Ksl & Industries Ltd vs M/S. Arihant Threads Ltd. & Ors on 27 October, 2014

Equivalent citations: 2014 AIR SCW 6691, 2015 (1) SCC 166, 2015 (1) AIR BOM R 442, (2015) 1 MAD LW 657, (2015) 1 ORISSA LR 134, (2015) 3 PUN LR 651, (2015) 145 ALLINDCAS 74 (SC), (2015) 5 CAL HN 52, (2015) 1 CIVLJ 768, (2015) 3 MAH LJ 413, (2015) 126 REVDEC 718, (2015) 2 ANDHLD 15, AIR 2015 SC (CIV) 642, (2014) 2 CLR 1092 (SC), (2014) 4 BANKCAS 596, (2014) 4 KER LT 471, (2015) 2 RECCIVR 396, (2014) 12 SCALE 313, (2014) 2 WLC(SC)CVL 708, (2015) 108 ALL LR 250, AIR 2015 SUPREME COURT 498

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Bench: Abhay Manohar Sapre, S.A. Bobde, H.L.Dattu

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 5225 OF 2008

KSL & INDUSTRIES LTD. …. APPELLANT

VERSUS

M/S ARIHANT THREADS LTD. & ORS. …. RESPONDENTS

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3 JUDGMENT

S. A. BOBDE, J.

1. This appeal is placed before us by way of a reference, made by a two- Judge Bench of this Court, C.K. Thakker and Altamas Kabir, JJ. which heard the matter on an earlier occasion and held that the appeal deserves to be allowed and that the Judgment and Order passed by the High Court is liable to be set aside. In view of a difference of opinion having arisen on the interpretation of Section 34 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the `RDDB' Act) the matter has been referred for decision to this Bench by the Hon'ble Chief Justice of India.

2. The present appeal is preferred by KSL & Industries Ltd. (`appellant' for short) against the final Judgment and Order dated 23.02.06 passed by the Delhi High Court in Writ Petition Nos. 2041-2042 OF 2006. The High Court set aside the Order passed by the Debt Recovery Appellate Tribunal, Delhi (`DRAT' for short) and held that in view of the bar contained in Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereafter referred to as `SICA') no recovery proceedings could be effected against Respondent No. 1 (M/s. Arihant Threads Ltd.) ('Company' for short).

3. The Company set up an export oriented spinning unit for manufacturing cotton yarn in Amritsar District, in the State of Punjab. The Company took on lease, Plot No. 454 in 1992 for a period of 99 years from Goindwal Sahib Industrial & Investment Corporation, on a condition that it would not transfer the interest in the property for the first fifteen years without prior permission of the lessor. The Company had a right to mortgage lease- hold rights to a Bank, the Punjab Financial Corporation or the Life Insurance Corporation of India as security for a loan. It got its project financed by the Industrial Development Bank of India (`IDBI' for short) by way of foreign currency loan and a working capital of Rs. 93.1 million.

4. Since the Company failed to repay loan installments, IDBI filed Original Application No. 1368 of 2001 on December 20.12.01 in Debt Recovery Tribunal, Chandigarh (`DRT' for short) for recovery of Rs. 25,26,60,836/- under the RDDB Act. In the proceedings before the DRT the Company remained absent, although, duly served. On 15.07.03, an ex-parte final order in favour of IDBI for recovery of above mentioned sum i.e. Rs. 25,26,60,836/- along with interest @ 7.8% p.a. was passed by DRT. DRT expressly directed that in the event of failure on the part of the Company to pay the decretal amount, IDBI will be entitled to sell the mortgaged property of the company and recover the amount. If the amount remained unrecovered even then, it shall be recovered from the sale of personal properties of the defendants therein.

5. On 09.09.03, the Recovery Officer issued a composite demand notice under Rule 2 of Second Schedule of the Income Tax Act, 1961 against the Company demanding payment of Rs. 28,60,87,384/-. He directed the Company to appear for settling terms and conditions of the proclamation of sale and for disclosure of its movable and immovable assets.

6. On 16.09.04, the Recovery Officer fixed the reserve price of the movable and immovable properties at Rs. 12.50 crores. On 18.10.04, the Company filed an appeal under Section 30 of the

RDDB Act against the order dated 16.09.04 fixing reserve price of the movable and immovable properties at Rs. 12.50 crores. On 30.10.04, the appellant was declared the highest bidder at Rs. 12.52 crores and was thus successful. On 15.12.04, the Company moved an application for setting aside the ex-parte final order, passed on 15.07.03 by DRT Chandigarh in favour of IDBI, directing recovery of Rs. 25,26,60,836/- along with interest @ 7.8% p.a. The appellant, who had become the auction-purchaser of the company's properties objected to the prayer of the Company for setting aside the ex- parte order and applied for impleadment. Meanwhile, the Company got its property valued by Himachal Consultancy Organisation Ltd. The realizable value of the company's property had been valued at Rs. 20.22 crores.

7. On 26.07.05, DRT-I, Delhi allowed the Company's appeal filed under Section 30 of the RDDB Act against fixation of reserve price at Rs. 12.50 crores. DRT-I, Delhi, set aside the auction sale subject to payment of a certain amount, interest, expenses, etc.

8. Objecting to these conditions, the Company filed an appeal to the DRAT, Delhi. The appellant also filed an appeal being aggrieved by the setting aside of the sale in its favour. The DRAT stayed the order dated 26.07.05 by which the ex-parte order against the Company was set aside and directed refund of sale amount to the appellant.

9. On 21.12.05, the Company invoked the provisions of SICA. It filed a Reference before the Board of Industrial Finance & Reconstruction (`BIFR' for short). On 10.02.06, the DRAT dismissed the appeal filed by the Company and allowed the appeal of the appellant. The DRAT confirmed auction-sale in favour of the appellant on depositing the sale price. The DRAT directed that steps to handover possession of the property to the auction-purchaser (appellant) be taken by the Recovery Officer and the appellant shall deposit the entire amount.

10. Before the formalities directed by the DRAT could be completed, the Company filed two Writ Petitions before the Delhi High Court against the order of the DRAT, Delhi. The Delhi High Court allowed the Writ Petitions vide impugned order dated 23.02.06 and set aside the order passed by the DRAT, Delhi on the ground that in view of the bar of Section 22 of the SICA, the recovery proceedings could not be pursued against the Company and no order ought to have been passed by the DRAT, Delhi.

11. Subsequent to the order of the High Court, the BIFR rejected the Reference of the Company and the Company preferred an appeal, which is pending before the Appellate Authority for Industrial & Financial Reconstruction (AAIFR). The second Reference has also been filed by the Company which has been registered as BIFR Case No. 18 of 2006, in which the Company has been declared as a `sick Company' and respondent No. 5 [Stressed Assets Stablization Fund, Mumbai] has been appointed as Operating Agency to prepare Rehabilitation Scheme.

12. As stated earlier, the matter was earlier heard by a two Judge Bench of this Court. One of the learned Judges, Thakker, J. held that the provisions of RDDB Act should be given priority and primacy over SICA by virtue of Section 34 of the RDDB Act as it is a subsequent enactment. Therefore it may be presumed even in the absence of any specific provision, that Parliament was

aware of all the statutes enacted prior thereto; that the non-obstante clause had been inserted to ensure expeditious adjudication and recovery of debts due to banks and financial institutions. Thakker, J. also held that in view of sub-section (2) of Section 34 of the RDDB Act, which provides that the provisions of the Act are "in addition to and not in derogation of" inter alia SICA, which is an additional factor why the RDDB Act shall prevail. Kabir, J. as His Lordship then was, held that the non-obstante clause in Section 34(1) contains an exception, to be found in sub-section (2). Sub-section (2) provides that the Act shall be in addition to and not in derogation of inter alia the SICA. Further, that the overriding effect of RDDB Act would have an overriding effect over other enactments but supplemental to the provisions of SICA, and therefore, the provisions of SICA would prevail over the provisions of the RDDB Act.

13. Kabir, J. further held that since the proceedings for recovery had long been over, before the Company invoked provisions of the SICA Act, the Company would therefore not be entitled to any relief before the High Court.

14. Kabir, J. referred to the following facts for drawing this conclusion. It was only on 21.12.05, that the Company filed a Reference before the BIFR which was dismissed on 10.02.06. Before this, the Recovery Officer had issued a demand notice under Rule 2 of the Second Schedule to the Income Tax Act, 1961 demanding payment of Rs.

28,60,87,384/-, as directed by the DRT, Chandigarh in the final order. Thereafter, several events had taken place, such as, on 27.10.2004, DRT allowed the auction sale proceedings but directed it should not be confirmed; on 30.10.04, the appellant was declared to be the highest bidder and had deposited the entire sale price on 11.11.04; in the appeal under Section 30 of the RDDB Act, the Company moved an application for setting aside the ex-parte order against fixation of reserve price and this appeal was allowed on 26.07.2005 subject to fulfillment of certain terms and conditions. It was observed that the appeal filed by the Company was only against fixation of the reserve price and not against the final order. The Company had not even availed of an appeal under Section 20 of the RDDB Act or for setting aside the sale under Rule 60 of the Second Schedule of the Income Tax Act, 1961 but only chose the path for having the auction-sale set aside on the ground that the reserve price of the Company's assets had not been correctly fixed. In effect, proceedings had been concluded in favour of the IDBI under Section 19 of the RDDB Act long before the BIFR came into the scene. That auction sale of the properties under the RDDB Act was confirmed by the DRAT before the writ petitions were allowed by the High Court.

15. The Company's first Reference was rejected by the BIFR and only the second reference made on 15.09.06, had been allowed i.e. after the High Court's order dated 23.02.06. Since the recovery proceedings have been concluded in favour of the appellant and the appellant had also deposited the sale price, the respondent was not entitled to any relief by virtue of Section 22 of the SICA before the High Court.

16. In the circumstances, both the learned Judges held, for different reasons, that the appeal deserves to be allowed and the Judgment and Order of the High Court is liable to be set aside. Since, there was a difference of opinion on the question of law, a reference was made to a larger Bench.

SCHEME AND PURPOSE OF THE SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) ACT, 1985 [SICA]

17. The Statement of Objects and Reasons for the Sick Industrial Companies (Special Provisions) Act, 1985, sets out the following:

> While interpreting which of the two Acts i.e. The Sick Industrial Companies (Special Provisions) Act, 1985 [SICA] or the Recovery of Debts due to Banks and Financial Institutions Act, 1993 [RDDB Act] should prevail, in view of the non obstante clause contained in both, one of the important tests is the purpose of the two enactments. It is important to recognize and ensure that the purpose of both enactments is as far as possible, fulfilled.

18. The SICA was enacted to provide for timely determination of a body of experts for providing preventive, ameliorative, remedial and other measures that would need to be adopted to sick companies. The ill-effects of sickness in industrial companies such as loss of production, loss of employment, loss of revenue to the Central and State Governments and locking up of investible funds of banks and financial institutions were of serious concern to the Government and the society at large. In order to fully utilize the productive industrial assets, afford maximum protection of employment and optimize the use of funds of the banks and financial institutions, it was found imperative to revive and rehabilitate the potentially liable sick industrial companies. 19. Multiplicity of laws and agencies made the adoption of a coordinated approach for dealing with sick industrial companies difficult. The Sick Industrial Companies Bill was introduced in the Parliament to enact legislation for timely determination of a body of experts for providing preventive, ameliorative, remedial and other measures.

20. As would appear significant in the scheme of things relevant to this matter, an important reference is made to the “multiplicity of laws and agencies” making the adoption of a coordinated approach for dealing with sick industrial companies difficult.

21. The term “sick industrial company” has been defined to mean an industrial company (being a company registered for not less than five years) which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth, vide Section 3(o). “Industrial Company” means a company which owns one or more industrial undertakings, vide Section 3(e). “Industrial Undertaking” has been defined to mean an undertaking pertaining to a scheduled industry carried on in one or more factories by any company, vide Section 3(f).

22. In effect a “sick industrial company” is a company owning one or more industrial undertakings pertaining to a scheduled industry as contemplated by the Industries (Development and Regulation) Act, 1951 (IDRA).

23. The Act thus aims to revive and rehabilitate, not all sick companies but those in the schedule to the IDRA, presumably vital to the economy of the nation.

24. The Act provides for an Inquiry into whether a company is a sick industrial company, an assessment whether it can be made viable and the preparation and sanction of a scheme for inter alia the financial reconstruction of the sick industrial company. It provides for the proper management of the sick industrial company, amalgamation, sale or lease of a part or whole of an industrial undertaking of the sick company etc., vide Sections 16, 17 and 18 of the SICA Act.

25. The Act confers wide powers on the Board to provide in the scheme - amalgamation of the sick industrial company with a transferee company, the alteration of the memorandum or articles of association, reduction of the interest or rights of the shareholders and for continuation of legal proceedings, the sale or lease of the industrial undertaking etc.

26. It is in this background that Section 22, which provides for suspension of legal proceedings, is enacted. To the extent it is relevant here, the Section reads as under:

> 4 "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 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 properties of the industrial company or for the appointment of a receiver in respect thereof and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans, or advance granted to the industrial company shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority."

27. The Section is enacted against the backdrop of the existing multitude of remedies which creditors may avail of against an indebted company and its properties bringing them to attachments, auction sale etc., making it difficult for the authorities entrusted with its reconstruction under the SICA to evolve a scheme for reconstruction. The Section is also given primacy by way of a non-obstante clause vide Section 32 of SICA which reads as follows:-

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

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

28. It may also be noted that the Section, along with the SICA was enacted in 1985. At that time the remedies which were later on provided by the RDDB Act 1993, for recovery by a creditor through an application to the Debt Recovery Tribunal were not in existence nor contemplated. There is naturally no reference to such a mode of recovery in the SICA and neither is a stay contemplated of such a proceedings in express terms. We say this in view of the submission advanced before us that Section 22 only contemplates a stay of proceedings for the distress or execution of the properties of the sick company and suits for recovery and that therefore an application for recovery under the RDDB Act cannot be stayed, and must proceed. We might also observe that the consequence of accepting the submission that Section 22 cannot affect or render untenable an application for recovery under the RDDB Act, would result in an anomaly. The submission is that Section 22 lays down that only proceeding for winding up or execution, distress or the like shall not lie or be proceeded with where an enquiry is pending or a scheme is under preparation or consideration or a sanction scheme is under implementation etc.; whereas a proceeding for recovery of a debt may proceed. To put it another way, that a proceeding for recovery shall lie against a sick company but an order made in it could not be executed against any of the properties of the industrial company, the effect being that the proceedings may continue without any consequence. Thus there cannot be any execution or distraint against the properties of the company but creditors may continue to apply for recovery before the DRT. We do not think that such an anomalous purpose can be attributed to Parliament in the present legislative scheme. Though there is no doubt that Parliament may expressly bring about such a situation if it considers it desirable. Even otherwise, it appears that the legislative purpose for reconstruction of companies could be thwarted if creditors are allowed to encumber the properties of the company with decrees of the DRT while the BIFR is engaged in reviving the company, if necessary, by leasing or selling the properties of the company for which there is an express power.

29. Plainly, the purpose of laying down that no proceedings for execution and distraint or the like or a suit for recovery shall not lie, is to protect the properties of the sick industrial company and the company itself from being proceeded against by its creditors who may wish to seek the winding up of the company or levy execution or distress against its properties. It protects the company from all such proceedings. It also protects the company from suits for recovery of money or for the enforcement of any security or of any guarantee in respect of any loans, or advances granted to the industrial company. But as is apparent, the immunity is not absolute. Such proceeding which a creditor may wish to institute, may be instituted or continued with the consent of the Board or the Appellate Authority. In the Section as originally enacted, the words "and no suit for the recovery of money or for the enforcement of any security ....." were not there. These words appear to have been inserted to expressly provide, rather clarify that no suits for the recovery of money etc. would

lie or be proceeded with against such a company.

30. At this juncture, it would apposite to notice the judgment of this Court in Kailash Nath Agarwal and Ors. Vs. Pradeshiya Industrial & Investment Corporation of U.P. Ltd. & Anr.[1], where this Court considered whether Section 22 afforded protection to guarantors of the sick company or only to the sick company. It was contended that Section 22 prohibits the filing of a suit for recovery of money or for enforcement of any guarantee in respect of a loan or advance granted to an industrial company. It was claimed that if proceedings for recovery through a court of law were prohibited under Section 22(1), there was no reason that protection should be refused when action was sought to be taken without recourse to Court. The Court held that the words "proceedings" and "suit" had to be construed differently as carrying different meanings, since, they had been used to denote different things. The Court concluded that Section 22(1) only prohibits recovery against the industrial company and there is no protection offered to guarantors against the recovery proceedings.

31. On the strength of this decision in Kailash Nath Agarwal (supra) it was contended that the application for recovery against the Company filed under the RDDB Act in the execution of which the appellant had purchased the property of the Company was neither a "proceeding" nor a "suit" within the meaning of Section 22. Therefore, the proceedings in the application for recovery remained ineffective by Section 22. We find, however, that the judgment in Kailash Nath Agarwal does not come to the aid of the appellant. That judgment did not consider the question that has arisen in this case. It dealt with the question regarding the scope of protection afforded to guarantors under Section 22(1) of the SICA, and held that there was no protection afforded to guarantors as distinct from the sick company under Section 22(1), since the expression "suit" was used only in relation to sick industrial companies and not to guarantors. Similarly, the expression "proceeding" in relation to distress and execution, was used to denote something other than a "suit". No such question arises in this case.

32. As observed earlier, sub-section (1) of Section 22 may be divided into two parts. In one part, it provides that "no proceedings" be instituted for the winding up of the industrial company or for execution, distress or the like against any of the properties of such industrial company, and in the second part it provides that "no suit" for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advances granted to the industrial company, "shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority."

33. Undoubtedly, the present proceedings viz. "application for recovery" cannot specifically be described as proceedings for execution, distress or the like against any of the properties, but it is certainly a proceeding which results in and in fact had resulted in the execution and distress against the property of the Company and is therefore liable to be construed as a proceeding for the execution, distress or the like against any of the properties of the industrial company. We are of the view that such a construction would be within the intendment of Parliament wherever the proceedings for recovery of a debt which has been secured by a mortgage or pledge of the property of the borrower are instituted. Surely, there is no purpose in construing that Parliament intended

that such an application for recovery by summary procedure should lie or be proceeded with, but only its execution be interdicted or inhibited especially. In this context, it may be remembered that the proceedings by way of an application for recovery according to a summary procedure as provided under the RDDB Act are not referred to in Section 22 simply because the RDDB Act had not then been enacted.

SCHEME AND PURPOSE OF THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993 (RDDB ACT)

34. In 1993, Parliament passed the Recovery of Debts due to Banks and Financial Institutions Act, 1993, i.e. the RDDB Act. The Statement of Objects and Reasons recited that more than fifteen lakhs of cases filed by the public sector banks and about 304 cases filed by the financial institutions involving recovery of debts of more than Rs. 5622 crores in dues of Public Sector Banks and about Rs. 391 crores of dues of the financial institutions were pending. The locking of such huge amounts of public money prevented proper utilisation and recycling of the funds for the development of the country. The RDDB Act was thus enacted to prevent such stagnation of huge amounts of public money due to the existing procedure for recovery of debts. The urgent need to work out a suitable mechanism through which the debts of the banks and financial institutions could be realised without delay was in the form of Special Tribunals, which would follow summary procedure. These Tribunals eventually came to be known as Debt Recovery Tribunals.

35. The 'debt' contemplated by the RDDB Act refers to the liability claimed as due, by a bank or a financial institution from any person, whether secured or unsecured or whether payable under a decree or order of any civil court or any arbitration award or under a mortgage and legally recoverable, vide Section 2 (g). Applications for recovery were required to be made to a Tribunal established under Section 3. Appeals were to lie before the Appellate Tribunal under Section 20. Upon the adjudication of the application/appeal by the Tribunal, the certificate of recovery is made executable by Chapter V under Section 25. The Recovery Officer on receipt of the copy of certificate is required to proceed to recover the amount of debt specified in the certificate by attachment and sale of the movable or immovable property of the defendant etc., vide Section 25. Section 18 bars the jurisdiction of any court or any authority except the Supreme Court and a High Court, in relation to an application for recovery of debts due to banks and financial institutions. Section 34, with which we are concerned, confers an overriding effect on the RDDB Act in the following terms:

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

36. This special law, which deals with the recovery of debts due to banks and financial institutions, makes the procedure for recovery of such debts exclusive and even unique. The non-obstante clause in sub-section (1) confers an overriding effect on the provisions of the RDDB Act notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Sub-section (2), however, makes the RDDB Act additional to and not in derogation or annulment of the five Acts mentioned therein i.e. Industrial Finance Corporation Act, 1948; the State Financial Corporations Act, 1951; the Unit Trust of India Act, 1963; the Industrial Reconstruction Bank of India Act, 1984 and the Sick Industrial Companies (Special Provisions) Act, 1985.

37. Sub-section (2) was added to SICA w.e.f. 17.01.2000 by Act No. 1 of 2000. There is no doubt that when an Act provides, as here, that its provisions shall be in addition to and not in derogation of another law or laws, it means that the Legislature intends that such an enactment shall co- exist along with the other Acts. It is clearly not the intention of the Legislature, in such a case, to annul or detract from the provisions of other laws. The term "in derogation of" means "in abrogation or repeal of." The Black's Law Dictionary sets forth the following meaning for "derogation":

> "The partial repeal or abrogation of a law by a later act that limits its scope or impairs its utility and force." It is clear that sub-section (1) contains a non-obstante clause, which gives the overriding effect to the RDDB Act. Sub-section (2) acts in the nature of an exception to such an overriding effect. It states that this overriding effect is in relation to certain laws and that the RDDB Act shall be in addition to and not in abrogation of, such laws. The SICA is undoubtedly one such law.

38. The effect of sub-section (2) must necessarily be to preserve the powers of the authorities under the SICA and save the proceedings from being overridden by the later Act i.e. the RDDB Act.

39. We, thus, find a harmonious scheme in relation to the proceedings for reconstruction of the company under the SICA, which includes the reconstruction of debts and even the sale or lease of the sick company's properties for the purpose, which may or may not be a part of the security executed by the sick company in favour of a bank or a financial institution on the one hand, and the provisions of the RDDB Act, which deal with recovery of debts due to banks or financial institutions, if necessary by enforcing the security charged with the bank or financial institution, on the other.

40. There is no doubt that both are special laws. SICA is a special law, which deals with the reconstruction of sick companies and matters incidental thereto, though it is general as regards other matters such as recovery of debts. The RDDB Act is also a special law, which deals with the recovery of money due to banks or financial institutions, through a special procedure, though it may be general as regards other matters such as the reconstruction of sick companies which it does not even specifically deal with. Thus the purpose of the two laws is different.

41. Parliament must be deemed to have had knowledge of the earlier law i.e. SICA, enacted in 1985, while enacting the RDDB Act, 1993. It is with a view to prevent a clash of procedure, and the possibility of contradictory orders in regard to the same entity and its properties, and in particular, to preserve the steps already taken for reconstruction of a sick company in relation to the properties

of such sick company, which may be charged as security with the banks or financial institutions, that Parliament has specifically enacted sub-section (2). The SICA had been enacted in respect of specified and limited companies i.e. those which owned industrial undertakings specified in the schedule to the IDR Act, as mentioned earlier, whereas the RDDB Act deals with all persons, who may have taken a loan from a bank or a financial institution in cash or otherwise, whether secured or unsecured etc.

42. Indeed, the question as to which Act shall prevail must be considered with respect to the purpose of the two enactments; which of the two Acts is the general or special; which is later. It must also be considered whether they can be harmoniously construed.

43. The conflict that is said to arise is between Section 22 of the SICA which purports to make untenable "proceedings" for recovery of the debt against the sick company and "suits" for recovery on the one hand and on the other hand Section 34 of the RDDB Act contains an overriding effect to its own provision, obviously including those for recovery of debts. Some of the decisions of this Court dealing with this aspect may be noticed in Ram Narain Vs. Simla Banking & Industrial Co. Ltd.[2]. Two statutes, both containing non-obstante clauses providing that the particular provisions of the Act shall have effect (notwithstanding anything inconsistent contained therein in any other law for the time being in force) fell for consideration. The two Acts were the Banking Company Act 1949 and the Displaced Persons (Debt Adjustment) Act, 1951. This Court gave primacy to the Banking Companies Act. While doing so, this Court observed:-

> "7. ..... It is therefore, desirable to determine the overriding effect of one or the other of the relevant provisions in these two Acts, in a given case, on much broader considerations of the purpose and policy underlying the two Acts and the clear intendment conveyed by the language of the relevant provisions therein."

44. In a subsequent case, this Court held that the right to possession enacted by the Delhi Rent Control Act, 1958 was not controlled by the Slum Clearance Act and the right could be enforced in the manner provided in Section 25-B without obtaining prior permission of the competent authority under the Slum Clearance Act. The conflict arose since the Slum Clearance Act contained a non-obstante clause, to the effect that proceedings for eviction of tenants could not be taken without prior permission of the competent authority. The Delhi Rent Control Act conferred a right under Section 14-A to recover immediate possession in case the landlord had to vacate residential premises allotted to him by the Central Government. This right was conferred with a non-obstante clause. This Court held that for resolving such conflicts, one test which may be adopted is that the later enactment must prevail over the earlier one. Having observed that the relevant provisions of the Delhi Rent Control Act had been enacted from 01.12.1975 alongwith a non-obstante clause with the knowledge that the overriding provision of the Slum Clearance Act was already in existence, the later enactment must prevail over the former.

45. In LIC Vs. D.J. Bahadur[3] this Court considered the question as to which of the two laws i.e. the Industrial Disputes Act, 1947 (the ID Act) and the Life Insurance Corporation Act, 1956 (the LIC Act), was a special law. Having regard to the doctrine of generalia specialibus non derogant (general

provisions will not abrogate special provisions), it was submitted that an employee of the LIC cannot invoke the provisions of the ID Act in his complaint, and the matter would have to be decided in accordance with the LIC Act. The Court observed that the LIC Act was "special" as regards nationalization of the life insurance business. But however, the disputes between employer and employee had to be dealt with under the ID Act which was a special law for resolving such disputes and if a dispute arose between employer and employee in the Life Insurance Corporation, the LIC Act must be treated as "general law" and the ID Act should be treated as "special law." The Court thus observed:-

> "52. In determining whether a statute is a special or a general one, the focus must be on the principal subject-matter plus the particular perspective. For certain purposes, an Act may be general and for certain other purposes it may be special and we cannot blur distinctions when dealing with finer points of law. In law, we have a cosmos of relatively no absolutes - so too in life."

46. In Maharashtra Tubes Ltd. Vs. State Industrial & Investment Corpn. Of Maharashtra Ltd. [4], the conflict arose between two special statues i.e. the State Financial Corporations Act, 1951 and the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). This Court came to the conclusion that the 1951 Act deals with the pre-sickness situation, whereas the 1985 Act deals with the post-sickness situation, and therefore, it was not possible to agree that the 1951 Act is a special statute vis-à-vis the 1985 Act which is a general statute. The Court observed:-

> "Both are special statues dealing with different situations notwithstanding a slight overlap here and there, for example, both of them provide for grant of financial assistance though in different situations. We must, therefore, hold that in cases of sick industrial undertakings the provisions contained in the 1985 Act would ordinarily prevail and govern."

47. In a subsequent decision in Allahabad Bank Vs. Canara Bank[5], this Court held that with reference to the Companies Act, the RDDB Act should be considered as a "special law" though both laws could be treated as "special laws" in respect of recovery of dues by banks and financial institutions. In a later case the question arose in the context of Special Court (Trial of offences Relating to Transactions in Securities) Act, 1992 and SICA. It was contended that in view of the special provisions contained in SICA no proceedings could have been initiated under the Special Court Act. The Court observed that though Section 32 of the SICA contained a non-obstante clause, there was a similar non-obstante clause in Section 13 of the Special Court Act. The Court observed:-

> "9... This Court has laid down in no uncertain terms that in such an event it is the later Act which must prevail."

48. This Court approved the observations of the Special Court to the effect that if the legislature confers a non-obstante clause on a later enactment, it means that the legislature intends that the later enactment should prevail. Further, it is a settled rule of interpretation that if one construction leads to a conflict, whereas on another construction two Acts can be harmoniously construed, then

the latter must be adopted.

49. In view of the observations of this Court in the decisions referred to and relied on by the learned counsel for the parties we find that, the purpose of the two enactments is entirely different. As observed earlier, the purpose of one is to provide ameliorative measures for reconstruction of sick companies, and the purpose of the other is to provide for speedy recovery of debts of banks and financial institutions. Both the Acts are "special" in this sense. However, with reference to the specific purpose of reconstruction of sick companies, the SICA must be held to be a special law, though it may be considered to be a general law in relation to the recovery of debts. Whereas, the RDDB Act may be considered to be a special law in relation to the recovery of debts and the SICA may be considered to be a general law in this regard. For this purpose we rely on the decision in LIC Vs. Vijay Bahadur (supra). Normally the latter of the two would prevail on the principle that the Legislature was aware that it had enacted the earlier Act and yet chose to enact the subsequent Act with a non- obstante clause. In this case, however, the express intendment of Parliament in the non-obstante clause of the RDDB Act does not permit us to take that view. Though the RDDB Act is the later enactment, sub-section (2) of Section 34 specifically provides that the provisions of the Act or the rules thereunder shall be in addition to, and not in derogation of, the other laws mentioned therein including SICA.

50. The term "not in derogation" clearly expresses the intention of Parliament not to detract from or abrogate the provisions of SICA in any way. This, in effect must mean that Parliament intended the proceedings under SICA for reconstruction of a sick company to go on and for that purpose further intended that all other proceedings against the company and its properties should be stayed pending the process of reconstruction. While the term "proceedings" under Section 22 did not originally include the RDDB Act, which was not there in existence. Section 22 covers proceedings under the RDDB Act.

51. The purpose of the two Acts is entirely different and where actions under the two laws may seem to be in conflict, Parliament has wisely preserved the proceedings under the SICA, by specifically providing for sub- section (2), which lays down that the later Act RDDB shall be in addition to and not in derogation of the SICA.

52. We might add that this conclusion has been guided by what is considered to be one of the most crucial principles of interpretation viz. giving effect to the intention of the Legislature. The difficulty arose in this case mainly due to the absence of specific words denoting the intention of Parliament to cover applications for recovery of debts under the RDDB Act while enacting Section 22 of the SICA. As observed earlier, the obvious reason for this absence is the fact that the SICA was enacted earlier. It is the duty of this Court to consider SICA, after the enactment of the RDDB Act to ascertain the true intent and purpose of providing that no proceedings for execution or distraints or suits shall lie or be proceeded with. Undoubtedly, in the narrower sense an application for recovery of debt can be giving a restricted meaning i.e. a proceeding which commences on filing and terminates at the judgment. However, there is no need to give such a restricted meaning, since the true purpose of an application for recovery is to proceed to the logical end of execution and recovery itself, that is by way of execution and distraint. We thus have no hesitation in coming to the

conclusion that Section 22 clearly covers and interdicts such an application for recovery made under the provisions of the RDB Act. We might remind ourselves of the oft-quoted statement of the principles of contextual construction laid down by this Court in Reserve Bank of India Versus Peerless General Finance and Investment Co. Ltd. & Ors.[6], where this Court has observed:-

> "33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

53. Moreover, we have found nothing contrary in the intention of the SICA to exclude a recovery application from the purview of Section 22, indeed there could be no reason for such exclusion since the purpose of the provision is to protect the properties of a sick company, so that they may be dealt with in the best possible way for the purpose of its revival by the BIFR. In State of Punjab Vs. The Okara Grain Buyers Syndicate Ltd.[7], the Court articulated the importance of preserving the beneficent purpose of the statute and observed:-

> "14. …….. We shall therefore proceed to examine the provisions of the Act on the footing that the test for determining whether the Government is bound by a statute is whether it is expressly named in the provision which it is contended binds it, or whether it "is manifest that from the terms of the statute, that it was the intention of the legislature that it shall be bound", and that the intention to bind would be clearly made out if the beneficent purpose of the statute would be wholly frustrated unless the Government were bound."

54. Having answered the reference, we hold that the provisions of SICA, in particular Section 22, shall prevail over the provision for the recovery of debts in the RDDB Act. In these circumstances, as already directed by the two-Judge Bench of this Court, the Judgment and Order dated 23.02.06 of the High Court of Delhi is set aside. As far as the writ petitions are concerned, whether on the ground that Section 22 of the SICA acts as a bar to the recovery proceedings under the RDDB Act or whether the protection of SICA is not available to the appellant company since the recovery proceedings under the RDDB Act had been concluded, the writ petitions would have to be dismissed and are accordingly dismissed. The present appeal is allowed.

.....CJI.

[H.L.DATTU] .....J. [S.A. BOBDE] .....J. [ABHAY MANOHAR SAPRE] NEW DELHI, OCTOBER 27, 2014

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[2] (2003) 4 SCC 305 [4] AIR 1956 SC 614 : 1956 SCR 603 [6] (1981) 1 SCC 315 [8] (1993) 2 SCC 144 [10] (2000) 4 SCC 406 [12] (1987)1 SCC 424 [14] AIR 1964 SC 669