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(2002) 10 AHC CK 0201

Allahabad High Court

Case No: C.M.W.P. No. 14344 of 2002

ESS BEE Packagers (P.) Ltd.		APPELLANT
	Vs	
Appellate Authority for Industrial and Financial Reconstruction and Others		RESPONDENT

Date of Decision: Oct. 31, 2002

Acts Referred:

- Companies Act, 1956 - Section 166, 220
- Limitation Act, 1963 - Section 5
- Sick Industrial Companies (Special Provisions) Act, 1985 - Section 15(1), 22, 3

Citation: (2003) 2 AWC 1054 : (2003) 2 BC 305 : (2003) 117 CompCas 366

Hon'ble Judges: Sunil Ambwani, J

Bench: Single Bench

Advocate: Ravi Kant, Saurabh Srivastava, Yatindra Shukla and Amit Krishan, for the Appellant; H.R. Misra, N.P. Singh, Nitin Sharma, Ajeet Kumar and S.C., for the Respondent

Final Decision: Dismissed

Judgement

Sunil Ambwani, J.
Petitioner, a Private Limited Company, has sought for a writ of certiorari to quash order dated 15.2.2002 passed by Appellate Authority for Industrial and Financial Reconstruction, New Delhi by which it has dismissed the appeal on 7.2.2002 for which reasons were given on 15.2.2002, against the order of Board for Industrial and Financial Reconstruction dated 22.11.2001, holding the reference filed by the company u/s 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, on 13.8.1999 to be non-maintainable on account of undue delay of nearly two years.

2. I have heard Sri Ravi Kant, senior advocate, assisted by Sri Saurabh Srivastava for petitioner company ; Sri H.R. Misra for U. P. Financial Corporation and Additional Standing Counsel for respondent Nos. 1, 2 and 3. The other respondents have not appeared in spite of notices issued to them on 17.4.2002, upon which the service is deemed to be sufficient.

3. Since the matter does not involve any disputed questions of fact, with the consent of parties, the writ petition is being decided at the admission stage.

4. The admitted facts are stated as below :

"Petitioner has two industrial units ; one situated at Ranla, Kanpur Dehat in U. P. and the other at Bilaspur, Himachal Pradesh. It is engaged in manufacture and sale of flexible packaging material. It has been taking financial assistance from U. P. Financial Corporation, Himachal Pradesh Financial Corporation and Bank of Baroda. The company suffered losses for reasons, which are not the matter of concern in this writ petition. The accounts of the company for financial year 1997-98 were finalised by adopting auditor"s report in annual general meeting convened in the month of July, 1999. It was found that net worth of the company has been eroded due to huge losses, and that the company had become sick industrial company within the meaning of Section 3(o) of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter called "the Act"). A reference was made to the Board of Industrial and Financial Reconstruction (hereinafter called as "B.I.F.R.") on 11.8.1999. It was registered as Case No. 273 of 1999. On 8.11.1999, secured creditors raised objections with regard to delay in filing reference. It was noted that the company"s net worth was fully eroded as on 31.3.1997, whereas reference was filed on 11.8.1999. The Board found that Company."s two plants had been taken over by H.P.F.C. and U.P.F.C. on 30.10.1996 and 20.8.1996, respectively. 50% of the net worth had been eroded by 31.3.1996. The reference was filed after a delay of two years and four months. In its explanation, it was said by the company, that the two units were taken over in 1996 and that it was under impression that a reference did not He. However, based on judgment of Appellate Authority of Industrial and Financial Reconstruction (hereinafter called as "A.A.I.F.R.") in the case of M/s. Tools International Limited, the reference was filed. It was found that the aforesaid judgment was delivered in August, 1996. The company while negotiating with financial institutions and banks had not. disclosed about the filing of reference with B.I.F.R.. It could not give a satisfactory explanation as to why accounts for the year 1997-98 were finalised on 31.5.1999. Bank of Baroda had initiated legal action against petitioner company with Debt Recovery Tribunal on 3.8.1999. The Board thus in its order dated 1.3.2000 concluded that the plants are lying closed for over three years. The company/ promoters have not shown any interest in reviving the company and that reference has been filed only to thwart the efforts of secured creditors in their recovery. It was further found that the reference was not filed even after immediately finalising the 31.3.1999 accounts on 31.5.1999, as there was a delay of three days beyond 60 days after the date of finalisation of accounts. It was observed that the intention of promoters was not honourable and that no public interest

will be served in accepting the reference. It was, as such, rejected as non-maintalnable."

5. The company preferred an Appeal No. 82 of 2000, before A.A.I.F.R. on the grounds that accounts for 1997-98 were approved by the Board of Directors on 31.5.1999, and at the Annual General Meeting on 30.6.1999, after which the Board of Directors met again and resolved to make a reference. According to Section 3(1)(da) of the Act, which defines "date of finalisation of the duly audited accounts" means the date on which the audited accounts of the company are adopted at the annual general meeting of the company, the reference was filed on 11.8.1999, within 60 days. It cannot, therefore, be said that the reference was to thwart the efforts of recovery by secured creditors. Bank of Baroda had filed a suit after finalisation of accounts. The efforts for revival with financial institutions did not meet any success. The delay in preparation of accounts was sought to be explained on the ground that industrial units of the company were in possession of H.P.F.C. and U.P.F.C. A.A.I.F.R. upon hearing found as under :

(a) that the reference was made within 60 days from the date of finalisation of duly audited accounts, as defined in Section 3(1)(da) of the Act ;

(b) that H.P.F.C. and U.P.F.C. had sufficient time at their disposal for recovery of their dues from 30.10.1996 and 20.8.1996 when the units were taken over, until the filing of reference on 11.8.1999 and thus it could not be said that the purpose of filing reference was to thwart recovery proceedings. It was not the case of H.P.F.C. and U.P.F.C. that the bids for sale were accepted or that the units were to be sold away to the accepted bidder but for the reference to the B.I.F.R. Bank of Baroda had filed a suit before Debt Recovery Tribunal on 3.8.1999, after finalisation of accounts which cannot be said to be initiation of any recovery effort ;

(c) A.A.I.F.R. did not take any view with regard to the fact that the company had become a sick industrial unit and on the observations of the B.I.F.R. that the company/ promoters had no interest in reviving the company. If the company was a sick industrial company and promoters were not interested in its revival, B.I.F.R. could take recourse to other measures for revival of the company ; and

(d) that the delay in finalisation of accounts cannot be a reason to dismiss the reference u/s 15(1) of the Act.

6. Clause (d) of the conclusions of A.A.I.F.R. is relevant and is quoted below :

"It is true that there was lapse on the part of the appellant company in not reporting to B.I.F.R. u/s 23 of S.I.C.A. on the basis of its accounts for the financial year ended on 31.3.1996. It is also true that there was a lapse in not filing a reference on the basis of accounts for the financial year ended of 31.3.1997. Moreover, there was a considerable delay in the finalisation of the accounts for the financial year 1997-98. However, such delay cannot be the reason for the dismissal of a reference u/s 15(1) of S.I.C.A. Delay in preparation of accounts are matters that may be raised by aggrieved persons with the

appropriate authorities competent to take cognizance thereof under the provisions of the Companies Act, 1956. However, considering that there have been considerable delays on the part of the appellant company/promoters in these matters, we grant consent to B.O.B. to continue legal proceedings in application filed with D.R.T.. Jabalpur, subject to the condition that the execution of recovery certificate/decree that may be obtained from the D.R.T. can only be executed with the prior consent of B.I.F.R."

7. The appeal was allowed on 14.7.2000 by A.A.I.F.R. and after setting aside the order of B.I.F.R., the case was remanded for fresh consideration of the reference u/s 15(1) of the Act.

8. The B.I.F.R. while considering the matter, on remand, once again went into the delay in filing of reference. It was found that the reference was based on the audited balance sheet as on 31.3.1998, whereas the audited balance sheet as on 31.3.1997, also indicated that company"s net worth of Rs. 123.76 lacs consisting of paid-up share capital of Rs. 116.95 lacs and free reserve of Rs. 6.81 lacs had been completely eroded by accumulated losses which, on that date, stood at Rs. 161.52 lacs. The audited balance sheet for 1996-97 was finalised in Annual General Meeting held on 30.9.1997, and the company was, therefore, required to explain as to why it had not filed reference within 60 days beginning from 30.9.1997, and the delay of about two years. The company had not provided for depreciation in its balance sheets during 1996-97 and 1997-98 and if that was done, the accumulated losses could have been much higher. The company relied upon the order of A.A.I.F.R. dated 14.7.2000 with reference to para 8 (d) and submitted that the question of delay in filing of reference is no longer in issue. The statutory auditor of the company had not held it to be a sick industrial company as on 31.3.1997, on account of the fact that both the units were taken over by Financial Institutions. Subsequently, in view of A.A.I.F.R."s judgment in M/s, Tools International Limited, the issue was settled and the auditors qualified the company to be sick in terms of the Act. U.P.F.C. submitted that company had removed major parts of machinery from its Kanpur unit in 1996-97 on account of which reports were made to police. The company and its promoters were not interested in revival at all. H.P.F.C. submitted that it had granted loan of Rs. 1.4 crores to the company which stood at Rs. 4.19 crores and that the charged assets were deteriorating on account of the delay caused by the company and thus they should be allowed to sell the assets. B.I.F.R. thereafter proceeded to conclude that the judgment of A.A.I.F.R. dated 14.7.2000, related to the delay in preparation of accounts for 1997-98. There was, however, no delay at all in finalisation of audited balance sheet for 1996-97 on 30.9.1997, in which it was found that the company"s net worth was fully eroded. The reference, therefore, should have been filed by 30.11.1997. The company cannot interpret the order of A.A.I.F.R. that it had condoned the delay in filing company"s reference, with reference to financial year 1996-97, since this question had not arisen in appeal at all. In para 8 (d) of the order, A.A.I.F.R. had considered the delay in finalisation of accounts with reference to 1997-98, which were finalised with some delay. The judgment in M/s. Tools International Limited was available at the time of finalisation of

accounts for 1996-97. The fact that the assets of the company had been taken over by financial institutions does not result into ceasure of the company to be an industrial company. M/s. Tools International Limited"s judgment of A.A.I.F.R. was based on a judgment of the Supreme Court of India rendered in the year 1993. The B.I.F.R. as such again held the reference to be non-maintainable on account of undue delay of nearly two years in filing the same. Section 15(1) reference which could have been made, based on audited balance sheet for 1996-97 which came to be finalised on 30.9.1997 and thus the reference should have been filed by 30.11.1997 latest i.e., within 60 days from the date its net worth was fully eroded in that year itself.

9. The company again appealed against the aforesaid order of B.I.F.R. dated 22.11.2001. It was dismissed after hearing arguments on 6.2.2002. The reasons followed in its order dated 15.2.2002.

10. Since the question was of some importance, although the Chairman and two other members agreed in dismissing the appeal, they gave their separate reasons for reaching to the same conclusion. Justice J.B. Goel, Chairman of the Appellate Authority, held that the cause of action for making the reference is not the finalisation of the duly audited accounts of company on the basis of which the reference is made but the annual accounts at the end of which the company had become sick in terms of Section 3(1)(o) of the Act for the first time. The period of 60 days u/s 15(1) of the Act is mandatory and starts from the finalisation of the annual audited accounts at the end of which it becomes sick and if the Board of Directors of the company formed an opinion of sickness earlier, in that case, sixty days starts when such opinion is formed. The Limitation Act, 1963, applies only to proceedings in Courts and not in applications before Bodies other than Courts, such as, quasi-judicial Tribunals or executive authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on Courts in the Codes of Civil and Criminal Procedure. B.I.F.R. is not a Court and thus Limitation Act, 1963, or its Section 5 which provides for condonation of delay is not a proceeding provided under the Act and, as such, B.I.F.R. had no power to condone the delay. Undisputedly, the company had become a sick industrial company at the end of its annual accounts on 31.3.1997. The reference was not made on the basis of these accounts and, as such, the reference was not maintainable and had been rightly rejected by B.I.F.R. In respect of the contention based on Section 16(1)(b) of the Act, which authorises the Board to make such inquiry as it may deem fit for determining whether any industrial company has become a sick industrial company, upon information received with respect to such company or upon its own knowledge as to the financial condition of the company. The learned Chairman held that the information contemplated in Section 16(1)(b) of the Act should be available to the B.I.F.R. within a reasonable time and at the earliest. If any delay is caused, the losses will further increase, making the revival of the company impossible or at least a remote possibility.

11. In S.R.F. Limited v. Garware Plastics and Polyesters Limited and Ors. (1995) 3 SCC 4651, the Supreme Court considered the legislative intent of the Act for timely detection

of sick or potentially sick industry and for taking up proceedings for revival and rehabilitation expeditiously to be completed within a time frame and if unavoidable, it should be condoned within a reasonable time thereafter, or say six months. The proceedings are not to be allowed to be used as dilatory tactics to prevent rehabilitation of sick company or potentially sick company, in particular by rival companies. The Board and appellate authority and the High Court should give effect to the provisions, company with procedural format and should finalise the proceedings expeditiously within the time frame so that not only the starving workmen, who are kept in agonising wait for revival of sick comply without wages, be rescued, but also needless accumulation of losses by the comply and the loss of revenue to the State is avoided. The information contemplated u/s 16(1)(b) of the Act should have been furnished or made available to the B.I.F.R., if not within 60 days, then within a reasonable time when the company had become sick. It was not done and thus the Appellate Authority held that it cannot consider the plea after five years.

12. Dr. J.K. Bagchi and Shri M.S. Dayal principally agreed within the Chairman in dismissing the appeal whereas Dr. Bagchi relied upon the provisions of Section 32(1) of the Act to repel the Limitation Act, he held that even Limitation Act talks about reasonable period and that Section 16(1)(b) of the Act cannot be resorted, as it would be a round about approach and it will be virtually impossible to implement limitation issues.

13. Shri S.M. Dayal found that accounts for financial year 1997-98 were approved at the Annual General Meeting on 30.9.1997. The period of 60 days expired on 29.11.1997 and since 29.11.1997 and 30.11.1997 were holidays, being Saturday and Sunday, the reference should have been made by 1.12.1997, The question of delay with reference to erosion of net worth in financial year 1996-97 was neither raised nor considered in A.A.I.F.R."s order dated 14.6.2000. As the case was remanded to B.I.F.R., it was open to B.I.F.R. to consider this issue. He held that a reference u/s 16(1)(b) of the Act must be made when the company became sick for the first time in terms of Section 3(1)(o) of the Act. The appellant"s plea of ignorance of law was not tenable and was rejected.

14. Shri Ravi Kant, senior advocate, submits that the matter with regard to delay in filing of reference u/s 15(1) of the Act was considered and decided by A.A.I.F.R. in its order dated 14.7.2000 in para 8 (d) and it was held that such delay cannot be reason for dismissing the reference inasmuch as delays in preparation of accounts are matters that may be raised by aggrieved persons before appropriate authorities under the provisions of the Companies Act, 1956. The appellate order was not challenged and became final and, as such, it was not open to B.I.F.R. to make a further inquiry with regard to the delay in filing of reference. He further submits that the object of the Act is to timely detect the sick and potentially sick companies. B.I.F.R. was constituted and vested with powers for speedy determination of preventive ameliorative, remedial and other measures. With this object in mind, the period for making reference u/s 15(1) of the Act by the company cannot be held to be mandatory and that once it was established before the Board that the company had become a sick industrial unit, it was in pubic interest, keeping in view

the object of the Act, to take such measures, as provided under the Act, for its rehabilitation. The provisions of Sections 15 and 16 of the Act provide for timely detection of sick and potentially sick industrial companies. A technical approach in rejecting the reference on the ground of delay will be ultra vires to the object and other provisions of the Act. In a case u/s 16(1)(b), once the Board receives information that an industrial company has become sick or is potentially sick, the provisions of Chapter III must be brought into action to take all and such remedial measures for its rehabilitation failing which the opinion u/s 20(1) of the Act can be formed to wind up the sick industrial company. According to him, the Appellate Authority has given an arbitrary approach in rejecting the reference and has avoided its statutory liability.

15. Shri H.R. Misra appearing for U.P.F.C. while supporting the order of the Appellate Authority submits that the object of the Act is timely detection of the sick and potentially sick companies. Section 22 of the Act gives special protection to the companies after the registration of the references and looking to the object of the Act and to avoid misuse of the provisions of Section 22, the period prescribed for making a reference u/s 15(1) must be strictly construed and should be held to be mandatory, failing which the Board of Directors will make reference according to their convenience, frustrating the object of the Act. He submits that Section 33 of the Act provides for penalty for violating provisions of the Act and that the provisions of the Limitation Act are not applicable to the Board and Appellate Authority. The Act has special purpose to achieve, for which it has been given overriding effect over the provisions of all other Acts except the Acts prescribed u/s 32.

Section 15 of the Act is relevant and is quoted below :

"15. Reference to Board.--(1) Where an industrial company has become a sick industrial company, the Board of Directors of the Company, shall, within sixty days from the date of finalisation of the duly audited accounts of the company for the financial year ,as at the end of which the company has become a sick industrial company, make a reference to the Board for determination of the measures which shall be adopted with respect to the company :

Provided that if the Board of Directors had sufficient reasons even before such finalisation to form the opinion that the company had become a sick industrial company, the Board of Directors shall, within sixty days after it has formed such opinion, make a reference to the Board for the determination of the measures which shall be adopted with respect to the company.

(2) Without prejudice to the provisions of Sub-section (1), the Central Government or the Reserve Bank or a State Government or a Public Financial Institution or a State Level Institution or a Scheduled Bank may, if it has sufficient reasons to believe that any industrial company has become, for the purposes of this Act, a sick industrial company, make a reference in respect of such company to the Board for determination of the measures which may be adopted with respect to such company :

Provided that a reference shall not be made under this sub-section in respect of any industrial company by :

(a) the Government of any State unless all or any of the industrial undertakings belonging to such company are situated in such State ;

(b) a public financial institution or a State Level Institution or a Scheduled Bank unless it has, by reason of any financial assistance or obligation rendered by it, or undertaken by it, with respect to such company, an interest in such Company."

16. The words "Sick Industrial Company" and "finalisation of the duly audited accounts" of the company have been defined under Sections 3(o) and 3(da) of the Act. They are quoted below :

"3 (o) "sick industrial company" means 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."

3 (da) "date of finalisation of the duly audited accounts" means the date on which the audited accounts of the company are adopted at the annual general meeting of the company."

17. The objects and reasons as given in the Bill originally proposed were serious concern of the Government and society at large to 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, the alarming increase of the sickness in industrial companies and to fully utilise the productive industrial assets, to give protection of employment and to optimize the use of the funds of banks and financial institutions impelled the enactment, to revive and rehabilitate the potentially viable sick industrial companies as quickly as possible. It was found that the existing institutional arrangements and procedures for revival and rehabilitation of potentially viable sick industrial companies are both inadequate and time consuming. Multiplicity of laws and agencies made the adoption of a coordinated approach for dealing with sick industrial companies difficult. It was, as such, felt that for dealing with sick industrial companies, a legislation was necessary to provide for timely detection of sickness in industrial companies and for expeditious determination by a body of experts of the preventive, ameliorative, remedial and other measures that would need to be adopted with respect to such companies and for enforcement -of such measures considered appropriate with utmost practicable despatch. The timely detection, expeditious determination and practicable despatch of all measures to be enforced were thus the impelling motives to enact the Sick Industrial Companies (Special Provisions) Act, 1985. In order to timely detect the sickness, the Act provides the Board of Directors of the Company to make a reference to the Board. It can be made by the Board of Directors if they have sufficient reasons, before the finalisation of duly audited accounts to

form an opinion, and to make a reference within sixty days of forming such an opinion under the proviso to Section 15(1) of the Act. In other cases, the sickness must be reported by the Board of Directors within sixty days of the date of finalisation of the duly audited accounts of the company for the financial year, at the end of which the company will become a sick industrial company. Without prejudice to the aforesaid, the Central Government or the Reserve Bank or the State Government or a Public Financial Institution or a State level institution or a Scheduled Bank may, if it has reasons to believe, that an industrial company has become sick, make a reference for which no limitation is prescribed under subsection (2) of Section 15 of the Act. Section 16(1)(b) of the Act mandates the Board to make such inquiry as it may deem fit for determination whether any industrial company has become sick industrial company, either upon receipt of reference u/s 15 or upon information received with respect to such company or upon its own knowledge as to the financial condition of the company. These three sources have been provided in the Act for the Board to initiate proceedings of determination of sickness and thereafter to take measures under Sections 16, 17 and 18 of the Act. The purpose of the provisions is the timely detection. Since the Board of Directors are primarily responsible for preparing the accounts of the company, they are the one who first acquire the knowledge of the sickness of the industrial company. They can either before the finalisation of the accounts form an opinion or after finalisation of the accounts inform the Board with regard to sickness. Whereas no limitation is provided for formation of an opinion before finalisation of duly audited accounts, the period of sixty days from the date of such finalisation in respect of the financial year has been provided.

18. Section 210 of the Companies Act, 1956, provides for placing of annual accounts before annual general meeting by the Board of Directors of the Company. There has to be at least one annual general meeting u/s 166 of the Companies Act in the course of one year in relation to the financial year. It is thus not open to the company to submit accounts for more than one year for consideration at the annual general meeting. A profit and loss account for the period along with auditor"s report, as provided under Sections 216-218 and other specified documents to be attached/annexed to the annual accounts, and its circulation u/s 219 to the members before it is laid before the annual general meeting. It is only after the balance sheet and profit and loss account have been placed before and considered by the general body of the share-holders of the company, that they are finally accepted and thereafter u/s 220, these have to be filed with the Registrar within 30 days from the date on which the balance sheet and the profit and loss account are so laid at the annual general meeting where the annual general meeting of the company for any year has not been held, Section 220 provides that these shall be filed with the Registrar within 30 days from the latest day on or before which that meeting should have been held in accordance with the provisions of the Act. Sub-section (2) of Section 220 provides that if the annual general meeting of the company before which a balance sheet is laid does not adopt the balance sheet, or is adjourned without adopting the balance sheet, or, if the annual general meeting of the company for any year has not been held, a statement of that fact and the reasons therefore shall be annexed to the balance sheet

and to the copies thereof required to be filed with the Registrar. In default, every officer of the company is liable to punishment, as provided u/s 162 of the Act.

19. Upon receipt of the profit and loss account and the balance sheet by the Board of Directors at the annual general meeting of the company, held in pursuance of Section 166, in the case of any subsequent annual general meeting of the company under Sub-section (3) (b) of Section 210, to the period beginning with the day immediately after the period for which the account was last submitted, and ending with a day which shall not precede the day of the meeting by more than six months, or, in any case, where an extension of time has been granted for holding the meeting under the second proviso to Sub-section (1) of Section 166, by more than six months and the extension so granted. Sub-section (4) of Section 210 provides that the period to which the account aforesaid relates is referred to in this Act as a "financial year" and it may be less or more than a calendar year, but it shall not exceed fifteen months provided that it may extend to eighteen months where special permission has been granted in that behalf by the Registrar. Failure to comply with the aforesaid provisions is punishable with imprisonment. The balance sheet u/s 211 is to provide true and fair view of the state of affairs of the company at the end of the financial year as every profit and loss account under Sub-section (2) is required to give a true and fair view of the profit and loss of the company for the financial year and must comply with the accounting standards. The Board of Directors, therefore, have the first opportunity to find out the net worth of the company with reference to the balance sheet which is, subsequently, audited and is thereafter placed before the annual general meeting after its circulation. It is on account of this fact that the proviso to Section 15(1) provides that if the Board of Directors had sufficient reasons even before the finalisation of the duly audited accounts of the company for the financial year, that is, on its adoption at the annual general meeting, to form an opinion that the company had become a sick industrial company, the deeming provision u/s 3(da) has been provided, taking into account the provisions of the Companies Act and by way of giving sufficient opportunity to the company to form an opinion and to refer the matter to the Board u/s 15(1) of the Act. After such finalisation of accounts, two months" period has been provided to make a reference.

20. The purpose of citing the aforesaid provisions of the Companies Act, 1956, is to find out the object of the definition of the date of finalisation of the duly audited accounts", and the time period provided u/s 15(1) of the Act. Even if the audited accounts are not adopted at the annual general meeting of the company, they shall have the same effect inasmuch as these have to be filed with the Registrar of Companies. The Act, however, starts the period of limitation of sixty days from the date they are adopted at the annual general meeting of the company.

21. The object and purpose of the Act has to be seen before interpreting any of its provisions. The word "shall" occurring in Section 15(1) has to be interpreted, therefore, in the context in which it has been used and the object and purposes of the Act. The Preamble of the Act shows that S.I.C.A. was enacted as a special provision with a view to

secure timely detection of sick and potentially sick industrial companies owning Industrial undertakings, the speedy determination by a Board of experts of the preventive, ameliorative, remedial and other protective measures. The words "timely detection of sick and potentially sick industrial companies" are relevant and thus the word "shall" has to be given mandatory character. The Board of Directors, therefore, have a mandate under the Act to make a reference to the B.I.F.R. within sixty days from the date of flnallsatlon of the duly audited accounts of the company for the financial year at the end of which the company has become a sick industrial company.

22. There is no dispute, in the present case, that the company had become a sick industrial company at the end of the finalisation of the duly audited accounts of the financial year 1996-97, and thus it was mandatory for the Board of Directors to have made a reference to the Board. There was a clear delay close to two years in this case. The Board of Directors have given reasons for condonation of delay. These reasons were considered and were found to be inadequate inasmuch as the judgment in T.I.L"s. case was dated 5.8.1996 and was already available at the time of finalisation of the company"s accounts for the year 1996-97. That judgment was in respect of an appeal against B.I.F.R."s order dated 17.2.1995 and it had also referred to the earlier Judgments of the Supreme Court.

23. Coming to the submission of the scope of inquiry by the Board after the matter was remanded by the Appellate Authority, I find that firstly the Appellate Authority in its order dated 14.7.2000, had not considered the delay on the basis of finalisation of the audited accounts of the company for the financial year ended on 31.3.1996. The finding that there were considerable delay in the finalisation of the accounts for the financial year 1997-98 was arrived at without taking into account the provisions of the Companies Act under which the permission of the Registrar was required to be taken and there was no pleading that such permission was applied for or obtained by the Company. The observation of the Appellate Authority under para 8 (d) of its order dated 14.7.2000, that such delay cannot be the reason for the dismissal of a reference u/s 15(1) of the S.I.C.A., was against the mandatory provisions of the Act, Res judicata or estoppel cannot be pleaded against the Statute. The Board, therefore, did not err in law in proceeding to consider the delay firstly on the basis of finalisation of the duly audited accounts of the company for the financial year ended on 31.3.1996 and, thereafter, the delay on account of finalisation of the accounts for the financial year ended on 31.3.1997. The submissions against the jurisdiction of the B.I.F.R. to consider the matter after remand are as such not tenable.

24. There is another reason for coming to the same conclusion, namely, that the object and purpose of the Act will be defeated in case the Board of Directors are allowed to make a reference at their will. In such a case, the reference may be used as a tool against the recoveries initiated against the company, by virtue of the umbrella of protection given u/s 22 of the Act. The Board for Industrial and Financial Reconstruction and Appellate Authority for Industrial and Financial Reconstruction are not Courts to which Section 5 of the Limitation Act is applicable.

25. For the aforesaid reasons, I do not find any ground to interfere with the impugned orders. The writ petition is, accordingly, dismissed.