

Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan, Connaught Place, New Delhi – 110001

16th January 2023

Subject: Judgment¹ dated 4th January 2023 in the matter of Sabarmati Gas Ltd. Vs. Shah Alloys Ltd. [Civil Appeal No. 1669 of 2020]

1. Shah Alloy Ltd. (CD) approached Board for Industrial and Financial Re-construction ('BIFR') to be declared as a 'sick unit' and for recommendation of a plan for its rehabilitation, in terms of the provisions under Sick Industrial Companies (Special Provisions) Act, 1985 (SICA).
2. OC filed an application under section 22 of SICA before BIFR to approach a civil court, for recovery of dues along with interest. The application was allowed, and the civil court directed OC to incorporate the dues of the CD in the Draft Rehabilitation Scheme. Thereafter, SICA got repealed and Insolvency Bankruptcy Code, 2016 (IBC/Code) was enacted. OC issued a demand notice under section 8 of the Code, demanding payment of 'operational debt'. AA dismissed the application on the grounds of being barred by limitation and existence of a 'pre-existing dispute' between the parties. Further, in appeal NCLAT also upheld the order passed by AA. Aggrieved by the order of NCLAT, OC preferred an appeal before Hon'ble SC.
3. Hon'ble SC held that there existed a 'pre-existing dispute' between the parties therefore, matter cannot be remanded to the AA for reconsideration. It explained that the expression 'pre-existing dispute' indicates the existence of a dispute prior to the receipt of a demand notice under section 8 of the Code.
4. Hon'ble SC also observed that there was a legal bar for initiating proceedings against CD by virtue of section 22(1) of SICA and explained that party was legally disabled from resorting to legal proceeding for recovering the outstanding dues without the permission of BIFR and even on application, permission was not given, the period of suspension of legal proceedings is excludable in computing the period of limitation for the enforcement of such right in terms of section 22(5) of SICA. SC also explained that section 5 of the Limitation Act, 1963 showing 'sufficient cause' is the only criterion for condoning delay and that 'sufficient cause' is the cause for which a party could not be blamed.

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