

Karnataka High Court M.M. Bhatia And Co., A Proprietary ... vs Binny Limited, A Company ... on 28 May, 2007 Equivalent citations: 2008 (3) KarLJ 486 Author: N Veerabhadraiah Bench: N Veerabhadraiah, J Rahim JUDGMENT N.S. Veerabhadraiah, J. Page 1242 1. This is the plaintiffs' first appeal, being aggrieved of the Order passed on I.A's in O.S. No. 15572/2004 by the learned XIII Addl. City Civil Judge, Mayo Hall Unit, Bangalore City, dated 19.04.2006, rejecting the plaint under Order VII Rule 11(d) r/w. Section 151 C.P.C., consequently dismissing the suit for specific performance. 2. The brief facts of the case are as follows: The suit of the plaintiffs for specific performance of the contract for sale of the suit schedule property by directing the defendants to execute a Sale Deed in favour of the plaintiffs after receiving the balance consideration and for consequential relief. That in pursuance of the notification by the defendants, Binny Limited published in daily newspaper "The Hindu" dated 11.06.2001 offers for purchase of properties detailed therein, particularly the 'B-Schedule property situated at Commissariat Road, Bangalore, the plaintiff deposited earnest amount of Rs. 5,00,000-00 towards the earnest money through demand draft, in favour of defendant No. 1. The said offer was accepted by the defendant by its letter dated 01.12.2001. The sale price of the property being Rs. 3,65,50,000-00. The 1st defendant directed the plaintiffs to prepare and submit draft Sale Agreement for Further action. But, the defendants failed to deliver the copies of the title deeds pertaining to the property for preparing the sale Agreement. However, on the demand of the 1st defendant, to pay 25% of the sale price, the plaintiffs issued a cheque for Rs. 91,37,500-00, dated 22.01.2002. But, for the best known reasons, they did not realise the amount and the cheque. The balance consideration amount that was payable was Rs. 2,69,12,500-00 after adjusting the initial amount already paid. But, at that stage, the 1st defendant by its letter dated 27.02.2002 sent an untenable reply. Without encashing the cheque, the 1st defendant by its letter dated 25.06.2002 informed the plaintiff to remit 25% of the offered price on or before 24.07.2002, by way of demand draft in favour of the Industrial Development Bank of India [hereinafter referred to as "IDBI" for short] or otherwise Earnest Money Deposit [hereinafter referred to as "EMD" for short] of Rs. 5,00,000-00 would be forfeited. The 1st defendant instead of encashing the cheque went on insisting the plaintiffs that they did not sent the demand draft. Subsequently, the plaintiffs by their letter dated 25.07.2002 again sent a letter along with a cheque for Rs. 91,37,500-00 in favour of the IDBI. In spite of these correspondence and after several months, the 1st defendant by their letter dated 09.12.2003 arbitrarily and unilaterally Page 1243 sought to cancel the Agreement and also stated they had forfeited, the EMB of Rs. 5,00,000-00. The correspondence makes it manifest that there is a concluded contract between the parties. The unilateral cancellation is illegal. On the above pleadings, the plaintiffs brought the suit for specific performance, also filed I.A. No. I under Order XXXIX Rule 1 and 2 of CPC, to restrain the defendants from alienating the suit schedule property. The 3rd defendant Binny Karnataka Limited filed a detailed written statement stating that the 2nd defendant Binny Limited is a branch of 1st defendant and is one of the oldest companies manufacturing

textiles. For various reasons it suffered heavy loss. The company was declared as a sick industry, under the provisions of Sick Industrial Companies [Special Provisions] Act 1985 [hereinafter referred, to as “the Sick Act”]. On a reference to The Board for Industrial and Financial Reconstruction [hereinafter referred to as “BIFR” for short] declared it as a sick company and scheme was sanctioned for rehabilitation following the guidelines for BIFR. A Committee was constituted for the sale of the assets of 1st defendant including the suit schedule property at Bangalore. The plaintiffs offered to purchase the said property for Rs. 363 lakhs. It was one of the condition that the plaintiffs have to make payment of advance money of 25% of the accepted offer price, within 30 days or it will be cancelled and the EMD amount will also be forfeited. The amount of 25% of the price was not paid by the plaintiffs by way of demand draft and thus the EMD amount came to be forfeited and alleged that there was no privity of contract for sale of the properties between the parties. In the meanwhile, the BIFR disbanded sales Committee with immediate affect by its order dated 01.07.2002. Therefore the relief claimed, is also not tenable. Even otherwise, by reason of Sections 26 and 32, the suit itself is not maintainable. The Sale Agreement has become nullity and not enforceable. When the matter was pending before the BIFR., the Sick Act has an over-riding affect thereby the Civil Court has no jurisdiction to try the suit. The other allegations in the plaint were also denied and they put the plaintiff to strict proof of the same. It was also urged that the matter is wholly covered by rehabilitation Scheme of the BIFR and the alleged agreement, even if be true is nullified by the BIFR as the Final Rehabilitation scheme has been formulated and the suit schedule property now vests with these defendants. Accordingly, prayed to dismiss the suit with costs. Defendant Nos. 1 and 2 have filed a memo, adopting the written statement filed by the third defendant. However, filed objections to I.A. I. Defendant No. 1 filed an application under Order 7, Rule 11(d) r/w. Section 151 CPC., praying to reject the plaint. The plaintiffs filed detailed objections to the said application and also counter objections. The learned XIII Addl. City Civil Judge, after hearing I.A. No. I filed under Order 39, Rule 1 and 2 CPC by the plaintiffs and also the application Page 1244 filed by the defendants under Order 7 Rule 11(d) r/w. Section 151 CPC., rejected the plaint. Consequently, dismissed the suit. It is this Order, which is questioned in the present appeal by the plaintiff. 3. Learned senior Counsel Sri. K.G. Raghavan submitted that the defendant Binny Limited issued a public notice for sale of its property, which came to be notified in “The Hindu” daily newspaper, dated 11.06.2001. It is in pursuance of it, the plaintiff participated and also paid the EMD of Rs. 5,00,000-00. The sale price is being Rs. 3,65,50,000-00. The plaintiffs are the highest bidders. Therefore, there was a concluded contract. Further submitted, that in the subsequent notices and latest notice dated 27.01.2004, letters dated 19.01.2004 by the first defendant it is stated that the plaintiffs have not deposited 25% of the value of the property. This itself shows that there exists a contract, which is concluded. It is also submitted that the learned trial Judge has erred in recording a finding that plaintiff is barred to prosecute a suit as provided under Section 26 of The Sick Industrial Companies [Special Provisions] Act, 1985 [hereinafter referred

to as the Sick Act. The very exchange of legal notices and the reply by the defendant Binny Limited makes clear that the suit for specific performance is very well maintainable. The findings of the trial Judge that the contract stands cancelled automatically and condition No. 22 is erroneous. In fact, condition No. 22 does not say anything about the automatic cancellation of agreement in view of the fact that the defendants have called upon the plaintiff to deposit 25% of the price amount. Further submitted that whether time is essence of the contract is purely a matter of evidence. Therefore, the recording of the finding by the learned trial Judge is erroneous. The question as to whether there is bar to proceed with the suit does not come within the meaning of Order 7 Rule 11(d) of CPC. The court has to see only the averments of the plaint and the nature of the pleadings. Merely because of the reasons that the matter was pending before the BIFR itself is not a ground to hold that the suit is not maintainable. It is also clear that it is BIFR, which has given approval for sale of the properties. It is in pursuance of it Binny Mill Limited invited the general public to submit the completed offer form. It is also submitted that the order of the BIFR dated 01.07.2002 shows the Assets Sale Committee [hereinafter referred to as "The ABC"] was disbanded with immediate effect. The Company is restrained from proceeding further in any manner in regard to sale/development of the properties. This itself shows what is disbanding is the ASC. But, the subsequent Order of BIFR dated 23.10.2003 bifurcating assets of Binny Madras and Company, Karnataka [Annexures-"A and B"] shows that the schedule property is held by the Binny Karnataka Limited and also permitted for the sale of the properties subject to certain terms. Therefore, there is no prohibition for alienating the property. When once the scheme was approved and transfer of the property is permitted, in the absence of any condition, there is no bar of alienation and the same is an admitted fact. 4. Learned senior counsel Sri. K.G. Raghavan further submitted that even if the ASC is disbanded, the transaction between the parties remains Page 1245 undisturbed, which can be inferred from the contents of the reply notice. Therefore, Section 26 of the Sick Act is no bar. Section 22 of the sick Act deals with suspension of legal proceedings. It is only in respect of recovery of money or for enforcement of security, the suit is not maintainable. Therefore, there is no bar to file a suit and Section 26 is not a bar. Section 22(3) of the sick Act makes clear if the above sale is to be suspended, the Board by an Order has to declare it otherwise it cannot be suspended. When the transaction is within the knowledge of the Board, the suit is very well maintainable and the rejection of the plaint is bad in law. It is further submitted that the scheme came to be sanctioned in pursuance of the Madras High Court Order. Therefore, Section 26 of the Sick Act is not bar. The rehabilitation Scheme does not say that the property should not be sold. Similarly, Section 32 of Sick Act is also no bar to file a suit. 5. Lastly contended that the relief claimed in the suit cannot be granted by the BIFR. Therefore, the Civil Court has jurisdiction to adjudicate the matter. Also submitted that almost all the reasons assigned by the learned trial Judge is illegal and perverse as Civil Courts jurisdiction is not ousted and those are the matters to be considered in the trial. Therefore, prayed to set aside the Order passed by the trial Court by

allowing the appeal and to remand the matter for fresh disposal in accordance with law. 6. Learned senior counsel Sri. K. Kasturi firstly contended that there is no bar for the court and the court is not precluded to consider the documents produced along with the plaint when application is filed under Order VII Rule 11(d) of CPC to find out whether the plaintiff has made out a cause of action or not. He urged that the plaintiff was aware that the matter was seized by BIFR and everything is subject to approval of the BIFR. The notification published in "The Hindu" daily newspaper dated 11.06.2001 also makes clear that everything is subject to approval of the BIFR. Though the ASC was constituted for sale of certain items of properties, when the BIFR disbanded the ASC., no longer the contract remains, even, though the EMD of Rs. 5,00,000-00 was deposited. It is also submitted that by an Order dated 22.10.2003 the Board, sanctioned the scheme for rehabilitation of the Company as per the directions of the Hon'ble High Court of Madras and later on after hearing the respective parties to the original dispute Case No. 48/1993 the demerger of the Binny Limited took place. The properties described in Annexure-"A" of Binny Limited, Chennai, and the properties described in Annexure-"B" were transferred in favour of Binny Karnataka Limited. It is in respect of the schedule property situated at Commissariat Road the plaintiffs brought the suit for the relief of specific performance. In view of the fact that amalgamation or demerger has taken place and as the entire proceedings are before BIFR, the suit itself is not maintainable. 7. Secondly contended, under Order VII Rule 11(d) of CPC there is no express bar to the Court to look into the plaint and the documents to filed. Those documents showed matter was seized by BIFR and therefore, the suit is impliedly barred under Section 9 of CPC. Page 1246 8. Thirdly contended that by reason of Sections 26 and 32 of Sick Act and also in the light of the decision rendered in 2004 Company Cases 818, 2003(6) AIR Karnataka 404, the matter is seized of by the BIFR and therefore suit itself is not maintainable. It is further submitted that the Civil Court has no jurisdiction to entertain the suit which is barred under Section 26 of Sick Act, and that there are no materials to show as to how the suit is maintainable. Further submitted that the BIFR has to implement the scheme under Section 18(12) of the Act, and it continues to have power to supervise and it does not become functus officio. Therefore, the BIFR has control over the transaction. It is further submitted that the total value of the schedule property is Rs. 3.65 crores, whereas the EMD is Rs. 5,00,000-00. The cheques sent by the plaintiffs for Rs. 91,25,500-00 was not encashed as it was not sent by D.D. Therefore it is only the BIFR which has control and it is for the plaintiff to approach the BIFR. Section 18(5) of the Act provides to modify the scheme, therefore they have to apply to BIFR. Also submitted that when time is essence of the contract and the demand draft was not submitted, within the stipulated period, and in the absence of the Agreement or in the absence of any privity of contract and as the Scheme was abandoned on 01.07.2002, it establishes the fact that the Civil Court has no jurisdiction as the sick Act has over-riding effect. 9. In support of his contention, learned senior counsel relied on the decision reported in AIR 1998 supreme court 634, 1998(2) Services Law Reporter 88 and 2005(6) AIR Kar. Rule 404 and submits that the provisions

of Sick Act prevails over the provisions of the Company Act. The BIFR cannot delegate power in favour anyone. Relying on the decisions cited supra, learned senior counsel Sri. K. Kasturi submitted that the Civil court has no jurisdiction and the Order passed by the trial court is well founded. Accordingly prayed to dismiss the appeal. 10. In the light of the rival contentions, the points for consideration that arise; 1) Whether the suit, as is brought for specific performance is not maintainable? 2) Whether the plaint does not disclose any cause of action as required under Order VII Rule 11(d) of CPC? 3) Whether the suit is not maintainable in view of Sections 22 and 26 of Sick Industrial companies (Special Provisions) Act 1985? 4) Whether the order of the learned XIII Addl. City Civil Judge, Mayo Hall Unit, Bangalore, rejecting the plaint, consequently dismissing the suit is capricious and unreasonable? If so, liable to be interfered with? 5) What Order? 11. It is not in dispute that on account of many reasons, Binny Limited was declared to be a sick company. Therefore, the matter was referred to BIFR for rehabilitation, much earlier during 1993 and that the case came to be registered in No. 48/1993. It is also not in dispute that the BIFR sanctioned Page 1247 a scheme for rehabilitation of Binny Limited on 13.06.1994 and by an order dated 12.01.1996, the BIFR declared that the Binny Limited is no longer a sick company and excluded from, the purview of the Sick Act. The aggrieved Union of the workers took up the matter in a writ petition before the Madras High Court, questioning the order of the BIFR. The High Court by its Order dated 25.02.1998 set aside the Order of the BIFR dated 12.01.1996 and remitted the matter to the BIFR. While the proceedings were pending, the BIFR appointed an ASC by issuing guidelines for the sale of the assets by way of public sale. It is in pursuance of the Order of the BIFR, the Binny Limited represented by the General Manager, Human Resources Department, issued a notification dated 11.06.2001 in "The Hindu" daily newspaper inviting offers for purchase of assets mentioned in category A, B and C subject, to the conditions stipulated in the offer form. The plaintiff participated for purchase of the property situated at Commissariat Road, Bangalore and offered to purchase it for Rs. 3.65 crores and also made an EMD of Rs. 5,00,000-00. The said facts are admitted by the respondents. 12. Now we have to consider whether the averments of the plaint does not disclose any cause of action and the same is barred by Sections 22 and 26 of the Sick Act. 13. Order VII Rule 11(a), (b), (c) and (d) of CPC thus reads: 11. Rejection of plaint.-The plaint shall be rejected in the following cases: (a) where it does not disclose a cause of action; (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the Court, fails to do so; (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the court, fails to do so; (d) where the suit appears from the statement in the plaint to be barred by any law; The reading of the provisions of Order VII Rule 11(d) of CPC makes clear if the pleadings and the statement made in the plaint does not disclose the cause of action, it is open for the Court to reject the plaint. Therefore, the Court has to see the nature of the relief claimed in the suit, based on the averments

of the plaint. The reading of the pleadings abundantly makes clear under what circumstances the plaintiff came forward to purchase the schedule property for a valuable amount of Rs. 3.65 crores and in pursuance of it, the plaintiffs have also deposited EMD of Rs. 5,00,000-00. It is also pleaded that the plaintiff at the first instance issued a cheque for Rs. 91,37,500-00 being 25% of the value by a cheque dated 22.01.2002. It is also seen as the cheque was not encashed, the defendants demanded for payment of the amount by D.D., but again issued Page 1248 a fresh cheque for Rs. 91,37,500-00 dated 25.07.2002. In the plaint it is specifically pleaded about the correspondence between the parties, whereas the defendants by their letter dated 19.01.2004 informed the plaintiffs about the cancellation of the Agreement and also forfeiting the EMD of Rs. 5,00,000-00. Thus from the very pleading itself shows that though the matter was pending before BIFR for approval of the Rehabilitation scheme, the 1st defendant having accepted the EMD of Rs. 5,00,000-00 deliberately not obtained sanction of BIFR. It is further relevant to note that the plaintiffs are not the parties before the BIFR. When the 1st defendant on their own having invited and notified for sale of their properties in public auction, in "The Hindu" daily newspaper dated 11.06.2001, an act done in pursuance of it, in our opinion, leads to a civil dispute, which has to be adjudicated in Civil Court and not even by the BIFR. 14. Therefore, the rejection of the plaint under Order VII Rule 11(d) CPC at the outset is not sustainable when the above matters are all triable by the Civil Court and is a matter of evidence. 15. The purpose of enactment of Sick Act is to; 1. afford maximum protection of employment; 2. optimise the use of the funds, etc; 3. salvaging the production assets; 4. realising the amounts due to the banks etc; and; 5. to replace the existing time-consuming and inadequate machinery by efficient machinery for expeditious determination by a body of experts. The object is to resuscitate, revive and rehabilitate potentially viable industries and to suggest ameliorative and recuperatory measures etc. It is with this background we have to consider the provisions of Sections 15, 16, 17, 18, 22, 26 and 32 of the Sick Act. 16. Section 15 of the Sick Act deals with reference to Board by the Directors of the Company and for further proceedings. Section 16 deals with the enquiry by the BIFR and for reports. Section 17 empowers the Board to make suitable order on the completion of enquiry. Section 18 enables the BIFR to prepare and sanction a scheme for rehabilitation, of a sick industry. Thus it is clear from Sections 15 to 18 of the Sick Act, the BIFR has to consider the report, hold an enquiry and prepare a Scheme for rehabilitation. Section 22 of the Sick Act thus reads: 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 Page 1249 an appeal under Section 25 relating to an industrial company is pending, then notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding-up of the industrial company or for execution, distress or the like against any of the prop-

erties of the industrial company or for the appointment of a receiver in respect thereof [and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans, or advance granted to the industrial company] shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority. (2) Where the management of the sick industrial company is taken over or changed [in pursuance of any scheme sanctioned, under Section 18], notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or any other law or in the memorandum and articles of association of such company or any instrument having effect under the said Act or other law- (a) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company; (b) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the Board: (3) [Where an 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 Board may be 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 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 adaptations 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, Page 1250 the memorandum and articles of association of the company or any instrument having affect under the said Act or other law or any agreement or any decree or order of a courts 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 of any law which way than be in force, from the stage which had been reached when the proceedings became stayed. (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 sus-

pendended under this section shall be excluded. The reading of the entire Section makes clear it is in respect of two category that no suit shall lie. Firstly for recovery of money, secondly for enforcement of security. In the present case, the relief claimed is for specific performance, and such a relief cannot be granted by the BIFR as they are all matter relating to dispute under common civil law and are matter based on evidence. That apart, unless the Board, passes a specific Order regarding suspension of certain acts, it cannot be said that the legal proceedings deem to have suspended suo moto, therefore there is no bar to file a suit. 17. In order to apply the provisions of Section 22(3) of the Sick Act, in respect of those matters involved in dispute, the legal proceedings shall remain suspended only if an Order is passed by the BIFR suspending such proceedings. Otherwise, there cannot be any suspension of legal proceedings. On this count also, we have to hold that the suit is very well maintainable and the rejection of the plaint is bad in law. In the absence of a specific Order by the Board, as contemplated under Section 22(3) of the Act, it cannot be deemed that legal proceedings are suspended. 18. Section 26 of the Sick Act reads as follows: 26. Bar of jurisdiction.-No Order passed or proposal made under this Act shall be appealable except as provided therein and no civil court shall have jurisdiction in respect of any matter which the Appellate Authority or the Board is empowered by, or under, this Act to determine and no injunction shall be granted by any court or other authority in Page 1251 respect of any action taken or to be taken in pursuance of any power conferred by or under this Act. Reading of the above section makes clear that what is challenged is an Order passed by the BIFR or by the Appellate authority, the Civil Court has no jurisdiction. In the present case, the plaintiffs are not aggrieved of such orders since there is no Order by the BIFR or by the appellate authority. 19. Thirdly, that the Civil Court has no jurisdiction, to grant an Order of injunction against the action taken by the BIFR or by the Appellate Authority. In the present case, the plaintiffs are not seeking any of these reliefs much less relief of injunction or regarding implementing of the scheme. Therefore, Section 26 of the Sick Act is not a bar to bring a suit for specific performance in the absence of any specific Orders by the BIFR as provided under Section 22(3) of the Sick Act. Therefore, we are of the opinion that Section 26 of the Act is no bar to institute a suit. 20. When once the defendants invited, offers for purchase of the assets by a notification in "The Hindu" daily newspaper dated 11.06.2001 and having accepted the EMD of Rs. 5,00,000-00 also having received the cheques for Rs. 91,37,500-00, at the first instance, and having not encashed the same, cannot recile from the said contract. Based on that they have demanded the plaintiff to send a demand draft again for the same amount. In response to it, the plaintiff instead of sending a demand draft have sent another cheque dated 25.07.2002 for Rs. 91,37,500-00. These facts are not disputed. The further correspondence between the parties i.e., between the plaintiffs and 1st and 3rd defendants, shows that they are all the matters to be adjudicated by a Civil Court and not by the Board constituted under the Sick Act. 21. It is also relevant to note that the offer form consists of as many as 23 conditions. The said farm is dated 08.06.2001 issued by the General Manager of the Binny Limited, Department of Human Resources Department. Thus, on the



pleadings of the parties evidence is required for adjudication of the matter. But the learned City Civil Judge has been influenced by the conditions stipulated in the offer form and rejected the plaint at the out-set, which is erroneous and not sustainable. 22. It is also relevant to note that the EMD of Rs. 5,00,000-00 was paid to the defendants by demand draft dated 14.07.2001. It is further relevant to note that subsequently on. 01.07.2002 the BIFR by its Order disbanded the ASC restraining it from proceeding further in any manner regard to sale of the properties. By the Order itself it is clear that what is disbanded is ASC. The BIFR have not cancelled the notifications issued by the Binny Limited published in "The Hindu" daily newspaper dated 11.06.2001. When the BIFR does not say anything about the deposit of the EMD of Rs. 5,00,000-00, it has to be held that there remains a privity of contract between the parties. 23. The major portion of the Order passed by the BIFR is in respect of implementation of the Schemes for rehabilitation of the Company. Those Page 1252 things are not in any way connected with the present claim. But, it is seen that by an Order of the BIFR dated 23.10.2003, the Binny Limited, are classified into two groups. One is Binny Limited, Chennai and another is Binny Karnataka Limited, Bangalore, whereas the suit schedule property was allotted in favour of Binny Karnataka Limited, situated at Commissariat Road, Bangalore. In the Order dated 23.10.2003 there is no bar for sale of the properties. 24. Appendix to Annexures-"A and B" thus reads: (i) All the assets should be got valued by an independent expert valuer and having regard to the likely market prices thereof, reserve price should be fixed in respect of each of the assets, if possible. (ii) The sale of assets should be by way of public sale, after notices to the public through advertisements in at least two leading newspapers one in English and the other in regional language of the locality where the assets are located. (iii) An asset Sale Committee should be constituted consisting of a member each from IDBI [MA], Spl. Director BIFR and the company. IDBI's nominee should be of the level of ED or Senior General Manager. All members should be preferably from local offices for greater coordination and timely decision. The terms and conditions of sale to be advertised should contain the following: (a) The prospective buyers/bidders will be allowed to inspect the assets on a stipulated dated in the presence of IDBI'S representatives. Offers/bids shall be made in sealed envelopes to be opened on the specific date, time and venue in the presence of the bidder's representatives. Sale of assets shall be on the basis of "as is where is". (b) The offer/bidder should deposit earnest money equivalent to 10% of the reserve price, in respect of each asset, which shall be liable to forfeiture, if the bidder whose bid is finally accepted defaults in completing the sale. (c) In case of final accepted bids the purchaser shall be required to pay the balance of the purchase money/consideration in three installments, within a maximum period of 3 months from the date of the final acceptance of the bid is conveyed to him. (d) The purchaser shall furnish Bank guarantee or such other collateral guarantee, as may be considered satisfactory, to secure full and timely payment of consideration for the assets purchased. (e) The possession of the assets purchased and the title thereof shall be transferred to the purchaser only on full payment of the purchase consideration along with 25% interest, in

case of delayed payments which are accepted with the approval of the Asset Sale Committee. Page 1253 (f) Sale of tenancy rights shall be subject to the applicable rent control laws; (iv) After opening of offers, IDBI could hold negotiations for improvement of offers. IDBI shall finalize its recommendations as to the best acceptable offers/bids with reasons there for, in consultation with FIs and submit the recommendations to the Asset Sale Committee for consideration and approval of the concerned bids. (v) Final acceptance of the bids recommended by the IDBI shall be subject to approval/confirmation by the Asset Sale Committee. (vi) The principal concern of the BIFR would be to ensure the keeping in view the market price of the assets, price offered was reasonable. This makes clear that there is no bar for sale of the properties. However those are all subject to certain terms and conditions. 25. In the light of the above facts and the Order of the BIFR itself, and also from the pleadings of the plaintiff averments, the relief claimed being for specific performance, it cannot be said that the suit is barred by reason of Sections 22 and 26 of the Sick Act. 26. Section 9 of CPC enables the Civil court to try all suits of civil nature unless they are expressly and impliedly barred. But, in the present case, in the absence of any specific order by the BIFR as provided under Section 22(3) of the Sick Act, the question of suspension of legal proceedings does not arise and further Section 26 of the Sick Act also does not prohibit the plaintiff to file a suit for specific performance. All those facts pleaded are all the matter of evidence, which has to be adjudicated only by the Civil court and not by the BIFR. 27. When the defendants remained silent for a very long period and abruptly intimated the plaintiffs about the forfeiture of the EMD amount, it itself gives rise to the cause of action to the plaintiffs. When the plaintiffs have issued cheques in favour of the defendants, the question whether the plaintiffs have sent a demand draft or not is a matter to be considered at the trial. The further question whether the plaintiffs have complied with the requirement of the conditions are also the matter of evidence. When there is a triable issue disclosed from the pleadings, the rejection of the plaint is not sustainable. In such matters, it is the Civil Court which has jurisdiction to adjudicate and not by the BIFR. For the foregoing reasons, the appeal is allowed. The Order of the trial Court rejecting the plaint, consequently dismissing the suit is hereby set aside and the matter is remitted for fresh disposal in accordance with law by permitting the parties to lead evidence after framing issues. Refund Court fee as is admissible. The parties shall bear their own costs.