Industrial and Financial Reconstruction (for short the 'AAIFR') under Section 25 of the E Act of 1985. The AAIFR made major variations in the order of the BIFR. Firstly, it held that BIFR should not have fixed 30th July, 2007 as the cut-off date and secondly, that the provisions of Section 22A would not apply to an agreement for sale which had already been entered into, registered, acted upon and was F in the process of completion. While dealing with the order of the BIFR, AAIFR vide its order dated 28th May, 2010, set aside certain findings of the BIFR as well as passed certain other directions. It is useful to refer to some of the findings recorded by the AAIFR in its order which are as under:

G "22. The BIFR has also not considered the impact of Section 22A or the transactions, contracts/agreements entered into between the company and third parties prior to the filing of reference when the company was not a sick H entity. If the BIFR was of the view that the agreement for sale of land was not in the interest the company, it could

have suspended the contract under Section 22(3) of SICA as it was a pre-existing contract. Despite arguments to the contrary, the BIFR has not given any reasons to justify how Section 22A of SICA applies to a pre-existing agreement for sale entered into between the company and a third party prior to filing of the reference. In fact, the agreement for sale is a clog on the absolute ownership of the property of the appellant company and the property cannot be said to be free from encumbrance unless the registered agreement for sale is cancelled. The property under agreement cannot be sold to others during the subsistence of agreement for sale.

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24. In view of the aforesaid discussion and considering the various provisions of the MOU dated 13.4.06, agreement for sale dated 01.3.07 and supplementary agreement dated 21.9.07, we are of the view that the provisions of Section 22A will not apply to the agreement for sale already entered into, registered, and acted upon and in the process of completion. Had it been the intention of the legislature to cover the past transactions within the ambit of Section 22A, the provisions for suspension of existing contracts etc. would not have been provided under Sub-Section (3) of Section 2 of SICA under which the BIFR has not passed any order. Readiness and willingness of the parties to the sale agreement to honour the contract is also a paramount consideration."

7. AAIFR summed up its conclusion in paragraphs 41 and 42 which read as under:

"41. To sum up :

The sale-purchase agreement dated 30.6.2009 was signed after the reference was filed and 15 days before the BIFR passed the restraint order under section 22A;

A There is no evidence to show whether various provisions of SEBI Take Over Code have been complied with;

B The company has violated the amended terms and conditions of STL dated 29.6.2009 by not paying to PNB one instalment of Rs.2.78 crores before 30.6.2009;

Consequently, PNB ha not released the shares of AOL for re-pledge by ISG Traders Ltd.:

C According to PNB, however, the company has shown the entire shares of AOL as sold:

There is no evidence to show that sale consideration has been paid; and

D The ISG Traders Ltd. is neither a party before the BTR nor before this Authority.

E In these circumstances, the BIFR was fully justified in seeking full details of the investments to be sold in the CDR scheme and to direct that the sale of investments will require the prior approval of the BIFR. We find no reasons to interfere with the aforesaid order of the BIFR regarding sale of investments.

F **42.** We observed that the BIFR has fixed the cutoff date as 30.07.2007 on the basis of the CDR scheme while passing the order under Section 17(3). The fixation of cut off date implies that the liabilities and the dues of the creditors will be determined as on that date and the repayment obligations will commence during the year following the cut oil date. If there is a substantial gap between the cut off date fixed and the date of sanction of the scheme, the scheme will become a non starter because the sick industrial company will be unable to fulfill its repayment obligations for the period between the cut off date as stipulated in the impugned order and date of sanction of the scheme, The issue can be resolved by

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determining a prospective cut off date. Section 17(4)(b) of SICA vests in the BIFR the necessary power to review and modify its orders under Section 17(3) of SICA. Therefore, in our view the cut off date fixed by the BIFR in the impugned order is required to be suitably modified by the BIFR.”

8. With the above findings, the AAIFR recorded that the scheme could be approved but subject to pre-payment of the entire remaining consideration of Rs.124.64 crores, as per its directions, for setting off labour dues. In other words, it permitted the land, though an asset of the company, to be sold. The correctness and legality of this order of the AAIFR was questioned by the Appellant-Company, the Respondent-Company and the NRC Mazdoor Sangh before the High Court. These Writ Petitions, along with other connected Writ Petitions, were disposed of by the High Court by a common judgment dated 29th July, 2011. The High Court, primarily, framed two questions for discussion: firstly, whether the land covered by the agreement of sale dated 1st March, 2007 and supplementary agreement signed on 29th September, 2007, was an existing asset of the Respondent-Company and secondly, what was the scope of the powers of the BIFR under Section 22(3) of the Act of 1985. The High Court quashed the order of the AAIFR and confirmed the order passed by the BIFR holding as under:

“(8).....The AIFR further held that prior to the filing of the reference under Section 15 of SICA, a debt restructuring scheme under the CDR mechanism on 12/12/2007 and 21/1/2008, the CDR package envisaged sale of surplus land as well as sale of investments of the appellant company. Any restraint order on the sale of land, under the agreements for sale, would not only complicate the matter but would hamper the revival process and would also lead to a prolonged litigation between the parties and this will not be in the interest of revival of the sick company. The provisions of Section 22A which are prospective in

A nature would not impact pre existing contract for sale
entered into by the company before it filed reference under
Section 15(1) of SICA and, therefore, the directions given
under Section 22A will not apply to the agreement for sale
deed 1/3/2007. The restraint order passed by the BIFR
B would apply to any subsequent proposals for disposal of
assets of the company, if any. But these agreements will
be subject to interim orders and final orders to be passed
by the High Court in the pending writ petition challenging
the settlement dated 5/9/2008. For all these reasons, the
C AIFR held that the agreement for sale cannot be part of
DRS under Section 18(d) of SICA as the same is under
transfer and unencumbered and legally enforceable
contract exists between the appellant company and
respondent no.13. However, the AIFR held that the balance
D sale consideration in respect of the land to the tune of
Rs.124.64 crores receivable by the company from
respondent no.13 should form part of the means of finance
in the DRS to be formulated by the BIFR for rehabilitation
of the company. One payment of balance sale
E consideration by respondent no.13, the same shall be
deposited with an interest bearing NLA with the operating
agency for utilisation as per the rehabilitation scheme to
be sanctioned by the BIFR. The said scheme was for
workers dues including Rs.45 crores for ERS and
appropriately crystallized amount for ex-employees dues
F as per the settlement dated 5/9/2008 with NRC Mazdoor
Sangh. The AIFR further observed that if the BIFR
considers it necessary to make payment to the workers
as provided for in the agreement with the workers, before
the sanction of the revival scheme, it could do so to
G alleviate the hardships of the workers.”

9. After dealing with these two questions at length, the High
Court was of the opinion that BIFR order dated 16th July, 2009
was within the scope of Section 22(3) of the Act of 1985. It held
H that the order of the AAIFR permitting the sale of the land in

furtherance to the agreement between the parties was not sustainable as it was part of the scheme and sale had been permitted subject to the final orders of the BIFR. This judgment of the High Court is impugned by the Appellant-Company before us. A

Legislative Scheme of the Act of 1985 : B

10. The framers of law felt that the existing institutional arrangements and procedure for revival and rehabilitation of potentially viable sick industrial companies are both inadequate and time consuming. Multiplicity of law and the regulatory agencies makes the adoption of a coordinated approach for dealing with sick industrial companies difficult. Thus, a need was felt to enact, in public interest, a legislation to provide for timely determination, by a body of experts, of the preventive, ameliorative, remedial and other measures that would be needed to be adopted with respect to such companies and for enforcement of the appropriate measures with utmost practicable despatch. The ill-effects of sickness in industrial companies, such as cessation of production, loss of employment, loss of revenue to the Central and State Governments and blocking up of investible funds of the banks and financial institutions, were of serious concern to the Government as well as the society at large. It had repercussions on the industrial growth of the country. With the passage of time the number of sick industrial units increased rapidly. Therefore, it was imperative to salvage the productive assets and release, to the extent possible, the amounts due to the banks and financial institutions from non-viable sick industrial debtor companies by liquidation of those companies or through formulation of rehabilitation schemes. With these objects, the Bill was introduced with the salient features *inter alia* of identification of sickness in the industrial companies, on the basis of symptomatic indices of cash losses for the specified periods. Wherever the Government or the Reserve Bank were satisfied that an industrial company has become sick, they were H

A required to make a reference to the BIFR. The BIFR consists
of experts, in various relevant fields, with powers to inquire into
and determine the incidences of sickness in the industrial
companies and devise suitable measures through appropriate
schemes to revive them. An appeal lies from the order of BIFR
B to an appellate authority (the AAIFR) consisting of members
selected from amongst Supreme Court or High Court Judges
or Secretaries to the Government of India. With this
background, objects and reasons, this Bill was passed by the
Indian Parliament and it received the assent of the President
C of India on 8th January, 1986. Thus, it became an Act of the
Parliament intended to revolutionize the mechanism of revival
or liquidation of sick industrial units and channelization of the
complete administrative-cum-quasi judicial process within the
framework of the Act of 1985.

D Nature and Scope of the Act of 1985

11. Having dealt with the legislative history and object of
the Act of 1985, we may now examine the very nature of this
legislation. The Act of 1985 basically and predominantly is
E remedial and ameliorative in so far as it empowers the quasi-
judicial body, the BIFR, to take appropriate measures for revival
and rehabilitation of the potentially viable sick industrial
companies and for liquidation of non-viable companies. It is
regulatory only to a limited extent. The provisions of the Act of
F 1985 impose an obligation on the sick industrial companies
and potentially sick industrial companies to make references
to the BIFR within the time specified under the Act of 1985.
Default thereof is punishable under the provisions of the Act of
1985. Largely, the proceedings before the BIFR are specific
G to rehabilitation or winding up of the sick company and the Act
of 1985 hardly contemplates adversarial proceedings. The
bodies constituted under the Act of 1985 would least exercise
their jurisdiction to a *lis* between any party or upon the rival
interests of the parties. With regard to the matters covered
under the Act of 1985, the jurisdiction of the civil courts is
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ousted and the matters which are even allied to the formulation and sanction of the scheme would have to be decided by the BIFR itself. Even this aspect has been a matter of judicial divergence. In the case of *Gram Panchayat & Anr. v. Shree Vallabh Glass Works Ltd. & Ors.* [(1990) 2 SCC 440], this Court was concerned with a company which had been declared 'sick' within the meaning and scope of clause (o) of Sub-section (1) of Section 3 of the Act of 1985. The Gram Panchayat had initiated coercive proceedings as per Section 129 of the Bombay Village Panchayat Act, 1959 to recover a sum of Rs.9,47,539/- stated to be the property tax and other amounts due from the company. This demand was challenged. The Bombay High Court quashed the demand and the recovery proceedings. This Court, while dealing with the scope of Section 22 read with Sections 16 and 17 of the Act of 1985, took the view that all proceedings for execution, distress or the like against the properties of the company would automatically be suspended and could not continue without the consent of the BIFR. This Court held as under: -

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

11. It may be against the principles of equity if the creditors are not allowed to recover their dues from the company, but such creditors may approach the Board for permission to proceed against the company for the recovery of their dues/outstandings/overdues or arrears by whatever name it is called. The Board at its discretion may accord its

A approval for proceeding against the company. If the
 approval is not granted, the remedy is not extinguished. It
 is only postponed. Sub-section (5) of Section 22 provides
 for exclusion of the period during which the remedy is
 suspended while computing the period of limitation for
 B recovering the dues.”

12. This Court in the case of *Deputy Commercial Tax
 Officer & Ors. v. Corromandal Pharamaceuticals & Ors.*
 [(1997) 10 SCC 649] had taken a somewhat divergent view to
 C the view taken in *Shree Vallabh Glass Works* (supra). In this
 case, this Court, while examining the language of Section 22
 of the Act of 1985, came to the conclusion that it was certainly
 a wide provision. In the totality of the circumstances, the
 safeguards stated under Section 22 of the Act of 1985 are only
 against any impediment that is likely to be caused in the
 D implementation of the scheme. If the matter falls outside the
 purview of the scheme and the dues are not reckoned or
 included in the sanctioned scheme of rehabilitation, recovery
 of sales tax dues would not be covered under this provision and
 as such the bar of Section 22(1) of the Act of 1985 would not
 E operate. This Court held as under: -

“.....The language of Section 22 of the Act is certainly wide.
 But, in the totality of the circumstances, the safeguard is
 only against the impediment, that is likely to be caused in
 F the implementation of the scheme. If that be so, only the
 liability or amounts covered by the scheme will be taken
 in, by Section 22 of the Act. So, we are of the view that
 though the language of Section 22 of the Act is of wide
 import regarding suspension of legal proceedings from the
 moment an inquiry is started, till after the implementation
 G of the scheme or the disposal of an appeal under Section
25 of the Act, it will be reasonable to hold that the bar or
 embargo envisaged in Section 22(1) of the Act can apply
 only to such of those dues reckoned or included in the”
 sanctioned scheme. Such amounts like sales tax, etc.
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which the sick industrial company is enabled to collect after the date of the sanctioned scheme legitimately belonging to the Revenue, cannot be and could not have been intended to be covered within Section 22 of the Act. Any other construction will be unreasonable and unfair and will lead to a state of affairs enabling the sick industrial unit to collect amounts due to the Revenue and withhold it indefinitely and unreasonably. Such a construction which is unfair, unreasonable and against spirit of the statutes in a business sense, should be avoided.”

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13. While taking the above view, this Court also noticed the judgment in *Shree Vallabh Glass Works* (supra) but distinguished the same by stating that the facts in that case were distinct.

14. The above two judgments covered the field of law in this regard for a considerable time, till the judgment of this Court was rendered in the case of *Jay Engineering Works Ltd. v. Industry Facilitation Council & Anr.* [AIR 2006 SC 3252]. In the said judgment, this Court was dealing with a question as to whether the award made under Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 was covered under Section 22 of the Act of 1985 or despite the pendency of such proceedings before the BIFR the award could be executed. This Court also discussed the issue as to which of the above two Acts would prevail. Dealing with the language of Section 22 of the Act of 1985, this Court took the view that the said Act shall prevail and though the adjudicatory process of making an award under the 1993 Act would not come under the purview of the Act of 1985, once an award is made and sought to be executed, the provisions of Section 22 of the Act of 1985 shall take over and such award would not be executable against the sick company, particularly when the party in whose favour the award was made was, as in the present case, included in the category of dormant creditors of the sick company. This Court in the said judgment held as under: -

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A "17. The said provision, thus, mandates that no proceeding
inter alia for execution, distress or the like against any of
the properties of the industrial company and no suit for
recovery of money or for the enforcement of any security,
shall lie or be proceeded with further, except with the
B consent of the Board or as the case may be, the Appellate
Authority. The said statutory injunction will operate when
an inquiry had been initiated under Section 16 or a scheme
referred to under Section 17 is under preparation and/ or
inter alia a sanctioned scheme is under implementation.
C It is not disputed before us that the amount awarded in
favour of the Respondent by the Council finds specific
mention in the sanctioned scheme which is under
implementation.

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

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G 21. 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 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

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determined and for matters connected therewith or incidental thereto.” A

15. Furthermore, in a recent judgment of this Court in the case of *Shree Sajjan Mills Limited & Ors. v. Municipal Corporation, Ratlam* [(2009) 17 SCC 665], this Court was dealing with a company which had approached the BIFR for being registered as a sick company and was so declared on 21st November, 1989. The BIFR had recommended the winding up of the sick company but the AAIFR had taken the view that the company could be rehabilitated and, therefore, framed the scheme for its revival. For the purpose of revival, an Assets Sales Committee was constituted for selling, via tender process, the surplus land belonging to the appellant-company. The issue under consideration was that when the 20 per cent of the purchase price deposited by the tenderer as earnest money as per the terms and conditions of the sale was forfeited, whether the same could be challenged only before the BIFR or the civil courts could determine the dispute and whether the bar contained under Section 26 of the Act of 1985 would operate. This Court took the view as under: - B
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“12. We agree with the view expressed by the High Court that the forfeiture of the earnest money by the Assets Sale Committee could not have been the subject-matter of a dispute within the meaning of Section 26 which either BIFR or AAIFR has the jurisdiction to determine. Accordingly, we see no reason to interfere with the judgment and order of the High Court impugned in this appeal.” E
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16. We may notice that though the Bench had noticed the view taken in the case of *Jay Engineering* (supra), no detailed reasoning was recorded for rejecting the said view. G

17. In order to affirmatively answer whether the view of this Court expressed in *Shree Vallabh Glass Works* (supra) is the correct and acceptable exposition of law, it is but necessary for this Court to examine the scheme of the Act of 1985 and H

- A some of its relevant provisions. As already noticed, the Act of 1985 was enacted by the Legislature, primarily with the object of establishing a specialized body for revival, rehabilitation and even winding up of sick industrial companies and wherever necessary, providing them with financial assistance. The
- B provisions contained in Chapter III of the Act of 1985, which deals with References, Inquiries and Schemes, are the relevant provisions which can throw some light on the matter and issues before us. Section 15 of the Act of 1985 places an obligation upon an industrial company, which has become sick in terms
- C of that provision, to make a reference to the BIFR established under Section 4 of the Act of 1985 within the period of limitation prescribed. While under Section 15(2) where the Central Government or Reserve Bank of India or a State Government or a Public Financial Institution has sufficient reasons to believe
- D that any industrial company has become, for the purpose of the Act of 1985, a sick industrial company, would also make a reference of such company to the Board for determination of the measures which may be adopted with regard to such company. Section 16 of the Act of 1985 deals with the conduct of an inquiry by the BIFR and the manner in which the BIFR is
- E expected to deal with the matter upon receipt of a reference under Section 15 of the Act of 1985. Section 16 vests the BIFR with very wide powers of inquiry and passing appropriate orders. Section 16(2) empowers the BIFR to pass an order, in its discretion, directing any operating agency to inquire into and
- F to make a report with regard to the matters as may be specified in the order. Such operating agency is expected to complete the inquiry expeditiously and preferably within 60 days from the date of commencement of inquiry. The BIFR is vested with powers such as appointing special directors for the sick
- G company and issuing directions to the special directors in relation to discharge of their duties and to improve the performance of any or all of the functions postulated under Section 16(6) of the Act of 1985. After the inquiry by the BIFR or by the operating agency is completed, BIFR if satisfied that
- H the company has become sick and upon considering all

relevant facts and circumstances of the case in exercise of its powers under Section 17 of the Act of 1985, may pass orders requiring the company to make its net worth exceed the accumulated losses within a reasonable time and for that purpose it may impose such restrictions or conditions as may specified in the order in terms of Section 17(2) of the Act of 1985. Further, where the BIFR decides that it is not practicable for a sick industrial company to make its net worth exceed the accumulated losses within a reasonable time and that it is otherwise necessary or expedient in public interest to adopt all or any of the measures specified in Section 18 of the Act of 1985 in relation to the said company, it may, having regard to the guidelines, as may be specified, pass an order formulating a scheme providing for such measures in relation to the sick industrial company. In the event of non-compliance of the restrictions or conditions specified in the order of the BIFR or where the company fails to revive itself in pursuance to the order, the BIFR can pass any of the directions/orders as required under Section 17(4) of the Act of 1985. Section 18 of the Act of 1985 again is a remedial provision which contains specified guidelines for the preparation and sanction of the schemes for the revival of the sick industrial company. Where an order is made under Section 17(3) in relation to a sick industrial company, the operating agency is required to prepare, as expeditiously as possible, ordinarily within 90 days from the date of such order, a scheme with respect to such company providing for any one or more of the measures stated under sub-clauses (a) to (f) of Section 18(1) of the Act of 1985. The scheme so framed may provide for any one or more of the measures stated under clauses (a) to (m) of Section 18(2) of the Act of 1985. The scheme which has been prepared in consonance with the provisions of Section 18(1) and 18(2) then has to be examined by the BIFR in terms of Section 18(3) of the Act of 1985 and if the BIFR makes any modifications to the scheme, the same draft scheme, in brief, shall be published or caused to be published in such daily newspapers as the BIFR may consider necessary, for receipt of suggestions and

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A objections, if any. In light of the suggestions and objections received in response to such publication, the BIFR may still make further modifications. Also, where the scheme relates to amalgamation of the companies, the procedures specified therein shall be followed. In such cases, the shareholders of the
B company, other than the sick industrial company, are expected to pass a resolution of approval of the scheme. The scheme thereafter shall be sanctioned by the BIFR and shall come into force on such date as the BIFR may specify in this behalf and in exercise of the powers vested in it under Section 18(4) of
C the Act of 1985. This scheme does not attain finality which is unalterable. Once the scheme is sanctioned and comes into force even then, on the recommendation of the operating agency, the BIFR can consider further modifications or even prepare a fresh scheme providing for such measures as the
D operating agency may consider it necessary and recommended in terms of Section 18(5) of the Act of 1985.

18. Section 18(7) of the Act of 1985 is an important provision which provides that the sanction accorded by the BIFR shall be conclusive evidence that all the requirements of the
E scheme relating to reconstruction or amalgamation or any measure specified therein have been complied with and a copy of the sanctioned scheme certified in writing by an officer of the BIFR to be a true copy thereof shall be admissible as evidence in all legal proceedings. To resolve the difficulties that
F may arise in giving effect to the provisions to the sanctioned scheme, the BIFR may, on the recommendation of the operating agency or otherwise, by order do anything, not inconsistent with such provisions, which appears to it to be necessary or expedient for the purpose of removing difficulty in terms of
G Section 18(9) of the Act of 1985. The role of the BIFR does not end here and it may even periodically monitor the implementation of the scheme. Where the scheme relates to preventive, ameliorative, remedial and other measures with respect to any sick industrial company, the scheme may
H provide for financial assistance by way of loans, advances or

guarantees from the Government or financial institutions. Before any financial institution is called upon to proceed to release the financial assistance to the sick industrial company in fulfilment of the requirements in that regard, the procedure contemplated under the provisions of Section 19 of the Act of 1985 has to be followed. Where the BIFR, after making inquiry under Section 16 of the Act of 1985, considering all relevant facts and circumstances and giving an opportunity of being heard to all concerned parties, is of the opinion that the sick industrial company is not likely to make its net worth exceed the accumulated losses within a reasonable time while meeting all its financial obligations and that the company as a result thereof is not likely to become viable in future and that it is just and equitable that the company should be wound up, it may record and forward its opinion to the concerned High Court as per the provisions of Section 20 of the Act of 1985 whereafter the company shall be wound up in accordance with the provisions of the Companies Act, 1956. The High Court may even appoint any officer of the operating agency as the liquidator of the sick industrial company. Section 21 of the Act of 1985 requires the operating agency to prepare an inventory, if so directed by the BIFR.

19. Sections 22 and 22A have a significant bearing upon the controversy that arises for consideration of the Court in the present case and it will be useful to refer to those provisions at this stage itself:

“22. Suspension of legal proceedings, contracts, etc.-

(1) Where in respect of an industrial company, an inquiry under section 16 is pending or any scheme referred to under section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under sections 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

A 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
B 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
C 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
D 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 the shareholders of such
E 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
F to unless approved by the Board.

(3) Where an inquiry 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
G 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, agreements,
settlements, awards, standing orders or other instruments
H 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 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 two years which may be extended by one year at a time so, however, that the total period shall not exceed seven years in the 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 articles of association of the company or any instrument having effect under the said Act or 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, -

(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

(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

(ii) any proceeding so remaining stayed shall be proceeded with, subject to the provisions

A of any law which may then be in force, from the stage which had been reached when the proceedings became stayed.

B (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 this section shall be excluded.

C **22A. Direction not to dispose of assets** - The Board may, if it is of opinion that any direction is necessary in the interest of the sick industrial company or creditors or shareholders or in the public interest, by order in writing direct the sick industrial company not to dispose of, except with the consent of the Board, any of its assets -

D (a) during the period of preparation or consideration of the scheme under section 18; and

E (b) during the period beginning with the recording of opinion by the Board for winding up of the company under sub-section (1) of section 20 and up to commencement of the proceedings relating to the winding up before the concerned High Court.

F 20. A bare reading of the above provision shows that Section 22 of the Act of 1985 is concerned with the suspension of legal proceedings, execution and distress sale etc. against the assets of a sick company while Section 22A deals with power of the Board to issue directions restraining the disposal of assets of such companies. These two provisions primarily ensure that the scheme prepared by the BIFR does not get frustrated because of certain other legal proceedings and to prevent untimely and unwarranted disposal of the assets of the sick industrial company. These sections clearly state certain restrictions which will impact upon the implementation of the scheme as well as on the assets of the company. These sections operate at different stages and in different fields.

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Section 22(3) of the Act of 1985 contemplates that where an inquiry 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 BIFR may, by order, declare that with respect to the sick industrial company concerned, the operation of all or any of the contracts, assurances of property, agreements, 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 that all or any of the rights, privileges, obligations or 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 BIFR. This power of the BIFR is subject to the proviso which states that the declaration made under this provision shall not be for a period exceeding two years and which may be extended by one year at a time, but the total period shall not exceed seven years in aggregate. Section 22A of the Act of 1985 empowers the BIFR to pass orders in the interest of the sick industrial company or even in public interest requiring the sick industrial company not to dispose of, except with the consent of the BIFR, any asset during the period of preparation or consideration of the scheme under Section 18 of the Act of 1985 and during the period beginning with the recording of opinion for winding up of the company under Section 20(1) of the Act of 1985 by the BIFR upto commencement of the proceedings relating to winding up before the High Court.

21. All these provisions which fall under Chapter III of the Act of 1985 have to be read conjointly and that too, along with other relevant provisions and the scheme of the Act of 1985. It is a settled canon of interpretation of statutes that the statute should not be construed in its entirety and a sub-section or a section therein should not be read and construed in isolation.

- A Chapter III, in fact, is the soul and essence of the Act of 1985 and it provides for the methodology that is to be adopted for the purposes of detecting, reviving or even winding up a sick industrial company. Provisions under the Act of 1985 also provide for an appeal against the orders of the BIFR before another specialised body, i.e., the AAIFR. To put it simply, this is a self-contained code and because of the *non obstante* provisions, contained therein, it has an overriding effect over the other laws. As per Section 32 of the Act of 1985, the Act is required to be enforced with all its vigour and in precedence to other laws.

22. The BIFR has been vested with wide powers and, being an expert body, is required to perform duties and functions of wide-ranged nature. If one looks into the legislative intent in relation to a sick industrial company, it is obvious that the BIFR has to first make an effort to provide an opportunity to the sick industrial company to make its net worth exceed the accumulated losses within a reasonable time, failing which the BIFR has to formulate a scheme for revival of the company, even by providing financial assistance in cases wherein the BIFR in its wisdom deems it necessary and finally only when both these options fail and the public interest so requires, the BIFR may recommend winding up of the sick industrial company. So long as the scheme is under consideration before the BIFR or it is being implemented after being sanctioned and is made operational from a given date, it is the legislative intent that such scheme should not be interjected by any other judicial process or frustrated by the impediments created by third parties and even by the management of the sick industrial company, in relation to the assets of the company. In other words, the object and purpose of the Act of the 1985 is to ensure smooth sanctioning of the scheme and its due implementation. Both these stages, i.e., pre and post sanctioning of the scheme by the BIFR, are equally material stages where the provisions of Sections 22 and 22A read with Section 32 of the Act of 1985 would come into play. Such an approach would also be

acceptable as otherwise the entire scheme under Chapter III of the Act of 1985 would be frustrated. Doctrine of frustration envisages that an exercise of special jurisdiction in futility, is neither the requirement of legislature nor judicial dictum. A

23. In *Shree Vallabh Glass Works* (supra), this Court had taken a general view that in the light of Sections 16 and 19 of the Act of 1985, no proceedings for execution, distress or the like against any of the property of the company shall be allowed to be proceeded further except with the consent of the BIFR. Reference in this regard was made to the provisions of the Section 22(1) of the Act of 1985. Despite *non-obstante* language of Section 22(1) and the prohibition contained therein, there is no absolute bar for institution and continuation of legal proceedings against a sick industrial company or its assets. The same can continue only after obtaining the consent of the BIFR or the AAIFR, as the case may be. Once permission is granted, the proceedings can continue and decree can be executed. In the case of *Corromandal Pharmaceuticals & Ors.* (supra), the scope of Section 22 of the Act of 1985 was sought to be restricted only to the items which have been reckoned or included in the scheme for rehabilitation failing which the recovery or proceedings in relation to that particular liability would continue despite the provisions of the Act of 1985. In that case the Court was concerned with the recovery of sales tax dues, which the sick industrial company was enabled to collect after the date of sanction of the scheme. The revenue was due to the department and the recovery of such amount was held to be beyond the purview of the Act of 1985. B
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24. In *Jay Engineering* (supra), the dictum of this Court was that the Act of 1985 is a complete code in itself and the provisions of Section 22 of the Act of 1985 would apply to an award made under the Interest on Delayed Payments to Small Scale and Ancillary Industries Undertaking Act, 1993, which would be governed by the provisions of the Arbitration and Conciliation Act, 1996. This Court also stated the principle that G
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A the Act of 1985 would have an overriding effect over other statutes, i.e. the 1993 Act in that case. However, the question whether the BIFR, while implementing the scheme, could reduce the quantum of liability of the creditors was left open.

B 25. Firstly, the facts of these cases are different and distinct and, therefore, conclusions of the Court have to be read with reference to the facts of the respective cases only and not *de hors* thereof. Once the dictum of this Court is read with reference to the facts of the respective cases, it would be evident that there is no conflict of views within the ambit of *ratio decidendi* of the respective judgments to make both of them legal and binding precedents. Despite these judgments and with an intention to clarify the law, we would state that the matters which are connected with the sanctioning and implementation of the scheme right from the date on which it is presented or the date from which the scheme is made effective, whichever is earlier, would be the matters which squarely fall within the ambit and scope of Section 22 of the Act of 1989 subject to their satisfying the ingredients stated under that provision. This would include the proceedings before the civil court, revenue authorities and/or any other competent forum in the form of execution or distress in relation to recovery of amount by sale or otherwise of the assets of the sick industrial company. It is difficult for us to hold that merely because a demand by a creditor had not been made a part of the scheme, pre or post-sanctioning of the same for that reason alone, it would fall outside the ambit of protection of Section 22 of the Act of 1985. The BIFR, being a specialised body which is required to act as per the legislative intent indicated above, has jurisdiction to examine the matter and grant or refuse its consent for institution, continuation and recovery of dues payable to a particular creditor, whatever the nature of such dues may be. If such an interpretation is not given, the very purpose of the Act of 1985 may stand defeated. For instance, a scheme is sanctioned by the BIFR and is at the stage of successful completion, where demand from the Revenue with

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regard to the sick industrial company is allowed, this can render the scheme ineffective and impossible to be executed, if permitted to be enforced against such company without approval/consent of the specialised body like the BIFR. A

26. Section 22A was introduced by the Amending Act 12 of 1994. The obvious intent of introducing the said provision was to empower the BIFR to issue any direction to the sick industrial company, its creditors and shareholders, in the interest of the company or even in public interest, directing the company not to dispose of any assets, except with the consent of the BIFR. The directions so issued are to remain in force during the preparation and consideration of the scheme. BIFR is also vested with similar powers where it recommends to the High Court for winding up of a company. The directive issued by BIFR would remain in force upto the commencement of the proceedings for winding up before the High Court. Section 22 is the reservoir of the statutory powers empowering the BIFR to determine a scheme, right from its presentation till its complete implementation in accordance with law, free of interjections and interference from other judicial processes. Section 22(1) deals with the execution, distress or the like proceedings against the company's properties, including appointment of a Receiver. It also specifically provides that even a winding up petition would not be instituted and no other proceedings shall lie or proceed further, except with the consent of the BIFR. In contradistinction to this power, Section 22(3) states that pending an enquiry or a scheme under the provisions of the Act of 1985 and even where the scheme is sanctioned, for the due implementation of such scheme, the BIFR may, by an order, declare with respect to the sick industrial company concerned that the operation of all or any of the contracts, assurances of property, agreements, 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 that B C D E F G H

- A all or any of the rights or privileges, obligations and liabilities accruing or arising thereunder before the said date, shall remain suspended and shall be enforceable with such adoption and in such a manner as may be specified by the BIFR. In other words, all those instruments to which the sick industrial
- B company is a party, will be subject to the orders of the BIFR. Further, such proceedings can even be modified by the BIFR, of course, for the limited purpose of implementing the scheme. The declarations made by the BIFR under Section 22(3) are subject to the restrictions of time as stated under the proviso
- C to this section. The maximum period for which such a declaration in aggregate can continue is seven years. The legislative intent of giving an over-riding effect to the declarations of the BIFR, as contemplated under Section 22(3) of the Act of 1985, is further fortified by the language of Section
- D 22(4), which states that any declaration made under Section 22(3) shall take effect notwithstanding anything contained in the Companies Act, 1956 or any other law, the memorandum and articles of association of the company or any instrument, decree, order of a court, settlement etc. Any remedy for
- E enforcement of a right which may be available to a third party and any such proceedings before any court or tribunal shall remain stayed or be continued subject to such declaration. Section 22(4)(b) brings *status quo ante* and in fact, makes it clear that on cessation of such a declaration, the right, privilege, obligation or liability which was suspended shall become
- F revived and enforceable as if the declaration had never been made. The proceedings will continue from the stage at which they were stayed. It can safely be perceived that the provisions of Section 22 of the Act of 1985 are self-explanatory. They would cease to operate within their own limitations and not by
- G force of any other law, agreement, memorandum or even articles of association of the company. The purpose is so very clear that during the examination, finalization and implementation of the scheme, there should be no impediment caused to the smooth execution of the scheme of revival of the sick industrial
- H company. It is only when the specified period of restrictions and

declarations contemplated under the provisions of the Act of 1985 is over, that the *status quo ante* as it existed at the time of the consideration and finalization of the scheme, would become operative. This is done primarily with the object that the assets of the company are not diverted, wasted, taken away and/or disposed of in any manner, during the relevant period.

27. The powers of the BIFR under Section 22(3) can be segregated under two different heads. Firstly, the power to suspend simplicitor the operation of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or any other instrument in force, to which the sick industrial company is a party or which may be applicable to the sick industrial company before the date of such order. Secondly, any rights, privileges, obligations or liabilities accruing or arising before the said date, shall be enforceable with such adaptation and in such manner as may be specified by the BIFR.

28. This dissection clearly demonstrates the intent of the framers of law, that the BIFR has the power to even make changes in such instruments, documents etc. which create rights and liabilities vis-à-vis the sick industrial company, and before permitting them to be enforced. Such an approach alone can be justified, as otherwise the expression 'shall be enforceable with such adaptation and in such manner as may be specified by the BIFR would be meaningless. It is a settled principle of interpretation of statutes that every word and expression used by the legislature has to be given its proper and effective meaning as the legislature uses no expression without purpose or meaning. The maxim *Lex Nil Frusta Jubet i.e. Law Commands nothing vainly* further elucidates this principle. Of course, the power to make this declaration as already noticed is controlled by limitation of time as specified in the proviso to the Section. Lifting of such declaration by lapse of time or otherwise or in accordance with the provisions of Section 22(4) shall bring the *status quo ante* as if such declaration had never been made. Section 22A is obviously a power over and above

A the wide powers vested in BIFR under the provisions of Section
22 of the Act of 1985. Section 22 is the reservoir of the statutory
powers empowering the BIFR to deal with the scheme, right
from its presentation till its complete implementation in
accordance with law, free of interjections and interference from
B other judicial processes.

29. Section 22A of the Act of 1985 empowers the BIFR
to pass injunctive or restraint orders in relation to the assets of
the sick industrial company. These injunctive orders are to be
in operation during the period of preparation or consideration
C of the scheme under Section 18 of the Act of 1985. Section
22A, thus, has a narrower scope than Section 22. Section 22
operates from the presentation of the scheme, its consideration,
preparation, finalization and ultimately the implementation of the
said scheme and consequent rehabilitation of the sick industrial
D company, while Section 22A operates only during the
preparation or consideration of the scheme, or upto the
commencement of the proceedings for winding up before the
concerned High Court, in the event the BIFR recommends
winding up proceedings.

E 30. The relevant provisions of the Act of 1985 clearly
demonstrate that BIFR is vested with the power to issue
directions in the interest of the company or even in public
interest, to prevent the disposal of assets of the company during
the period of preparation, consideration or implementation of
F the scheme. Not only this, BIFR is expected to ensure proper
implementation by appropriately monitoring the scheme during
the entire relevant period. Sections 22 and 22A thus specify
the complete jurisdiction and authority of the BIFR in relation
to preparation, consideration, finalization and implementation
G of a revival scheme in relation to a sick industrial company.

31. Where Section 22(1) deals with the restrictions and
limitations *vis-à-vis* the court proceedings while Section 22(3)
of the Act of 1985 deals with the agreement, intents or other
H obligations as stated in that provision and declarations which

will be made by the BIFR for the purposes of finalization and effective implementation of the scheme. There, Section 22A deals with restrictions and prohibitory orders which the BIFR can pass, all for the purposes of preparation of the scheme and proper implementation and effective management of the revival of the sick industrial company. These provisions have to be read along with the provisions of Section 26 of the Act of 1985 which ousts the jurisdiction of the civil courts and vests exclusive jurisdiction for the specified purposes with the BIFR. Another relevant provision in this regard is Section 32 of the Act of 1985, which gives an overriding effect to the provisions of the Act of 1985 over the other laws in force except the law specifically stated therein. Sections 22, 22A, 26 and 32 have to be read and construed conjointly. A common thread of legislative intent to treat this law as a special law, in contradistinction to the other laws except the laws stated in the provisions and to ensure its effective implementation with utmost expeditiousness, runs through all these provisions. It also mandates that no injunction shall be granted by any court or authority in respect of an action taken or to be taken in pursuance of the powers conferred to or by under this Act.

CASE LAW

32. In the case of *Shree Vallabh Glass Works Ltd.* (supra), as already noticed, this Court had taken a very wide view and given liberal constructions to the provisions of Section 22 and held that no proceedings for execution or distress or like proceedings against any of the properties of the company shall lie or be proceeded, except with the consent of the BIFR. The Court also held that the BIFR, at its discretion, may accord its approval for proceeding against the company. This view of wide interpretation was accepted by another Bench of this Court in the case of *Maharashtra Tubes Ltd. v. State Industrial and Investment Corporation of Maharashtra* [(1993) 2 SCC 144], wherein this Court took the view that the word 'proceedings' under Section 22(1) cannot be given a narrower or restricted meaning to limit the same to a legal proceeding and even the

A proceedings invoked by a financial institution under the State Financial Corporation Act were held to be covered within the ambit of Section 22(1) of the Act of 1985. A similar view was also taken in the case of *Tata Davy Ltd. v. State of Orissa* [AIR 1998 SC 2928]. Answering the question that steps to recover the sales tax under Section 13A of the said Act were in the nature of proceedings by way of execution, distress or the like contemplated by Section 22(1) of the Act, this Court followed its earlier view and held that even the proceedings for recovery of tax under the State Act were covered within the scope of Section 22(1) of the Act of 1985, and thus, could not be given effect to without approval/consent of the BIFR.

33. As already noticed above, in the case of *Corromandal Pharmaceuticals (supra)*, this Court had taken the view that the bar or embargo envisaged in Section 22(1) can apply only to such of those cases where it is reckoned or included in the sub-judice schemes. Amounts like the sales tax which the sick industry is enabled to collect after the date of the sanction of the scheme, had to be recovered in the normal course, by the Revenue and protection of Section 22(1) was not available.

34. This view, however, was not clearly adopted by this Court in subsequent judgments of *Jay Engineering (supra)*, where this Court accepted the wider connotation of the words 'proceedings' appearing in Section 22(1) where an award passed under the Interest on Delayed Payments to Small Scale and Ancillary Industries Undertaking Act, 1993 was being executed, the Court took the view that the award could not be executed against the sick industry without the leave of the BIFR as the Act of 1985 would override the provisions of the 1993 Act and approval of the BIFR was essential. Still in another case, *Morgan Securities and Credit Pvt. Ltd. (supra)*, this Court had held that the Act of 1985 has an overriding effect and Section 22(3) of the Act even covers the execution of non-contractual liabilities like enforcement of an arbitral award. The Court further held that the imperative character of an enquiry

at the hands of the BIFR is inherent in the scheme of the Act. A
The Court also expressed doubt as to whether the courts of
limited jurisdiction, vested with the power of passing interim
orders, could pass interim orders in exercise of its incidental
power for sale of assets where the matter was pending before
the BIFR. B

35. On the analytical analysis of the above-stated dictum
of this Court and the legislative purpose and object of the Act,
it has to be held that on its plain reading the provisions of
Sections 22(1) and 22(3) of the Act are the provisions of wide C
connotation and would normally bring the specified
proceedings, contractual and non-contractual liabilities, within
the ambit and scope of the bar and restrictions contained in
Sections 22(1) and 22(3) of the Act of 1985 respectively. The
legislative intent is explicit that the BIFR has wide powers to D
impose restrictions in the form of declaration and even
prohibitory/injunctive orders right from the stage of
consideration of a scheme till its successful implementation
within the ambit and scope of Sections 22(3) and 22A of the
Act. Section 22 of the Act of 1985 is very significant and of E
wide ramifications and application. More often than not, the
jurisdiction of the BIFR is being invoked, necessitated by varied
actions of third parties against the sick industrial company. The
proceedings, taken by way of execution, distress or the like,
may have the effect of destabilizing the finalization and/or F
implementation of the scheme of revival under consideration
of the BIFR. It appears that, the Legislature intended to ensure
that no impediments are created to obstruct the finalization of
the scheme by the specialized body. To protect the industrial
growth and to ensure revival, this preventive provision has been G
enacted. The provision has an overriding effect as it contains
non obstante clauses not only vis-à-vis the Companies Act but
even qua any other law, even the memorandum and articles of
association of the industrial company and/or any other
instrument having effect under any other Act or law. These
proceedings cannot be permitted to be taken out or continued H

A without the consent of the BIFR or the AAIFR, as the case may be. The expression 'no proceedings' that finds place in Section 22(1) is of wide spectrum but is certainly not free of exceptions. The framers of law have given a definite meaning to the expression 'proceedings' appearing under Section 22(1) of the Act of 1985. These proceedings are for winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a Receiver in respect thereof. The expression 'the like' has to be read *ejusdem generis* to the term 'proceedings'. The words 'execution, distress or the like' have a definite connotation. These proceedings can have the effect of nullifying or obstructing the sanctioning or implementation of the revival scheme, as contemplated under the provisions of the Act of 1985. This is what is required to be avoided for effective implementation of the scheme. The other facet of the same Section is that, no suit for recovery of money, or for enforcement of any security against the industrial company, or any guarantee in respect of any loan or advance granted to the industrial company shall lie, or be proceeded with further without the consent of the BIFR. In other words, a suit for recovery and/or for the stated kind of reliefs cannot lie or be proceeded further without the leave of the BIFR. Again, the intention is to protect the properties/assets of the sick industrial company, which is the subject matter of the scheme. It is difficult to state with precision the principle that would uniformly apply to all the proceedings/suits falling under Section 22(1) of the Act of 1985. Firstly, it will depend upon the facts and circumstances of a given case, it must satisfy the ingredients of Section 22(1) and fall under any of the various classes of proceedings stated thereunder. Secondly, these proceedings should have the impact of interfering with the formulation, consideration, finalization or implementation of the scheme. Once these ingredients are satisfied, normally the bar or limitation contained in Section 22(1) of the Act of 1985 would apply. For instance, execution of a decree against the assets of a company, if permitted, is bound to result in disturbing the scheme, which

has or may be framed by the BIFR. The sale of an asset during such execution or even withdrawing the money from the bank account of the company would certainly defeat the very purpose of the protection sought to be created by the Legislature under Section 22(1) of the Act of 1985. On the other hand, a proceeding taken out for possession of the tenanted premises, under the provisions of Karnataka Rent Control Act, have been held to be proceedings not falling within the ambit and scope of Section 22(1) of the Act of 1985. This was for the reason that the contractual tenancy between the company and the owner had been terminated and the company only had an interest as a statutory tenant. Such interest was neither assignable nor transferable. This Court held that it could not be regarded as 'property' of the sick company for the purposes of the provisions of Section 22(1) and as such, these provisions were not attracted. (*M/s. Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association, Madras* [AIR 1992 SC1439]).

36. Referring to the facts of the present case, the land was one of the major assets of the Respondent Company and in the event the said asset was kept outside the scope of the scheme or its sale was permitted by the BIFR, probably the company could never be revived and any effort in that direction *de hors* such asset of the company would be in futility. Besides, the fact that the statutory protection contained in Section 22(3) was available to the company, it could be stated with more emphasis that the BIFR could even adopt and permit the transaction with such adoption as it may have deemed appropriate. The imperative nature of the functions of the BIFR under the provisions of the Act of 1985 and the overriding effect of its provisions fully support such a view.

Overriding effect of the Act of 1985 :-

37. This Court has taken the view in *Tata Motors Ltd.* [(2008) 7 SCC 619] that the Act of 1985 has been enacted to secure the principles specified in Article 359 of the Constitution

A of India. It seeks to give effect to the larger public interest. It should be given primacy because of its higher public purpose. As the Act of 1985 is a special law and on the principle that a special law will prevail over a general law, it is permissible to contend that even if the provisions contained in Section 22(1)

B read with Section 32 of the Act, giving overriding effect *vis-à-vis* the other laws, other than the Foreign Exchange Regulation Act, 1973 and the Urban Land Ceiling and Regulation Act, 1976 had not been there, the provisions of the general law like the Companies Act, for regulation, incorporation, winding-up etc.

C of the companies would have still been overridden to the extent of inconsistency. We have already seen that this Court had, in the case of *Jay Engineering* (supra), taken the view that the Interest on Delayed Payments to Small Scale and Ancillary Industries Undertaking Act, 1993 shall have to give way for

D enforcement of the provisions of the Act of 1985. In the case of *Tata Davy* (supra) also, the Court took the view that the State Sales Tax Act would have to be read and construed in comity to the provisions of the Act of 1985 which shall have the overriding effect. In the case of *Tata Motors Ltd. v. Pharmaceuticals Product of India Ltd.* (supra), this Court was

E concerned with the provisions of mismanagement and oppression contained in Sections 391 and 394 of the Companies Act and whether the Company Court will have the jurisdiction to pass orders in preference to the proceedings pending before the Court under the Act of 1985. The Court

F while holding the primacy of the Act of 1985 held as under: -

G “SICA furthermore was enacted to secure the principles specified in Article 39 of the Constitution of India. It seeks to give effect to the larger public interest. It should be given primacy because of its higher public purpose. Section 26 of SICA bars the jurisdiction of the civil Courts.

H What scheme should be prepared by the operating agency for revival and rehabilitation of the sick industrial company is within the domain of BIFR. Section 26 not only covers orders passed under SICA but also any matter which BIFR

is empowered to determine.

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23. The jurisdiction of civil court is, thus, barred in respect of any matter for which the appellate authority or the Board is empowered. The High Court may not be a civil court but its jurisdiction in a case of this nature is limited.”

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38. Even in the case of *NGEF Ltd. v. Chandra Developers (P) Ltd. and Anr.* [(2005) 8 SCC 219], this Court specifically reiterated and with emphasis the principle that the provisions of the Act of 1985 contained *non-obstante* clauses, it is a special statute which is a complete code in itself and that the jurisdiction of the Company Court in such matters would arise only when AAIFR and BIFR have exercised their jurisdiction under Section 20 and 25 respectively of the Act of 1985. The provisions of SICA would prevail over the provisions of the Companies Act.

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39. From the above judgments of this Court, the unambiguous principle of law that emerges is that the provisions of the Act of 1985 shall normally override the other laws except the laws which have been specifically excluded by the Legislature under Section 32 of the Act of 1985. The Act of 1985 has been held to be a special statute vis-à-vis the other laws, most of which have been indicated above. In the present case, we are concerned with the provisions of the Act of 1882. It is the case of the respondent-company before us that they have got an interest in the immovable property by virtue of the Memorandum of Understanding, Agreements dated 1st March, 2007 and 17th August, 2010 and by part performance, as they had been given possession of the land in question. It was contended that as their interests were duly protected under the provisions of the Act of 1882, the BIFR/AAIFR, in exercise of its powers under Sections 22(1), 22(3) and 22A of the Act of 1985, cannot place any restriction upon their title or interest in the immovable property. In other words, the contention is that vis-à-vis the Act of 1985, the provisions of the Act of 1882 shall prevail.

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A 40. The Act of 1882 is a general law and controls and
operates in a very wide field. It was an Act enacted for and
related to transfer of immovable property in India and to decide
the disputes as well as to resolve the confusion and conflict,
which was in existence, as the courts were forced to decide
B the disputes according to their own notions of justice and fair
play. The Act of 1882 does not have application to a particular
situation or class of persons. On the contrary, the Act of 1985
is a special legislation providing for imperative functioning of
specialized bodies like the BIFR and AAIFR and is intended
C to apply to a very specific situation, i.e., where a company is a
sick industrial company. It has no application even to other
different kinds of companies within the purview of the
Companies Act, except sick industrial companies. The
Legislature has undoubtedly given an overriding effect to the
provisions of the Act of 1985 and even restricted the jurisdiction
D of the civil courts, as is demonstrated from the language of
Sections 26 and 32 of the Act of 1985. Thus, we have no
hesitation in holding that the provisions of the Act of 1985 shall
prevail over the provisions of the Act of 1882.

E **Discussion on Merits with reference to Factual Matrix of
the Case**

F 41. Having dealt with the basic legal questions arising for
consideration of this Court in the facts of the present case, now
we will now proceed to examine the issues of facts and law with
reference to the present case. The Respondent-Company,
upon some negotiations had executed a Memorandum of
Understanding with the appellant-company on 13th April, 2006.
A land admeasuring about 344 acres, situated in the revenue
estate of villages Ambivali, Mohone, Wadavli, Atalee and
Galegaon in taluk Kalyan, District Thane was agreed to be sold
G on the conditions which were stated therein and it had also
postulated the execution of a proper Agreement to Sell.
Principal Agreement of Sale was executed on 1st March, 2007
between the parties. As certain amounts were found to have
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been incorrectly stated in the Principal Agreement and parties intended to pre-pone the payment of instalments as per the terms of that agreement, they executed First Supplementary Agreement dated 29th September, 2007. It may be noticed here that the Respondent Company, in the meanwhile, had financial crisis and was not able to pay off its debt of nearly Rs.147 crore as on 31st March, 2006. The company itself had approached the BIFR for declaring the company as a 'sick industrial company' and to examine the possibility of its revival through a scheme, in accordance with the provisions of the Act of 1985.

42. The scheme of rehabilitation in relation to the sick industrial company was presented before the Corporate Debt Restructuring (CDR) Empowered Group which was appointed by the consortium of the banks to whom large sums were due from the said company on 13th June, 2007. The scheme was approved by the CDR on 12th December, 2007 which resulted in issuance of a letter of approval dated 21st January, 2008. Prior to the complete implementation of the revival scheme, the Respondent Company applied to the BIFR under Section 15 of the Act of 1985 for being declared as a 'sick company' on 3rd December, 2008. During the consideration of this application, the rehabilitation scheme approved by the CDR was placed before the BIFR for its acceptance and adoption. Vide its order dated 16th July, 2009, passed under Section 17(3) of the Act of 1985, the Scheme was adopted and for the purposes of implementation of the Scheme, the cut-off date was declared as 30th July, 2007 by the BIFR. As already noticed, the parties had entered into a Memorandum of Understanding dated 13th April, 2006 and the Agreement to Sell dated 1st March, 2007 for sale of the land belonging to the company. The BIFR, while approving the scheme, had taken into consideration these events in relation to the sale of the land. Thereafter, the parties executed Supplementary Agreements dated 29th September, 2007 and 17th August, 2010. The Agreements provided for pre-ponement of the instalments payable in terms

A of the Agreements as well as giving of possession of the land
 to the Appellant Company. The Agreement dated 29th
 September, 2007 was executed when the rehabilitation scheme
 was pending consideration before the BIFR, while the
 Agreement dated 17th August, 2010 was executed subsequent
 B to the adoption of the Scheme by the BIFR. It appears from the
 record that the Second Supplementary Agreement dated 17th
 August, 2010 was not executed between the parties with prior
 approval of the BIFR. The BIFR, vide its order dated 16th July,
 2009, had placed certain restrictions and had not permitted the
 C transfer of the land without its prior approval. It had also raised
 certain other queries including valuation, etc. This order was
 set aside by the AAIFR, which had permitted the sale of the
 land in favour of the Appellant Company, even during the
 consideration and implementation of the revival scheme. This
 D order of the AAIFR dated 28th May, 2010 was disturbed by the
 High Court vide its order dated 29th July, 2011. The High Court
 practically restored the order of BIFR, giving rise to the present
 appeal.

E 43. The contention raised before us is that in view of the
 provisions of Sections 53A and 54 of the Act of 1882, the title
 in the property in question is vested in the Respondent-
 Company and they are entitled to transfer of the property, free
 from any restrictions or limitations. As such, the order of the
 High Court is liable to be set aside and that of the AAIFR be
 F restored. In view of our afore-stated discussion and the
 reasons to follow, we are unable to accept this contention
 entirely or even in part for that matter. Firstly, we may examine
 whether an agreement to sell in relation to an immovable
 property transfers or creates any right or title in the immovable
 G property itself in favour of the purchaser. Section 54 defines
 'Sale' as a transfer of ownership in exchange for price paid or
 promised or part-paid and part-promised. Such a transfer of
 tangible immovable property of the value of Rs.100/- and
 upwards can be made only by a registered instrument. The
 H 'contract for sale' has been explained under this very provision

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ORS. [SWATANTER KUMAR, J.]

as follows: -

“Contract for sale:- A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.”

44. Thus, on a plain reading of the statutory provisions, it is clear that an agreement for sale or an agreement to sell itself does not create any interest or charge in such property. Mulla on ‘Transfer of Property Act’, 9th Edition, page 181, clearly states that Section 54 enacts that an agreement for the sale of land does not itself create an interest in land. There was a considerable conflict of decisions as to the application of the rule against perpetuity to such agreements. This conflict has been resolved by judgment of this Court in the case of *Rambaran Prosad vs. Ram Mohit Hazra* [AIR 1967 SC 744] where this Court held that a mere contract for sale of immovable property does not create any interest in the immovable property. In this case, this Court held as under:-

“10. In the case of an agreement for sale entered into prior to the passing of the Transfer of Property Act, it was the accepted doctrine in India that the agreement created an interest in the land itself in favour of the purchaser. For instance, in *Fati Chand Sahu v. Lilambar Sing Das* (1871) 9 B.L.R. 433 a suit for specific performance of a contract for sale was dismissed on the ground that the agreement, which was held to create an interest in the land, was not registered under s. 17, clause(2) of the Indian Registration Act of 1866. Following this principle, Markby J. in *Tripoota Soonduree v. Juggur Nath Dutt* (1875) 24 W.R. 321 expressed the opinion that a covenant for pre-emption contained in a deed of partition, which was unlimited in point of time, was not enforceable in law. The same view was taken by Baker J. in *Allibhai Mahomed Akuji v. Dada*

A *Alli Isap A.L.R.* 1931 Bom. 578 where the option of
 purchase was contained in a contract entered into before
 the passing of the Transfer of Property Act. The decision
 of the Judicial Committee in *Maharaj Bahadur Singh v.*
 B *Bal Chanad* 48 I.A. 376 was also a decision relating to a
 contract of the year 1872. In that case, the proprietor of a
 hill entered into an agreement with a society of Jains that,
 if the latter would require a site thereon for the erection of
 a temple, he and his heirs would grant the site free of cost.
 C The proprietor afterwards alienated the hill. The society,
 through their representatives, sued the alienees for
 possession of a site defined by boundaries, alleging notice
 to the proprietor requiring that site and that they had taken
 possession, but been dispossessed. It was held by the
 D Judicial Committee that the suit must fail. The Judicial
 Committee was of the opinion that the agreement
 conferred on the society no present estate or interest in
 the site, and was unenforceable as a covenant, since it did
 not run with the land, and infringed the rule against
 perpetuity. Lord Buckmaster who pronounced the opinion
 of the Judicial Committee observes as follows:

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 F “Further, if the case be regarded in another light -
 namely, an agreement to grant in the future
 whatever land might be selected as a site for a
 temple - as the only interest created would be one
 to take effect by entry at a later date, and as this
 date is uncertain, the provision is obviously bad as
 offending the rule against perpetuities, for the
 interest would not then vest in present, but would
 vest at the expiration of an indefinite time which
 G might extend beyond the expiration of the proper
 period.”

H (11) But there has been a change in the legal position in
 India since the passing of the Transfer of Property Act.
 Section 54 of the Act states that a contract for sale of
 immovable property “does not, of itself, create any interest

in or charge on such property". Section 40 of the Act is also important and reads as follows: A

"40. Where, for the more beneficial enjoyment of his own immovable property, a third person has, independently of any interest in the immovable property of another or of any easement thereon, a right to restrain the enjoyment in a particular manner of the latter property, or B

Where a third person is entitled to the benefit of an obligation arising out of contract, and annexed to the ownership of immovable property, but not amounting to an interest therein or easement thereon, such right or obligation may be enforced against a transferee with notice thereof or a gratuitous transferee of the property affected thereby, but not against a transferee for consideration and without notice of the right or obligation nor against such property in his hands." C D

The second paragraph of s. 40 taken with the illustration establishes two propositions: (1) that a contract for sale does not create any interest in the land, but is annexed to the ownership of the land and (2) that the obligation can be enforced against a subsequent gratuitous transferee from the vendor or a transferee for value but with notice. Section 14 of the Act states as follows: E F

"14. No transfer of property can operate to create an interest which is to take effect after the lifetime of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong." G

Reading S. 14 along with S. 54 of the Transfer of Property H

A Act its manifest that a mere contract for sale of immovable property does not create any interest in the immovable property and it therefore follows that the rule of perpetuity cannot be applied to a covenant of pre-emption even though there is no time limit within which the option has to be exercised. It is true that the second paragraph of s. 40 of the Transfer of Property Act make a substantial departure from the English law, for an obligation under a contract which creates no interest in land but which concerns land is made enforceable against an assignee of the land who takes from the promisor either gratuitously or takes for value but with notice. A contract of this nature does not stand on the same footing as a mere personal contract, for it can be enforced against an assignee with notice. There is a superficial kind of resemblance between the personal obligation created by the contract of sale described under s. 40 of the Act which arises out of the contract, and annexed to the ownership of immovable property, but not amounting to an interest therein or easement thereon and the equitable interest of the person purchasing under the English Law, in that both these rights are liable to be defeated by a purchaser for value without notice. But the analogy cannot be carried further and the rule against perpetuity which applies to equitable estates in English law cannot be applied to a covenant of pre-emption because s. 40 of the statute does not make the covenant enforceable against the assignee on the footing that it creates an interest in the land.”

G 45. This very view was reiterated by this Court in the cases of *State of U.P. v. District Judge and Ors.* [AIR 1997 SC 53]; *Dharma Naika v. Rama Naika* [AIR 2008 SC 1276] and *Mrs. Saradamani Kandappan vs. Rajalakshmi & Ors.* [JT 2011 (8) SC 129].

H 46. Heavy reliance was placed by the learned counsel appearing for the Respondent-Company, upon the provisions

of Section 53A of the Act of 1882 to substantiate his argument that in part performance of the contract, possession of the property having been given, the execution of the title documents and transfer of the property in its favour could not be hampered or controlled by the BIFR in exercise of its powers under Section 22(3) of the Act of 1985. We are not called upon in this case to adjudicate upon the merits or otherwise the rights and liabilities of the parties arising out of the agreement dated 1st March, 2007 or the agreements entered into subsequent thereto. We would also not like to venture upon and decide whether the second supplementary agreement dated 17th August, 2010 vide which the payment of intallments was pre-poned and the possession of the land in question is alleged to have been given to the Appellant-Company is a valid, enforceable and its consequences in law. Suffices it to note that memorandum of understanding and agreement to sell the land belonging to the company between the appellant and the respondent-company was signed prior to the presentation of the scheme before the BIFR. However, second supplementary agreement was executed not only subsequent to the presentation of the scheme before the BIFR but even after the BIFR had passed an order under Section 17(3) of the Act of 1985. It cannot be disputed that even the sale proceeds received under the agreements have been utilized for the revival of the company to a large extent. The agreement with the workers dated 5th September, 2008 stands testimony to this fact. Once the asset of the company and/or its sale proceeds have been integral part of the formation and finalization of the revival scheme, such transaction by any stretch of imagination cannot be stated to be beyond the ambit and scope of Section 22(3) of the Act of 1985. Thus BIFR has the power to issue declarations in relation to contracts, agreements, settlements, awards, standing orders or even other instruments in force to which the sick industrial company is a party. The power to suspend or power to enforce the same subject to such adaptations as the BIFR may consider appropriate is a power of great magnitude and scope, the only restriction thereupon

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A is as contemplated in the proviso to Section 22(3) of the Act of 1985.

B 47. The provisions of Section 53A of 1882 Act recognize a right of a transferee, where a transferor has given and the transferee has taken possession of the property or any part thereof. Even this provision does not create title of the transferee in the property in question but gives him a very limited right, that too, subject to the satisfaction of the conditions as stated in Section 53A of the Act of 1882 itself. In the case of *State of U.P. v. District Judge* (supra), this Court, while deliberating upon C the rights emerging from Section 53A of the Act of 1882, held as under:

D “... That protection is available as a shield only against the transferor, the proposed vendor, and would disentitle him from disturbing the possession of the proposed transferees who are put in possession pursuant to such an agreement. But that has nothing to do with the ownership of the proposed transferor who remains full owner of the said land till they are legally conveyed by Sale Deed to the proposed transferees.” E

F 48. Thus, even if the part performance of the agreement is accepted, still no title is created in favour of the Respondent-Company. Provisions of Section 53A would also not, in any way, alter the position of the Act of 1985 having an overriding effect vis-à-vis the provisions of the Act of 1882. We have already held that the provisions of Act of 1985 shall have precedence and overriding effect over the provisions of the Act of 1882.

G 49. This brings us to the last and final question arising for consideration of this Court in the present case, that is, whether in the facts and circumstances of the case, the BIFR had the jurisdiction to issue a direction or make a declaration in relation to the agreement in question in exercise of the powers vested H in it under Section 22(3) of the Act of 1985 and, if answer to

the above is in the affirmative, whether the order dated 16th July, 2009 of the BIFR and that of the High Court dated 29th July, 2011 are unsustainable on facts? The BIFR vide its order dated 16th July, 2009, after declaring the Respondent-Company as a sick company and appointing the Punjab National Bank as the Operating Agency, had fixed the cut off date as 30th July, 2007, as indicated in the CDR Scheme. The CDR scheme had been approved, after taking into consideration the agreement to sell and the sale proceeds likely to be received therefrom. The BIFR had passed certain directions/declarations in the order passed under Section 17(3) of the Act of 1985 requiring the company to state clearly the details of the land to be sold including survey numbers as well as the remaining land with the company and confirming if the remaining land was adequate for functioning and viability of the company on long term basis. The BIFR raised the query whether all the secured creditors who had charge over the land, had approved the sale of 350 acres of land belonging to the respondent-company at Kalyan, Thane for a sum of Rs.166.40 crore and for entering into memorandum of understanding with the appellant company in that behalf. Besides issuing a directive that assets including investments will require prior approval of the BIFR as the company was under the purview of SICA, it also issued a clear prohibitory order requiring the secured creditors not to take any coercive steps against the company without prior permission of the BIFR. This order of the BIFR was therefore passed clearly at the stage of the consideration of the revival scheme which had been approved by the CDR Group as well as the secured creditors. The scheme for revival of the company on long term basis, thus, was primarily dependent upon the sale proceeds of the land in question on the one hand and the utility of the remaining land for revival of the company on the other. To put it simply, the land was the paramount asset of the company for its revival and successful implementation of the scheme in accordance with law. The asset was duly taken into consideration in formulation of the scheme as contemplated under Sections 17 and 18 of the Act of 1985 and

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A appropriate directions, prohibitory orders were issued within
the ambit and scope of Sections 22(1), 22(3) and 22A of the
Act of 1985. In view of the clear statement of law, as afore-
recorded, and facts of the present case, we are unable to find
any merit in the submission of the Respondent-Company that
B the BIFR had no jurisdiction to pass such directives.

50. AAIFR had disturbed the above order and held that the
contract between the parties could not be suspended under
Section 22(3) and it was not in the interest of the Respondent-
Company. In other words, it had permitted the sale to be
C completed without any restriction. This order was set aside and
the order of the BIFR was restored by the High Court. We find
no jurisdictional or other error in the order of the High Court in
restoring the order of the BIFR. The land being the primary
asset of the Respondent-Company, could not be permitted to
D be dissolved by sale or otherwise without the consent and
approval of the BIFR. The BIFR is the *authority proprio vigore*
and required to oversee the entire affairs of a sick industrial
company and to ensure that the same are within the framework
of the scheme formulated and approved by the Board for revival
E of the company in accordance with the provisions of the Act of
1985. On facts as well, neither the BIFR nor the High Court had
exceeded its jurisdiction in passing the impugned orders. It is
not that the Respondent-Company has been divested of its right
by the BIFR. All that has been done is to suspend the final
F transfer of the property in its favour in accordance with the
provisions of the Act and the limitations imposed therein. Once
the scheme is implemented or the period specified under the
provisions of Sections 22(3) and 22(4) expires, the declaration
would cease to exist and the appellant would be entitled to
G enforce its rights in accordance with law as if no such
declaration or restriction ever existed.

51. The principle of law that emerges from the afore-
referred discussion, which consistently has judicial benediction,
H is that a scheme for rehabilitation or restructuring of a sick

industrial company undertaken by a specialized body like the BIFR/AAIFR should, as far as legally permissible, remain obstruction free and the events should take place as pre-ordained, during consideration and successful implementation of the formulated scheme. Wide jurisdiction is vested in BIFR/AAIFR to issue directives, declarations and prohibitory orders within the rationalized scope and limitations prescribed under Section 22(1), 22(3) and 22A of the Act of 1985.

52. An objection to the maintainability of a composite petition, taken before the High Court, has been reiterated before this Court, of course, half-heartedly. Argument is that Article 227 vests the High Court with supervisory powers while Article 226 is the reservoir of extra-ordinary jurisdiction of the High Courts to issue prerogative writs and orders and, as such, a joint petition under both these Articles could not be maintainable.

53. Reliance has been placed in this regard to the case of *Shalini Shyam Shetty & Anr. v. Rajendra Shankar Patil* [(2010) 8 SCC 329]. This objection was neither pressed before us during the course of arguments nor do we consider it necessary to decide this issue in view of the facts and circumstances of the present case and the fact that we have decided the entire matter on merits.

54. For the reasons afore-recorded, the present appeals are dismissed. The order of the BIFR dated 16th July, 2009 which has merged into the order of the High Court dated 29th July, 2011 is maintained while that of the AAIFR dated 28th May, 2010 is set aside. The parties are directed to appear before the BIFR which shall proceed with the matter in accordance with law. However, we express a poised hope that the BIFR would deal with and dispose of the matter expeditiously.

N.J.

Appeals dismissed.

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