A REAL VALUE APPLIANCES LTD. ETC.

v.

CANARA BANK AND ORS. ETC.

MAY 5, 1998

B [S. SAGHIR AHMAD AND M. JAGANNADHA RAO, JJ.]

Sick Industrial Companies (Special Provisions) Act, 1985/ Board of Industrial and Financial Reconstruction Regulations, 1987 :

C *S.s. 15, 16/22 Regulation 19(5)—Industrial Company—Petition for winding up pendings in High Court—A Regular suit for recovery of money against the Company, also pending in High Court—Thereafter company getting its reference u/s 15 registered before BIFR and not disclosing this fact to High Court—High Court deprecating conduct of company and making orders appointing provisional liquidator and Receiver holding that mere registration of reference u/s 15 did not amount to "pendency of any inquiry" under s.16—Held, High Court was right in deprecating conduct of company—But registration of reference u/s 15 cannot be said to be invalid—Orders passed by High Court after registration of reference are in violation of prohibition contained in s.22—Inquiry u/s 16(1) must be deemed to have commenced simultaneously with the registration of reference.*

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Interpretation of Statutes :

Internal aid to construction—Headings—Held, Chapter headings cannot be treated as rigid compartments.

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A Winding up petition was filed against the appellant-company in the High Court. The Company Judge appointed a provisional liquidator. But, on appeal the Division Bench stayed the operation of the order.

Meanwhile a suit for recovery was filed against the appellant-company G **by the Canara Bank and the Union Bank of India. The application filed in the said suit for appointing a receiver to take formal possession of the mortgaged properties, which were subject matter of the suit, was dismissed by the Single Judge, but in interlocutory appeal the prayer was granted by the Division Bench by its order dated 28.7.1997.**

H **The appellant after obtaining the stay in the company appeal went on**

seeking adjournments and opposing appointment of provisional liquidator on the plea that it was a viable unit. On the other hand, the company approached the Board for Industrial and Financial Reconstruction (BIFR) on 17.7.1997 and got its reference registered on 24.7.1997 but did not disclose this fact to the Division Bench of the High Court till 8.8.1997 on which date the Bench passed an order vacating the stay and confirming the appointment of provisional liquidator holding that mere registration of reference under s.15 of the Sick Industrial Companies (Special Provisions) Act, 1985 did not amount to "pendency of any inquiry" under s.16 so as to attract s.22 and, therefore, the Bench was well within its powers in vacating the stay. Aggrieved, the company filed before this Court C.A. No. 2573 of 1998 against the order dated 8.8.1997 passed in the company appeal and C.A. No. 2572 of 1998 challenging the order dated 28.7.1997 passed by the other Division Bench of the High Court in the interlocutory appeal appointing the Receiver. C.A. No. 2574 of 1998 was filed by the workman (Engineering Kamgar Sangh) against the order dated 8.8.1998.

The respondents contended that the appellant-company was guilty of suppression of facts before the High Court inasmuch as it took adjournments without informing the Court of its approaching the BIFR and getting the reference registered, and keeping in view the suppression of facts by the company and contradictory pleas taken by it in regard to its viability, the reference to BIFR must be treated as vitiated and amounting to 'fraud' and, therefore, all consequential orders of the BIFR must be ignored.

For the appellant it was contended that once the reference was registered under s.15 of the Act by the BIFR on 24.7.1997, in view of the mandate of s.22, the respective Division Benches of the High Court ought not to have passed the order dated 28.7.1997 and 8.8.1997.

Allowing the appeals, this Court

HELD : 1.1. It cannot be said that the reference under s.15 of the Sick Industrial Companies (Special Provisions) Act, 1985 and the registration thereof by the BIFR became bad because of any conduct of the company before the High Court. Equally, the subsequent orders passed by BIFR on the reference cannot, on that account, be said to be invalid. [179-G]

1.2. It is true that on the one hand before the High Court the Company was opposing appointment of a Receiver and of a provisional liquidator contending that it was a viable unit while, on the other hand, it had approached

A **the BIFR and got its reference registered seeking it to be declared sick company and did not disclose this fact to the High Court till 8.8.1997. This conduct of the appellant was certainly very unfair to the High Court, and therefore, the High Court had rightly deprecate the same. There was a clear attempt to keep the Court in dark. But, so far as BIFR was concerned, there was no suppression of facts before it. BIFR was informed about the** B **proceedings taken against the Company in the High Court both on the company side and on the original side. The conduct of the appellant-Company before the High Court could not make the registration of reference before BIFR bad. [179-B-E]**

C **2.1. After the amendment to Regulation 19 of the Board of Industrial and Financial Reconstruction Regulations, 1987, w.e.f. 24.3.1994, once the reference is registered and when once it is mandatory *simultaneously* to call for information/documents from the informant and such a direction is given, then inquiry under section 16(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 must - for the purposes of section 22 - be deemed to** D **have commence. Section 22 and the prohibitions contained in it shall immediately came into play. [185-G-H]**

Industrial Finance Corporation **v.** *Maharashtra Steels Ltd.,* **(1990) 67 Comp. Cases 412 (All)**

E *Sponge Iron India Ltd.* **v.** *Neelima Steels Ltd.,* **(1990) 68 Comp. Cases 201 AP, and**

Orissa Sponge Iron Ltd. **v.** *Rishab Ispat Ltd.,* **(1993) 78 Comp. Cases 264, approved.**

F *Maruti Uayog Ltd.* **v.** *Instrumentation Ltd.,* **(1995) 82 Comp. cases 485 (Raj), disapproved**

Bangal Lamps Ltd. **v.** *Furmanite Nicco Limited,* **(1991) 72 Com. Cases 146 (Cal.), referred to.**

G **2.2. The first part of Regulation 19(5) says that the reference, if it is in order, will be registered. The second part says that *simultaneously* notice shall be issued calling for information or documents from the informant. The effect of the amended Regulation 19(5) is that even before any Branch of BIFR can think of calling for information under Regulation 20(1) or** H **under Regulation 21 read with section 16, it is now mandatory, under the**

latter past of Regulation 19(5), that as soon as a reference is registered, information/documents shall be called for from the informant straightaway; and the 'inquiry' must, therefore, be deemed to have commenced under s. 16 of the Act at that stage itself. Strictly speaking, after the amendment of Regulation 19(5) on 24.3.1994 its latter part falls into Chapters III and IV of the Regulations which are referable to 'Inquiries' under section 16 of the Act, rather than into Chapter II which deals with 'References' under section 15. The Chapter headings cannot be treated as rigid compartments. [185-A-B, E-F]

2.3. Keeping in view the format of the reference as prescribed in the Regulation, it will be practically impossible for the BIFR to reject a reference outright without calling for information/documents or without hearing the company or other parties. When section 16(1) says that BIFR can conduct the inquiry "in such manner as it may deem fit", the said words are intended only to convey that a wide discretion is vested in BIFR in regard to the procedure it may follow for conducting an inquiry under section 16(1) and nothing more. In fact, *once the reference is registered after scrutiny*, it is mandatory for BIFR to conduct an inquiry. [183-B]

2.4. Further, the Act is intended to revive and rehabilitate sick industries before they can be wound up under the Companies Act, 1956. Whether the Company seeks a declaration that it is sick or some other body seeks to have it dèclared as sick company, it is necessary that the Company be heard before any final decision is taken under the Act. It is also the legislative intention to see that no proceedings against the assets are taken before any such decision is given by the BIFR for in case the Company's assets are sold, or the company is wound up it may indeed become difficult later to restore the status quo ante. [183-D]

3. On the facts of this case, the orders dated 28.7.1997 and 8.8.1997 of the High Court have been passed after the BIFR proceedings reached the stage of the second part of Regulation 19(5) on 24.7.1997, that is to say, when proceedings as per the amended Regulation 19(5) reached the stage of inquiry under section 16(1). It must, therefore, be deemed that the said orders are illegal and are in violation of the prohibition contained in section 22 of the Act, and are, therefore, set aside. [186-B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2572 of 1998 Etc.

From the Judgment and Order dated 28.7.97 of the Bombay High Court

A in Notice of Motion No. 421/97 in A. No. 56 /97 in Notice of Motion No. 120/97 in Suit No. 82 of 1997.

Soli J. Sorabjee, Attorney General of India, Harish N. Salve and Jay Salva for the Appellants in C.A. Nos. 2572 and 2573/98.

B S. Wasim A. Qadri and Jana Kalyan Das for the Appellant in C.A. No. 2574/98.

Altaf Ahmed, Additional Solicitor General, Pradeep Dewan, Ms. Praveena Goutam and Pramod B. Aggarwala for the Respondent in C.A. No. 2572/98.

C Bharat Sangal for the Respondents in C.A. No. 2573/98 and C.A. No. 2574/98.

The Judgment of the Court was delivered by

M. JAGANNADHA RAO, J. Special leave granted in all the Special D leave petitions.

Civil Appeal arising out of SLP (C) No. 14327/1997 is filed by 'Real Value Appliances Ltd' against the order of the High Court of Bombay dated 28.7.1997 passed by a Division Bench in an interlocutory appeal, appointing a Receiver to take formal possession of the mortgaged properties which are subject E matter of suit No. 82 of 1997 pending before a learned Single Judge of the said High Court on the Original Side. The respondent Canara Bank, which is the plaintiff in the suit is claiming in consortium with Union Bank of India a sum of Rs. 23.67 crores (approximately) as due to it as on 24.12.1996. Earlier the Single Judge of the Bombay High Court in his order dated 10.1.1997 had disallowed the application for appointment of Receiver in view of the stay of F appointment of provisional Liquidator granted by a Division Bench of the Bombay High Court in winding up proceedings on 20.12.1996.

Civil Appeal (arising out of SLP (C) No. 14750 of 1997) is filed by the appellant Company against the order passed by another Division Bench of G the Bombay High Court dated 8.8.1997 in Appeal No. 1193 of 1996 by which the order of the learned Single Judge on Company Side appointing a provisional Liquidator on 18.10.1996 was affirmed. Thereby an earlier order of stay dated 20.12.96 (granted by the Division Bench in respect of the Company Judge's order dated 18.10.96) stood vacated. The respondents are Vardhman Spinning & General Mills Ltd., the creditors, who filed the winding up petition 415/1996 H on 6.8.1996 against the appellant in the High Court of Bombay.

Civil Appeal (arising out of SLP (C) NO. 15736/1997) is filed by the workmen (Engineering Kamgar Sangh) against the order dated 8.8.1997 passed by the Division Bench in winding up proceedings confirming the order of the Single Judge appointing provisional Liquidator. They are supporting the appellant company.

That is how these three appeals have arisen and have come before us. The appellant company had, after taking some adjournments before the Division Bench in the Company Appeal - which was filed against the order of the learned Single Judge appointing provisional liquidator - submitted a reference before the Board for Industrial and Financial Reconstruction (hereinafter called the 'BIFR') on 17.7.1997 under the Sick Industrial Companies (Special Provision) Act, 1985 (hereinafter called the 'Act'). The said reference was registered on 24.7.1997 as Case No.97 of 1997. The point raised in these appeals is that once the reference was registered by the BIFR on 24.7.1997, the Division Bench of the High Court ought not to have passed orders on 8.8.1997 vacating the interim stay granted by it on 24.12.1996 and ought not to have confirmed the order of the learned Company Judge dated 18.10.1996 appointing provisional liquidator, in view of the mandate of section 22 of the Act. Likewise, it is argued that the order of another Division Bench dated 28.7.1997 appointing a Receiver in the interlocutory appeal arising out of the Civil Suit is also bad in view of section 22 of the Act.

We may state that the order of the High Court in proceedings arising out of suit - appointing Receiver on 28.7.1997 was stayed by this Court on 5.8.1997 in SLP 14327/1997. Similarly the order of the High Court, in proceedings arising out of winding up proceedings, dated 8.8.1997 vacating the stay and confirming the Company Judges order appointing provisional Liquidator was stayed on 12.8.1997 in SLP 14750/1997 and it was further ordered that the provisional Liquidator shall not take any further steps.

One other important fact to be noted is that on 10.11.1997 in SLP 14327/1997, this Court passed an order, -after hearing both sides, adjourning the SLPs "to enable the BIFR to come to a decision'. This Court, however, directed the appellant-Company not to dispose of or alienate or create any third party interests in any of the assets of the Company except with the previous approval of the BIFR and that before passing any orders, the BIFR will give hearing to the Canara Bank. This Court also recorded an assertion by the Bank that the Receiver had taken formal possession of the properties. This assertion was no doubt denied by the Company. This Court also noticed

A that the High Court of Bombay had, in its order dated 8.8.97 accepted as true the serious allegations made by the Canara Bank against the appellant Company.

At this stage, it is necessary to refer to the conduct of the Company, already adverted to, which came up for severe criticism by the High Court of B Bombay in its order dated 8.8.1997. What happened was that after securing a stay order from the Division Bench on 20.12.1996 - in respect of the order of the learned Single Judge appointing a provisional Liquidator, - the Company obtained adjournments before the Division Bench on 4.11.1996, 2.12.1996, 9.12.1996, 18.12.1996, 20.12.1996. On 20.12.1996 the case was adjourned to C 22.7.1997 when an affidavit was filed -without disclosing that the Company had approached the BIFR on 17.7.1997 - and the matter was got adjourned to 29.7.1997 and again to 8.8.1997. The factum of registration of the reference by the BIFR on 24.7.97 was not disclosed to the High Court till 8.8.1997. The Bench, therefore, rightly criticised the conduct of the appellant for not disclosing these facts to the High Court before 8.8.1997. Further, in the High D Court the Company was opposing the appointment of provisional Liquidator on the plea that it was a viable unit but when it approached the BIFR, it was claiming that it was a sick industry. These contradictory pleas also came up for adverse comment by the High Court. The Bench referred to section 22 and section 16 of the Act and felt that the mere registration of the reference under E Section 15 did not amount to "pendency of any inquiry" under Section 16 and that, therefore, section 22 was not attracted and, therefore, the Bench was well within its powers in vacating the stay and confirming the appointment of provisional liquidator or in appointing a Receiver. In that context, the Bombay High Court followed a decision of a Division Bench of the Calcutta High Court in *Bengal Lamps Ltd.* v. *Furmanite Nicco Limited,* (1991) 72 Com. F Cases 146 (Cal.) in preference to the Judgments of other High Courts which had taken a contrary view. The Bench then gave several findings to the effect that the Company had indulged in various "irregularities" or "misconduct" in its accounting procedures etc. with a view to show that it was a viable unit and to show that it was not liable to be wound up. Having enumerated the G alleged financial irregularities as pointed by the Bank and the suppression of facts, the High Court in its order dated 8.8.1997 vacated the stay order dated 20.12.1996 and confirmed the appointment of provisional Liquidator. It also issued a contempt notice to the officers of the Company.

It is necessary to refer to certain *subsequent events* which have since H taken place after the orders under appeal were passed by the High Court.

These events relate mainly to three orders passed by the BIFR. A

(i) On *9.9.1997,* the BIFR passed orders, after hearing the representatives of the appellant - Company and Canara Bank and the IDBI (which was also to get around Rs. 38 crores from the company), directing the IDBI under Section *16(2)* of the Act to examine and analyse the audited balance sheets of the Company upto 30.6.1997 and submit a status report. The Bank was also B directed to submit its reaction or comments to the IDBI. The contentions raised by the Bank's representatives were elaborately set out.

(ii) On *24.11.1997* the BIFR passed orders recording that the IDBI had submitted a report and that on that basis and on the basis of the submissions C made, "the Company was to be declared as a sick industry' under section 16 read with section 3(o) of the Act. It then said that it is necessary in the public interest to adopt the measures specified in Sections 18 and 19 of the Act in relation to the Company. It accordingly appointed IDBI as the Operating Agency under Section 16(2) of the Act and directed it under section 17(3) to prepare a rehabilitation Report. The Company was directed under Section 22- D A, not to alienate any of its assets.

(iii) A notice was issued by BIFR fixing 15.12.1997 as the date on which the *allegations of the Canara Bank* against the Company would be heard. On *15.12.1997,* the BIFR passed further orders after hearing the Bank's representatives observing that the allegations made by the Bank against the E Company had been considered by the IDBI and that the IDBI had prepared a status report and that the BIFR was *satisfied* that the allegations of the Bank against the company - in regard to the change in the accounting year and provision for depreciation and interest and in regard to the preparation of the balance sheet - could not be accepted inasmuch as these actions "were F permissible under the various provisions of the Companies Act, 1956 and as such these were valid under law". The matter was adjourned to enable the Company to submit its revival/rehabilitation proposals. These are the three orders passed by the BIFR subsequent to the impugned orders of the Bombay High Court.

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It was contended before us by Sri Soli Sorabjee and Sri Harish Salve, appearing for the Company in the two appeals filed by the Company and by the counsel for the workmen in the third appeal that the Division Bench ought not have vacated the stay dt. 20.12.96 nor confirmed the appointment of provisional Liquidator dated 18.10.96 by its order dated 8.8.1997 when by that date, Section 22 of the Act had come into play on account of the registration H

A of the reference dated 17.7.1997 by the BIFR on 24.7.1997. For the same reasons, it was contended that the Division Bench could not have appointed a Receiver on 28.7.1997 in the interlocutory appeal filed in the suit proceedings. It was contended that the appeals should, therefore, be allowed and the impugned orders vacated in view of the mandate under Section 22. Sri Sorabjee cited several rulings of the High Courts to contend that registration of the B reference was sufficient for purposes of the applicability of Section 22. It was argued that now the matters have reached the stage of section 17(3) of the Act before the BIFR and, therefore, no orders can be passed restoring the Receiver or the provisional liquidator. It was also brought to our notice that the High Court had dropped the contempt proceedings by its order dated C 13.2.1998 pursuant to the apology tendered.

On the other hand, the learned Additional Solicitor General, Sri Altaf Ahmad contended that while the contention of the appellants in relation to Section 22 could be correct, the appellant was guilty of suppression of facts before the Division Bench of the High Court as pointed in the order dated D 8.8.1997. It took adjournments before the High Court without informing the Court that it was either approaching or that it had approached the BIFR and got its reference registered. The Company also took contradictory pleas before the High Court and before the BIFR, in regard to its viability. This conduct was wholly unbecoming. On account of its suppression of facts and E mutually contrary pleas, the reference to the BIFR must be treated as vitiated and as amounting to 'fraud' and, therefore, all consequential orders of the BIFR must be ignored.

On the basis of the above contentions, the following points arise for consideration:

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(1) Could it be said that the conduct of the appellant Company before the High Court on account of the contrary pleas taken by it before the High Court and the BIFR and on account of the suppression of facts, - would render the reference under section 15 and the registration of the reference and the subsequent orders of the BIFR bad?

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(2) Whether, once the BIFR had registered the reference dated 17.7.97 on 24.7.97 under section 15 of the Act read with the Regulations, it was permissible for the Division Bench of the High Court to pass orders on 8.8.97 vacating the stay order dated 20.12.96 and confirming the appointment of provisional liquidator on the company side and also whether it was permissible H for another Division Bench of the High court to appoint a Receiver on 28.7.97

in the proceedings arising out of the suit, in view of section 22 of the Act? A

Point 1:

It is true that in the winding up proceedings and in the civil suit, the appellant company contended that it was a viable unit and that neither a Receiver nor a provisional liquidator could be appointed. The appellant was, B on the one hand seeking adjournments before the Division Bench while on the other hand it had approached the BIFR on 17.7.97 and got its reference registered on 24.7.97 seeking to be declared a sick company. It is also true that in the affidavit filed on its behalf in the High Court on 22.7.97 seeking an adjournment, it had not disclosed to the Division Bench that it had moved the BIFR on 17.7.97. The Company sought an adjournment to 29.7.97 and then C again to 8.8.97. Neither on 22.7.97 nor on 29.7.97 was the High Court informed about the application filed before the BIFR nor about its registration. A disclosure of these facts was made only on 8.8.97.

This conduct of the appellant, in our view, was certainly very unfair to D the High Court and, therefore, the High Court had rightly depreciated the same. In our view, there was a clear attempt to keep the Court in the dark.

But the question is whether, on that account, the reference application to the BIFR would become bad. It is clear from the application filed before the BIFR that the BIFR was informed about the proceedings taken against the E company in the High Court both on the company side and on the original side. So far as the BIFR was concerned, there was no suppression of facts before it. We are at a loss to understand as to how any conduct of the appellant company before the High Court of Bombay could make the registration of the reference before the BIFR bad. If any orders were obtained by the Company from the High Court by way of fraud it was certainly open to the F respondent to ask the High Court to recall such orders. No such thing was done. We, therefore, cannot accept the contention of the respondents that the reference under section 15 of the Act and the registration thereof by the BIFR became bad because of any conduct of the Company before the High Court. It follows that equally the subsequent orders passed by the BIFR on the G reference cannot, on that account, be said to be invalid. This contention of the respondents is rejected. Point 1 is held against the respondents.

Point 2:

The legal issue under this point is of considerable importance in proceedings arising under this Act. H

A We shall, therefore, refer to the relevant provisions of the Act and Regulations and the headings of the Chapters in the Act and the headings of the Chapters in the Regulations.

Chapter III of the Act contains section 15 to section 22A and bears the heading "*Reference, Inquiries and Schemes*". *Section 15* of the Act refers to
B the '*Reference* to Board' either by the industrial Company under sub-clause (1) of Section 15 or by the Central Government or the Reserve Bank or a State Government or by a public financial institution or by State local institutions or Scheduled Banks. *Section 16* refers to '*Inquiry* into the working of Sick industrial Companies' and to the declaration of the unit as a sick industry,
C after inquiry. Section 17 deals with 'Powers of Board to make suitable orders on the completion of inquiry' to the company so as to make its net worth exceed its accumulated losses within a reasonable time or to direct the operating agency to prepare a scheme in the manner provided in section 18. Section 19 deals with 'Rehabilitation by giving financial assistance'. Section 20 refers to the winding up of the industrial unit if it is not likely that the Company will
D be able to make its net worth exceed its accumulated losses. Section 22 of the Act with which we are concerned here, deals with 'Suspension of legal proceedings, contracts etc.' where '*an inquiry under section 16 is pending* or any scheme under Section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under section
E 25 before the appellate authority (AAIFR) is pending.

The point which has, in this context, been raised in several High Courts is that the mere registration of a reference by the BIFR under the Act, would not result in the automatic cessation of all proceedings which are pending either in civil courts or in the Company Court etc. as against its assets. It is
F argued that in order that section 22 of the Act can come into operation, the BIFR must -subsequent to the registration of the reference under section 15 - apply its mind and consider it necessary under section 16 to make an inquiry and issue notices on the reference to the affected parties who are required to be heard, and that only then it can be said that an 'inquiry' is pending. Unless an inquiry is pending there cannot be a statutory stay of proceedings
G etc. as contemplated by section 22 of the Act.

For the purpose of understanding the above point, it is necessary to refer to sub-clauses (1) to (4) of section 16 and section 22(1) of the Act. They read as follows:

H *"S. 16: Inquiry into working of sick industrial companies* - (1) The

Board *may* make such inquiry as it may deem fit for determining whether any industrial company has become a sick industrial company- A

(a) upon receipt of a reference with respect to such company under Section 15; or

(b) upon information received with respect to such company or upon its own knowledge as to the financial condition of the company. B

(2) The Board may, if it deems necessary or expedient so to do for the expeditious disposal of an inquiry under sub-section (1), require by order any operating agency to enquire into and make a report with respect to such matters as may be specified in the order. C

(3) The Board or as the case may be, the operating agency shall complete its inquiry as expeditiously as possible and endeavour shall be made to complete the inquiry within sixty days from the commencement of the inquiry.

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Explanation - For the purposes of this sub-section, an inquiry shall be deemed to have commenced upon the receipt by the Board of any reference or information or upon its own knowledge reduced to writing by the Board.

(4) Where the Board deems it fit to make an inquiry or to cause an inquiry to be made into any industrial company under sub-section (1) or, as the case may be, under sub-section (2), it may appoint one or more persons to be a special director or special directors of the company for safeguarding the financial and other interests of the company or in the public interest. E

F

"Section 22(1): suspension of legal proceedings, contracts etc.: 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 G H

A 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."

B

It is to be noticed that according to *section 22*, in case an *"inquiry under section 16"* is pending, then, notwithstanding anything in the Companies Act or any other instrument etc., no proceedings for the winding up of the company or for execution or distress or *the like* against the property of the C company or for the appointment of a receiver and no suit for recovery of money or enforcement of any security or of any guarantee - shall *lie* or be *proceeded* with further, except with the consent of the Board or, as the case may be, by the appellate authority. Section 22A permits the Board to pass certain conditional orders.

D It is also to be noticed that sub-clause (1) of section 16 says that the Board '*may*' make such inquiry as it may deem fit for determining whether any industrial company has become a sick industrial unit - (a) upon receipt of a reference under section 15 or (b) upon information received by it or upon its own knowledge as to the financial condition of the company. Under sub-E clause (2) of section 16, the Board '*may*', if it deems it necessary or expedient, require any operating agency to inquiry and report to it. Under sub-clause (3), the Board or the operating agency is to endeavour to complete the inquiry within 60 days from the date of commencement of the inquiry. *Explanation* below sub-clause (3) explains that for *purposes of sub-clause* (3), that is to say, for computing the period of 60 days, *an inquiry shall be deemed to have* F *commenced* upon the receipt by the Board or any reference or information or upon its own knowledge reduced to writing by the Board. Under sub-clause (4), when the Board deems it fit to make an inquiry under sub-clause (1) or (2) of section 16, it *may* (the word 'shall' has been omitted by Act 12 of 1994) appoint one or more directors etc.

G Relying on the use of the word 'may' in section 16(1) of the Act it has been contended in some High Courts that the word 'may' in that section shows that the BIFR has power to reject a reference summarily without going into merits and that it is only when the BIFR takes up the reference for consideration on merits under section 16(1) that it can be said that the H 'inquiry' as contemplated by section has commenced. It is argued that if the

reference before the BIFR is only at the stage of registration under section 15, then section 22 is not attracted. This contention, in our opinion, has no merit. In our view, when section 16(1) says that the BIFR can conduct the inquiry "in such manner as it may deem fit", the said words are intended only to convey that a wide discretion is vested in the BIFR in regard to the procedure it may follow for conducting an inquiry under section 16(1) and nothing more. In fact, *Once the reference is registered after scrutiny,* it is, in our view, mandatory for the BIFR to conduct an inquiry. If one looks at the format of the reference as prescribed in the Regulations, it will be clear that it contains more than fifty columns regarding extensive financial details of the Company's assets, liabilities, etc. Indeed, it will be practically impossible for the BIFR to reject a reference outright without calling for information/documents or without hearing the Company or other parties. Further, the Act is intended to revive and rehabilitate sick industries before they can be wound up under the Companies Act, 1956. Whether the Company seeks a declaration that it is sick or some other body seeks to have it declared as a sick Company, it is, in our opinion, necessary that the Company be heard before any final decision is taken under the Act. It is also the legislative intention to see that no proceedings against the assets are taken before any such decision is given by the BIFR for in the case the Company's assets are sold, or the company wound up it may indeed become difficult later to restore the *status quo ante.* Therefore, in our view, the High Court of Allahabad in *Industrial Finance Corporation* v. *Maharashtra Steels Ltd.,* (1990) 67 Comp. Cases 412 (All), the High Court of Andhra Pradesh in *Sponge Iron India Ltd.* v. *Neelima Steels Ltd.,* (1990) 68 Comp. Cases 201 (AP), the High Court of Himachal Pradesh in *Orissa Sponge Iron Ltd.* v. *Rishab Ispat Ltd.,* (1993) 78 Comp. Cases 264 are right in rejecting such a contention and in holding that the inquiry must be treated as having commenced as soon as the registration of the reference is completed after scrutiny and that from that time, action against the Company's assets must remain stayed as stated in section 22 till final decisions are taken by the BIFR.

The other view that mere registration does not amount to "commencement of inquiry under section 16(1)" for purposes of section 22(1) has been taken by the Calcutta High Court in *Bengal Lamps Case* (supra), and by the Rajasthan High Court in *Maruti Udyog Ltd.* v. *Instrumentation Ltd.,* (1995) 82 Comp. cases 485 (Raj). This view is mainly based upon the provisions of the Regulations made under the Act.

We shall refer to these Regulations briefly. Chapter II of the Regulations

framed under section 13 of the Act bears the heading '*Reference* under section 15' and contains Regulation 19. Chapter III deals with 'General provisions regarding Inquiries' and contains Regulation 20 while Chapter IV which bears the heading "*Inquiry* under section 16" contains Regulations 21 to 25. Chapter V deals with proceedings under section 17 and contains Regulation 26. For the present purpose, we are not referring to the other Chapters which are not very relevant.

The Division Bench of the Calcutta High Court in *Bengal Lamps Ltd., Case* (supra) - which case has been relied upon by the Bombay High Court in the impugned order dated 8.8.1997, - has held that at the stage of registration of the Reference under section 15 of the Act read with Regulation 19 (in Chapter II of the Regulations which refers only to section 15), there can be no question of commencement of any 'inquiry' referable to section 16 of the Act. Such an inquiry can be treated as having commenced only at the stage of section 16 read with Regulation 21 (in Chapter IV of the Regulations which refers to section 16). On that reasoning it held that there can be stay as contemplated by section 22 only when section 16(1) stage of inquiry has arrived and not at the stage of section 15 dealing with registration of the reference. It further held that it is only when the BIFR, i.e. the Bench of the BIFR issues notices under section 16(1) for inquiry or asks the operating agency to inquire, -that the 'inquiry' can be said to have commenced. This line of reasoning has been applied by the Rajasthan High Court also and by the Bombay High Court in the judgment under appeal. Question is whether this view is correct?

Now, Regulation 19(4) which is concerned with section 15 requires that upon receipt of a reference, an acknowledgement is to be issued stating expressly that the reference has been received 'subject to verification that the reference is in order'. If on scrutiny, the reference is in order, then it will be registered under Regulation 19(5). Regulation 19(5) has been amended recently with effect from 24.3.1994 which is of a date very much subsequent, in point of time, to the date of Judgment of the Calcutta High Court. The new Regulation 19(5) as substituted w.e.f. *24.3.1994* is in two parts and reads as follows:

> *"Reg. 19(5):* If on scrutiny, the reference is found to be in order, it shall be registered, assigned a serial number and submitted to the Chairman or assigning it to a Bench. *Simultaneously, remaining information/documents required, if any, shall be called for from the informant."*

The first part says that the reference, if it is in order, will be registered. The second part says that *simultaneously* notice shall be issued calling for information or documents from the informant. The effect of the amended Regulation 19(5) is that even before any Bench of the BIFR can think of calling for information under Regulation 20(1) or under Regulation 21 read with section 16, it is now mandatory after the amendment that as soon as a reference is registered, information/documents shall be called for from the informant straightaway. The point is whether when such information/ documents are required to be simultaneously called for at Regulation 19(5) stage, can it be said that an 'inquiry' under section 16(1) has commenced? A B

The above question depends upon what is meant by the word 'inquiry' used in section 16(1) of the Act. According to the New Standard Dictionary, the word 'inquiry' includes '*investigation*' into facts, causes, effects and relations generally; 'to inquire', according to the same dictionary means 'to exert oneself to discover something'. Chamber's 20th Century Dictionary lays down that the meaning of the term 'to inquire' is "to ask, to seek" and the meaning of the term 'inquiry' is given as: "search for knowledge; *investigation*: a question". C D

Inasmuch as under the latter part of Regulation 19(5) it is necessary that simultaneously with the registration of the reference, information/documents are to be called for from the informant - the 'inquiry' must, in our opinion, be deemed to have commenced under section 16 of the Act at that stage itself, namely, at stage of the second part of Regulation 19(5) and it is no longer permissible to say that such a stage is reached only when the BIFR issues notices and starts an inquiry under Regulation 20 calling for additional information 'in relation to the inquiry' or only when orders are passed by the BIFR under Regulation 21, read with section 16(1). The result is that strictly speaking, after the amendment of Regulation 19(5) on 24.3.1994 the latter part of Regulation 19(5) falls into Chapters III and IV of the Regulations which are referable to 'Inquiries' under section 16 of the Act, rather than into Chapter II which deals with 'References' under section 15. The Chapter headings cannot, in our opinion, be treated as rigid compartments. E F G

There can, therefore, be no difficulty in holding that after the amendment to Regulation 19 w.e.f. 24.3.1994, once the reference is registered and when once it is mandatory *simultaneously* to call for information/documents from the informant and such a direction is given, then inquiry under section 16(1) must - for the purposes of section 22 - be deemed to have commenced. Section 22 and the prohibitions contained in it shall immediately come into H

play. In that view of the matter, we need not go into the correctness of the view expressed by the Calcutta, Rajasthan and Bombay High Courts which relied upon the unamended Regulation 19. Point 2 is decided accordingly.

On the facts of this case, the impugned orders dated 28.7.1997 and 8.8.1997 of the High Court have been passed after the BIFR proceedings reached the stage of second part of Regulation 19(5) on 24.7.1997 that is to say, when proceedings, as per the amended Regulation 19(5) reached the stage of inquiry under section 16(1). It must, therefore, be deemed that the said orders are illegal and are in violation of the prohibition contained in section 22 of the Act.

For the aforesaid reasons, the order passed by the Division Bench on 28.7.97 appointing Receiver and the order passed by another Bench of the High Court on 8.8.97 restoring the provisional liquidator, are set aside. The Civil appeals are accordingly allowed. There will be no order as to costs. The respondents are free, if need be, to approach the BIFR under section 22 and section 22A of the Act for further orders, if any, in addition to the orders already passed by the BIFR in this behalf.

R.P. Appeals allowed.