M/s. Salem Textiles Limited Vs The Authorized Officer and Others

Court: Madras High Court

Date of Decision: April 22, 2013

Acts Referred: Banking Regulation Act, 1949 â€" Section 36(2)
Companies Act, 1956 â€" Section 18, 391, 392, 424A, 424A(1)
Criminal Procedure Code, 1973 (CrPC) â€" Section 195
Presidency Towns Insolvency Act, 1909 â€" Section 9(2)
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 â€" Section 19, 34, 34(1), 34(2)
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) â€" Section 13, 13(2), 13(4), 17, 17(2)
Sick Industrial Companies (Special Provisions) Act, 1985 â€" Section 13(3), 13(4), 15, 15, 15
State Financial Corporations Act, 1951 â€" Section 29, 29, 30, 31, 31
Transfer of Property Act, 1882 â€" Section 69

Citation: AIR 2013 Mad 229 : (2013) 3 BC 423 : (2013) 114 CLA 560 : (2013) 178 CompCas 533 : (2013) 3 CTC 257 : (2013) 3 LW 105 : (2013) 5 MLJ 1

Hon'ble Judges: V. Ramasubramanian, J; Selvi K. Suguna, J; M. Duraiswamy, J

Bench: Full Bench

Advocate: A.R.L. Sundaresan, for Ms. A.L. Ganthimathi, for the Appellant; Arvind P. Datar, for M/S. Ramalingam and Associates for Respondent-1, Mr. K. Moorthy for Respondent-2 and Mr. K.V. Shanmuganathan for Respondents 3 to 6, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

V. Ramasubramanian, J.
Unable to reconcile itself with the opinion rendered by a Division Bench of this Court in Triveni Alloys Limited

Vs. Board for Industrial and Financial Reconstruction and Others, , another Division Bench has referred the following questions for the

consideration of the Full Bench:-

(i) Whether an action initiated in terms of Section 13(4) of the Securitisation Act, by the secured creditors, representing three-fourths in value of

the total amount outstanding, would result in the automatic abatement of the proceedings before BIFR, in view of the third proviso to section 15(1)

of the Sick Industrial Companies (Special Provisions) Act, 1985, inserted by way of amendment under Act 54 of 2002 ?

(ii) Whether the secured creditors are obliged to seek permission of BIFR, for taking action u/s 13(4), for bringing to an end the proceedings

before BIFR, when the matter is pending at the stage of Section 15 of Sick Industrial Companies (Special Provisions) Act, 1985 ?

(iii) Whether the ratio decidendi in Triveni Alloys Limited requires reconsideration or represents the correct view?

We have heard Mr. AR. L. Sundaresan, learned Senior Counsel for the petitioner, Mr. Arvind P. Datar, learned Senior Counsel for the first

respondent, Mr. K. Moorthy, learned counsel for the second respondent and Mr. K.V. Shanmuganathan, learned counsel for the respondents 3 to

6.

2. Brief facts constituting the background to this litigation, are necessary to throw light upon the significance of the reference made. Therefore, they

are summarised as follows:-

(i) The petitioner is a Company carrying on business in spinning yarn. It has two Mills.

(ii) Claiming that the net-worth of the Company got eroded as on 31.3.1998, the petitioner filed a reference before BIFR under the Sick Industrial

Companies (Special Provisions) Act, 1985. It was taken on file and numbered as Case No. 252 of 1998.

(iii) The petition was later dismissed by BIFR by an order dated 20.9.1999, but the same was set aside by the Appellate Authority (AAIFR), on

28.4.2000 and the case was remanded back to BIFR.

(iv) By a fresh order dated 29.12.2000, BIFR rejected the reference as not maintainable and the petitioner filed an appeal once again before

AAIFR.

(v) By an order dated 10.5.2001, the AAIFR again set aside the second order of BIFR and remanded the case back to BIFR for a fresh

consideration.

(vi) After the second order of remand, BIFR appointed ICICI Bank Limited as the Operating Agency on 31.01.2002.

(vii) BIFR subsequently passed an order on 30.8.2005, declaring the petitioner-company as a sick industrial company, within the meaning of the

expression u/s 3(1)(o) of the Sick Industrial Companies (Special Provisions) Act, 1985 and appointed IDBI Ltd., which is the second respondent

herein, as the Operating Agency.

(viii) The Operating Agency was directed by BIFR to carry out Techno Economic Feasibility Studies and to prepare a Rehabilitation Scheme,

before the cut-off date 31.12.2005.

(ix) We do not know what happened to the said direction. However, in the meantime, the second respondent herein (IDBI) filed an application in

O.A. No. 437 of 2001 on the file of the Debts Recovery Tribunal-I, Chennai, against the petitioner for recovery of a sum of Rs. 6,28,63,589/-,

due as on 31.1.2001, u/s 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993, hereinafter referred to the RDDB Act,

for the sake of convenience.

(x) Since neither the proceedings before the BIFR nor the proceedings before the Debts Recovery Tribunal were progressing, IDBI and other

secured creditors assigned the debts due to them from the writ petitioner, in favour of the first respondent herein. The Deed of Assignment

executed by the second respondent (IDBI) in favour of the first respondent is dated 30.3.2009.

(xi) After getting assignment of the dues, the first respondent issued a notice u/s 13(2) of the Securitisation Act, 2002 on 30.6.2010.

(xii) After giving a reply to the notice and suffering an order of rejection, the petitioner filed a writ petition in W.P. No. 18614 of 2010 on the file of

this Court. Initially, the writ petition was admitted and an interim stay was granted on 17.8.2010.

(xiii) However, the writ petition was dismissed subsequently, on 06.01.2011, on the sole ground that a notice u/s 13(2) was not amenable to

challenge and that only a measure taken u/s 13(4) could be challenged.

(xiv) As against the dismissal of the writ petition W.P. No. 18614 of 2010, the petitioner filed a SLP in SLP (Civil) No. 10732 of 2011 on the file

of the Supreme Court. But it appears that the petitioner kept on taking adjournments of the said Special Leave Petition.

(xv) On 02.02.2011, the BIFR appears to have directed the second respondent to constitute an Asset Sale Committee, for the sale of one of the

Units of the petitioner-company.

(xvi) In the meantime, on the basis of the assignment in their favour, the first respondent herein, got itself substituted in the place of the second

respondent (IDBI) in the proceedings before the BIFR. Thereafter, BIFR issued directions on 20.7.2011, directing all the secured creditors to

nominate their representatives to the Asset Sale Committee.

(xvii) However, by a letter dated 04.8.2011, the first respondent lodged its protest to the constitution of the Committee. Thereafter, the first

respondent also sent a letter on 9.8.2011, intimating BIFR that they would initiate action u/s 13(4) of the Securitisation Act.

(xviii) Challenging the said communication, the petitioner filed another writ petition in W.P. No. 19262 of 2011 and obtained an interim stay of

further proceedings. However, the writ petition was eventually dismissed on 02.11.2011, on the ground that the letter impugned therein was not

actually a possession notice u/s 13(4) of the SARFAESI Act.

(xix) Thereafter, a possession notice u/s 13(4) of the Securitisation Act, was issued by the first respondent on 17.11.2011. Challenging the said

notice, the petitioner filed a fresh writ petition in W.P. No. 26905 of 2011. It is in this writ petition that the present reference has come up before

us.

3. The writ petition was admitted and an interim stay was granted in the first instance. Thereafter when the writ petition came up for hearing before

the Division Bench, the first respondent prayed for a dismissal of the writ petition by relying upon -- (i) the third proviso inserted u/s 15(1) of the

Sick Industrial Companies (Special Provisions) Act, 1985, under Act 54 of 2002 (Securitisation Act) and (ii) a decision of this Court in Triveni

Alloys Limited v. Board for Industrial and Financial Reconstruction (2006 (132) CompCases 190(Mad)). In the said decision, a Division Bench of

this Court took the view that once a decision is taken by the secured creditors representing not less than three-fourths in value of the amount

outstanding, the proceedings before the BIFR would abate. The contention of the petitioner that the proviso to Section 15(1) would apply only at a

stage where the reference is pending, but not to a stage where an appeal is pending, was rejected by the Division Bench.

4. But, the petitioner herein relied upon a contra view taken by a Division Bench of the Orissa High Court in Noble Aqua Pvt. Ltd. and Others Vs.

State Bank of India and Others, In the said decision, the Division Bench of the Orissa High Court held that once the stage of reference has crossed

and the proceedings before BIFR had gone far ahead, culminating in an order declaring the company to be sick, the third proviso inserted u/s

15(1) of SICA could not be invoked.

5. But the decision of the Division Bench of the Orissa High Court was not accepted by a Division Bench of the Delhi High Court in Punjab

National Bank and Others Vs. AAIFR and Others, . In that case, the Division Bench of the Delhi High Court disagreed with the opinion rendered

by the Division Bench of the Orissa High Court and agreed with the contra view taken by a Division Bench of the Bombay High Court.

6. In view of the above conflicting opinions and finding itself unable to agree with the opinion rendered in Triveni Alloys Limited, the Division Bench

of our High Court passed a brief order on 14.12.2012 in the above writ petition, referring the issue to a larger Bench. Since the Division Bench has

not chosen to formulate the reference precisely in the form of questions, it has become necessary for us to extract paragraphs 15 to 17 of the order

of reference, to facilitate us to render our opinion. Therefore, paragraphs 15 to 17 of the order of reference are extracted as follows:

15. Considering the avowed object of the Acts and in the context of the provisions u/s 13(4) of the Securitisation Act, the ultimate aim of the

Securitisation Act on recovery is not just by sale alone and taking note of the view of the Delhi High Court that mere decision of the secured

creditors representing three fourth in value of the amount outstanding may not amount to a measure taken to recover a secured debt u/s 13(4) of

the Securitisation Act and something more concrete has to be done by the secured creditors to show the availability of any revival scheme, we feel,

the decision requires reconsideration by a Larger Bench.

16. In the circumstances, the question that requires a decision before the Larger Bench is in the context of passing of the Securitisation Act and the

amendment brought forth under proviso to Section 15 of SICA as to whether the action of the secured creditors, representing three-fourth in value

of the amount outstanding, u/s 13(4) of the Securitisation Act, results in automatic abatement of the proceedings before BIFR? In other words, at

the stage of Section 15, whether the secured creditors must seek the permission of the Board as to the action to be taken u/s 13(4) of the

Securitisation Act for the purpose of bringing an end to the proceedings before the BIFR. Since Section 22 of SICA refers to the stage of

proceedings under Sections 16 and 17 of SICA and as we are now concerned about Section 15 of the SICA alone, we restrict our reference only

to this stage of the proceedings u/s 15 of the SICA.

17. Registry is directed to place the papers before the Honourable the Chief Justice for listing the matter before the Larger Bench for considering

the correctness of the decision of this Court reported in TRIVENI ALLOYS LIMITED.

7. It is only after a careful reading of paragraphs 15 to 17 of the order of reference extracted above, that we have deduced the questions arising

before us for consideration, in paragraph 1 above.

Question No. 1

8.1. As pointed out in paragraph 1 above, the first question that requires our opinion is as to whether or not, the proceedings before the BIFR

would automatically abate, in terms of the third proviso to Section 15(1) of SICA, once the secured creditors, representing three-fourths in value

of the total amount outstanding, initiate action u/s 13(4) of the Securitisation Act.

8.2. In order to find an answer to this question, it is necessary to take a look at the relevant provisions of some of the statutes, which have close

connection or nexus with each other, insofar as the issues on hand are concerned. These enactments are:

(a) The State Financial Corporations Act, 1951;

(b) The Companies Act, 1956;

(c) The Sick Industrial Companies (Special Provisions) Act, 1986;

(d) The Recovery of Debts due to Banks and Financial Institutions Act, 1993; and

(e) The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

8.3. It will be of interest to note that while the purpose and object of some of the above enactments are to achieve speedy recovery of amounts

due from borrower Companies, to Banks, financial institutions and statutory Corporations, the object and purpose of other enactments have been

to protect companies from economic death. Therefore, the objects and purposes of these Acts or some of the provisions of these Acts, vis-a-vis

the other provisions, have always stood in conflict with each other. The resolution of this conflict has posed greater challenges to judicial institutions

resulting at times in recovery of dues, but many times only in the conduct of legal research, at the cost of Banks and other financial institutions.

State Financial Corporations Act, 1951

9.1. The State Financial Corporations Act, 1951, was enacted, primarily with a view to enable State Governments to set up Industrial Financial

Corporations, on the same lines as the Central Financial Corporations set up under Act XV of 1948 by the Central Government, immediately after

independence. But, even at that time, the Parliament was conscious of the fact that recovery of amounts financed by State Financial Corporations

to industries, may pose difficulties, if the Financial Corporations are also required to follow the normal route of recovery through civil Courts.

Therefore, Sections 29 to 32 were incorporated in the Act, empowering the Financial Corporations (i) to take over the Management or possession

or both of the industrial concern; (ii) to have the right of transfer by way of lease or sale and realise the property; (iii) to recall the loan; and (iv) to

apply to the District Court for the sale of the mortgaged property or for the transfer of the Management and for such orders as would safeguard

the rights of the Financial Corporation.

9.2. The State Financial Corporations Act, 1951, underwent major changes under Amendment Act 56 of 1956. One of the important changes

made, was the insertion of the provisions of Section 32A to 32G. It is relevant to note that some of these changes took place out of necessity and

they took place at or about the same time when the Companies Act, 1956 was passed.

The Companies Act, 1956

10.1. The Companies Act, 1956, was not the first enactment that regulated the law relating to incorporation and management of companies. The

1956 Act only re-placed the then existing Indian Companies Act, 1913. The focus of the 1956 Act was primarily to consolidate and amend the

law relating to companies. Nevertheless, the Act incorporated certain provisions for the winding up and dissolution of companies. The provisions

relating to winding up, were intended broadly to balance the rights of the company and the shareholders on the one hand vis-a-vis the secured and

unsecured creditors on the other hand. There was no attempt initially to take care of the interest of the workers.

10.2. Part VII of the Companies Act, comprising of five chapters, the first relating to the modes of winding up and contributories, the second

relating to winding up by the Court, the third relating to voluntary winding up, the fourth relating to winding up under the supervision of the Court

and the fifth relating to general provisions applicable to every mode of winding up, was actually modelled on the lines of the law relating to

insolvency. Just as a person sought to be adjudicated as insolvent is granted certain immunities, the Companies which are sought to be wound up

are also granted certain immunities, under the Companies Act, 1956. Say for instance, once a company is ordered to be wound up or a provisional

liquidator is appointed, no suit or other proceedings can be commenced or proceeded with, against such a company, except with the leave of the

Company Court. This is a kind of protection granted to a company ordered to be wound up, from an onslaught by various creditors, in the form of

suits or legal proceedings.

10.3. In other words, if the object and purpose of the State Financial Corporations Act, 1951, was to finance the development of industries and at

the same time, to ensure prompt recovery of dues of State Financial Corporations, the purport of some of the provisions of the Companies Act

was to provide a speed breaker to the process of recovery.

Sick Industrial Companies (Special Provisions) Act, 1986

11. Then came the Sick Industrial Companies (Special Provisions) Act, 1986, with the avowed object of identifying sick and potentially sick

companies owning industrial undertakings and for the speedy effectuation of preventive, ameliorative, remedial or other measures, to revive and

rehabilitate those companies that were capable of being revived or rehabilitated. This Act created a two tier mechanism in the form of a Board for

Industrial and Financial Reconstruction and the Appellate Authority for Industrial and Financial Reconstruction. The Board was vested with the

power to conduct an inquiry into the sickness of an industrial company, to prepare and sanction schemes for the reconstruction and for proper

management of the company or for the winding up, if the sickness was found to be irreversible. Since the object of this Act was to turn sick

industrial companies into healthy ones, perhaps by waving a magic wand, this Act also granted an immunity in terms of Section 22, against any kind

of proceedings for the recovery of dues, during the pendency of an inquiry or the preparation or operation of a Scheme.

The Recovery of Debts due to Banks and Financial Institutions Act, 1993

12. The object of this Act was the expeditious adjudication and recovery of debts due to Banks and financial institutions. This Act was the result of

the recommendations of two Committees, headed by M. Narasimmam and T. Tiwari, which found out that as on 30th September 1990, more than

15 lakhs of cases were pending in various Courts in the country, for the recovery of debts running to more than Rs. 5,622 Crores, payable to

public sector banks and about Rs. 391 Crores payable to financial institutions. This amount multiplied to a staggering figure of Rs. 1,20,000 Crores

by the year 2001, as per the survey conducted by the Ministry of Finance, which was recorded by the Supreme Court in its decision in United

Bank of India Vs. Satyawati Tondon and Others, . But, unfortunately, experience showed that the remedy provided by this RDDB Act of 1993

was much worse than the disease.

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

13.1. Therefore, Act 54 of 2002 (hereinafter referred to as the Securitisation Act, 2002) was enacted, based upon the recommendations of

Narasimmam Committee I and II and Andhyarjuna Committee. Though this Act attempted to revolutionise the method of recovery of dues by

banks and financial institutions, the procedure prescribed therein was not wholly innovative. What was already available to secured creditors in

terms of the conditions of contract, enforceable by virtue of Section 69 of the Transfer of Property Act, 1882, for the sale of the mortgaged

property without the intervention of the Court, is actually what was conferred upon the banks and financial institutions by Securitisation Act, 2002.

13.2. Interestingly, the Securitisation Act, 2002, not only brought a fresh enactment, providing for a special procedure for recovery of dues of

banks and financial institutions, but also sought to amend three other related enactments, namely, (i) The Companies Act, 1956, (ii) The Securities

Contracts (Regulation) Act, 1956, and (iii) The Sick Industrial Companies (Special Provisions) Act, 1985. It is, by virtue of Section 41 of the

Securitisation Act, 2002, read with the Schedule thereto that two provisos were inserted under the already existing proviso to Sub-section (1) of

Section 15 of SICA. Section 41 of the Securitisation Act, 2002, reads as follows:

41. Amendments of certain enactments.- The enactments specified in the Schedule shall be amended in the manner specified therein.

The relevant portion of the Schedule to the Securitisation Act, 2002, reads as follows:

13.3. The validity of the provisions of the Securitisation Act, 2002, came under challenge before the Supreme Court in Mardia Chemicals Ltd. Vs.

Union of India (UOI) and Others Etc. Etc.,). While upholding the provisions of the Act, except Section 17(2), the Supreme Court pointed out that

there must be some fine tuning. Therefore, Act 54 of 2002 was amended by Act 30 of 2004.

13.4. The Securitisation Act, 2002, barred the jurisdiction of civil Courts u/s 34. Section 35 made the provisions of the Securitisation Act, to have

overriding effect upon all other laws for the time being in force or any instrument having effect by virtue of any law, notwithstanding anything

inconsistent therewith. But, at the same breadth, Section 37 of the Securitisation Act, declared that the provisions of that Act shall be in addition to

and not in derogation of the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India

Act, 1992, and the Recovery of Debts due to Banks and Financial Institutions Act, 1993. Interestingly, Section 37 does not make a mention about

SICA, though it makes a mention about the Companies Act, 1956 and Securities Contracts (Regulation) Act, 1956, all the three of which were

amended by Section 41 read with Schedule to the Securitisation Act, 2002.

13.5. Before proceeding further, it would be useful to take not of Section 37. Hence, it is extracted as follows:

37. Application of other laws not barred.- The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of,

the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India

Act, 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) or any other law for the time

being in force.

13.6. We have already seen that u/s 41 read with the Schedule, to the Securitisation Act, 2002 three Acts were amended, including the Sick

Industrial Companies (Special Provisions) Act, 1985. But, Section 37 took along with it the provisions of the other two enactments, to have

simultaneous application. It did not specifically mention the name of SICA in Section 37. Section 37 nevertheless uses the phrase ""any other law

for the time being in force"". But, this cannot be taken to include SICA, in view of the fact that two out of three enactments amended by the Act,

are specifically mentioned in Section 37, along with other enactments not amended at all. Therefore, if Parliament wanted all the three Acts

amended by Section 41 read with Schedule to the Securitisation Act, 2002, to have simultaneous effect, the Parliament would have made a

mention of all the three enactments in Section 37, without omitting one of the three enactments. This omission in Section 37, to name SICA along

with the other 2 enactments, is a conscious and deliberate omission. Keeping the same in mind, let us proceed further.

14. The history of legislative march from 1951 to 2004 under the above enactments would show that while two enactments, namely, the 1993 Act

and 2002 Act, were intended to achieve speedy and effective recovery of the dues of banks and financial institutions, the object of other

enactments was actually to revive industries and rehabilitate them, even at the cost of impeding the process of recovery of dues of banks and

financial institutions. In other words, these enactments started working at cross-purposes, providing a never ending tug-of-war between

borrowers, which are industries and lenders that are banks and financial institutions. This tug-of-war and the conflict situation has led to legal

battles throwing up a wide spectrum of results, ranging from one extreme to the other.

15. The conflict between the State Financial Corporations Act, 1951 and SICA came up for consideration before the Supreme Court in

Maharashtra Tubes Ltd. Vs. State Industrial and Investment Corporation of Maharashtra Ltd. and Another,). In the said decision, the Supreme

Court underplayed the object behind Sections 29 and 31 of the State Financial Corporations Act, 1951, and held that the primary objective of

1951 Act was to provide an impetus to industrialisation, by providing financial assistance to industrial concerns and that the power conferred upon

Financial Corporations under Sections 29 and 31 was not the underlying object and purpose of the statute. Nevertheless, the Court indicated in

paragraph 7 that both 1951 and 1985 Act are special enactments, each having a different objective, with the emphasis in the case of the former

being on providing financial assistance and the emphasis in the case of the latter being to revive and rehabilitate the sick industries. On account of

the manner in which the objects of both the Acts were construed, the Supreme Court eventually came to the conclusion that where an enquiry u/s

16 or 17 of SICA was pending, or where an appeal was pending u/s 25 of SICA, there should be cessation of the coercive activities in terms of

Section 22(1). In other words, the bar u/s 22(1) of SICA was construed to include even the coercive measures provided under Sections 29 and

31 of the 1951 Act.

16. Yet another conflict that arose between the provisions of SICA, 1985 and the provisions of the Arbitration and Conciliation Act, 1996, came

up for consideration before the Supreme Court in Morgan Securities and Credit Pvt. Ltd. Vs. Modi Rubber Ltd., . It was held in the said decision

that BIFR has powers u/s 22(3) of SICA to suspend the operation of an award. In other words, the Court held that the provisions of the

Arbitration and Conciliation Act, 1996, would not prevail over the provisions of SICA, 1985. Though both the learned Judges who constituted the

Bench that decided Morgan Securities, expressed concurrent opinion on the question of law, P.K. Balasubramanian, J, made an observation in the

concluding portion of his opinion, which is worthy of being noted. It reads as follows:

Occasions are not infrequent when not so scrupulous debtors approach BIFR to stall the proceedings and to keep their creditors at bay. The delay

before BIFR is sought to be taken advantage of. Parliament has apparently taken note of this and has repealed SICA by the Sick Industrial

Companies (Special Provisions) Repeal Act, 2003. The vacuum, thus created has been filled by an amendment to the Companies Act. But, so far,

the provisions of the amending Act and the Companies Act introduced, have not been brought into force. It appears to be time to consider

whether these enactments should not be notified.

17. Similarly, the interplay between the provisions of the Presidency Towns Insolvency Act, 1909 and SICA with reference to an award passed

under the Arbitration and Conciliation Act, 1996, came up for consideration in Paramjeet Singh Patheja Vs. ICDS Ltd., . The Court held that an

arbitration award is not a decree within the meaning of Section 9(2) of the Presidency Towns Insolvency Act, 1909 and that the award could not

be executed, in view of the statutory stay u/s 22 of SICA. However, the issue appears to have been referred to a Larger Bench subsequently in

Zenith Steel Tubes and Industries Ltd. and Another Vs. SICOM Limited, .

18. Similarly, the conflict between the provisions of SICA and the provisions of RDDB Act, 1993, was considered by a two member Bench of the

Supreme Court in KSL and Industries Ltd. Vs. Arihant Threads Ltd. and Others, . The facts out of which the said case arose, are quite interesting

to be noted. The company in question suffered a certificate of recovery issued by the Debts Recovery Tribunal and the properties of the company

were brought to sale in pursuance of the certificate of recovery. At that stage, the company filed a reference before BIFR. Based upon the said

reference, the auction sale was set aside by the High Court at the instance of the company, on the ground that Section 22 of SICA operated as a

complete bar to recovery proceedings. The judgment of the High Court became the subject matter of the Civil Appeal before the Supreme Court.

The Bench, before which KSL & Industries Ltd. came up for hearing, was divided in its opinion on the scope of the non obstante clause contained

in Section 34 of the RDDB Act, 1993. While C.K. Thakker, J, opined that the 1993 Act being subsequent in point of time should be given priority

and primacy over SICA, especially in view of Section 34(2), Altamas Kabir, J, held that in view of Section 34(1) of RDDB Act, the provisions of

SICA will prevail over the provisions of RDDB Act. Therefore, the question has been referred to a Larger Bench.

19. At this stage, it may be necessary to take note of the manner in which Section 34 of the RDDB Act, 1993, has been worded and the manner in

which the 2 sub-sections of section 34 of RDDB Act have been imported into Sections 35 and 37 of the Securitisation Act, 2002.

20. A careful reading of Sub-sections (1) and (2) of Section 34 of RDDB Act, 1993 and Sections 35 and 37 of the Securitisation Act, 2002,

would show that Section 34(1) of the former is in pari materia with Section 35 of the latter and Section 34(2) of the former is in pari materia with

Section 37 of the latter. But, a small distinction, which makes a large significance, is present in the Securitisation Act, 2002 and the same can be

appreciated, by providing in a tabular form, the Sub-sections of 34 of the 1993 Act and Sections 35 and 37 of the Securitisation Act, 2002.

Thus sub-section (1) of section 34 of RDDB Act was made subject to sub-section (2) by the use of the expression ""save as provided under sub-

section (2)"". But section 35 of the Securitisation Act, 2002 is not controlled by section 37 nor made subject to section 37. Keeping this distinction

in mind let us proceed further.

21. The above discussion would show that though the conflict or interplay between the provisions of SICA, 1985 and various other enactments

have come up before courts for consideration, the conflict between SICA and the Securitisation Act, 2002, has not come up for resolution before

the Supreme Court. Therefore, different High Courts appear to have taken different views, which can be summarised as follows:

(i) In Triveni Alloys Limited Vs. Board for Industrial and Financial Reconstruction and Others, a company, whose appeal before the Appellate

Authority for Industrial and Financial Reconstruction was pending, came up before this Court seeking two reliefs, namely, (a) to quash an order of

the financial institution issued in terms of the provisions of the Securitisation Act, 2002, and (b) to restrain the financial institutions from initiating any

recovery proceedings till an appeal before AAIFR was decided under the provisions of SICA. A Division Bench of this Court dismissed the writ

petitions on two grounds, namely, (i) that in view of the third proviso to Section 15(1) of SICA, all proceedings including an appeal before AAIFR

would abate, if the secured creditors representing not less than three-fourths in value decide to proceed under the Securitisation Act, 2002, and (ii)

that in any case, the petitioner should move an appeal u/s 17 of the 2002 Act before the Debts Recovery Tribunal against the measures initiated u/s

13(4).

(ii) In Noble Aqua Pvt. Ltd. and Others Vs. State Bank of India and Others, , the Borrower Company filed an application u/s 15(1) of SICA in

October 2005. Initially, BIFR refused to register the reference, but on appeal to the AAIFR, the reference was directed to be registered. In

November 2006, BIFR overruled the objections of the Bank and declared the Company to be a Sick Unit. The BIFR also appointed the Bank as

the Operating Agency, with a direction to prepare a Revival Scheme. Interestingly, the order of BIFR declaring the Company to be sick, also

recorded a request made by the Bank u/s 22(1) of SICA for permission to proceed to recover the amounts due. While the matter was pending

before BIFR, the Bank filed an application for recovery under the RDDB Act, 1993. Much before the Borrower Company filed the application

before BIFR, the Bank had also issued a notice u/s 13(2) in September, 1994 itself, but did not issue a possession notice until April 2007.

Eventually, the possession notice u/s 13(4) of the Securitisation Act, 2002, was issued on 7.4.2007. Challenging the possession notice, the

Borrower filed a writ petition that came up before a Division Bench of the Orissa High Court. Reliance was placed on behalf of the Bank, upon the

third proviso to Section 15(1) of SICA, inserted by Section 41 read with the Schedule to the Securitisation Act, 2002. But the Division Bench of

the Orissa High Court held that the third proviso to Section 15(1) could be invoked, only when the proceeding under the SICA was at the stage of

reference. Once the proceeding before BIFR had gone far ahead of the reference and had culminated in an order by which the Company was

declared as sick, then the reference cannot abate in terms of the third proviso to Section 15(1). In paragraph 21 of its order, the Orissa High Court

held that the order declaring the Borrower Company, to be sick and consequently appointing the Bank as the Operating Agency had attained

finality, due to the failure of the Bank to file an appeal and that therefore, the Bank was not entitled to invoke Section 13(4) of the Securitisation

Act, 2002, without seeking the consent of BIFR. In other words, the sum and substance of the ratio laid down by the Division Bench of the Orissa

High Court was that the proceedings before BIFR would abate in terms of the third proviso to Section 15(1) of SICA, only in cases where the

proceeding before BIFR is pending at the stage of reference and not in cases where a declaration of sickness had been made and an Operating

Agency already appointed.

(iii) After the judgment of the Division Bench of the Orissa High Court, a similar issue came up for consideration before a Division Bench of the

Delhi High Court in Punjab National Bank and Others Vs. AAIFR and Others, . In the case before the Division Bench of the Delhi High Court, the

Borrower Company filed a reference before the BIFR in the year 2000. The reference was rejected in November 2000. At about the same time,

the Bank filed two applications for recovery before the Debts Recovery Tribunal under the RDDB Act, 1993. When it was pending, the Borrower

Company challenged the order of BIFR before AAIFR. The AAIFR also dismissed the appeal. Thereafter, a fresh reference was made by the

Borrower Company, in the year 2001 and a third reference was made in the year 2002. Thereafter, the Consortium of Banks took a decision to

initiate proceedings under the Securitisation Act, 2002. In pursuance of the said decision, a possession notice was issued and possession was

taken on 18.9.2004. Thereafter, the reference was taken up for hearing by BIFR and an order was passed by BIFR on 1.11.2004 (after

possession was taken) that the reference abated in view of the third proviso to Section 15(1). But the said order of BIFR was reversed by AAIFR

on an appeal filed by the Borrower Company. The said order of AAIFR became the subject matter of challenge at the instance of the Bank before

the Division Bench of the Delhi High Court.

Before the Division Bench of the Delhi High Court, the Bank relied upon the decision of this Court Triveni Alloys Ltd. The borrower-Company

relied upon the decision of the Division Bench of the Orissa High Court in Noble Aqua Pvt. Ltd.

Interestingly, the Delhi High Court disagreed with the reasoning, but agreed with the conclusion reached by this Court in Triveni Alloys. The only

area where the Delhi High Court found itself unable to agree with the decision in Triveni Alloys, was whether to invoke the third proviso to Section

15(1) of SICA, it is sufficient for the secured creditors to take a decision to take recourse to Securitisation Act, 2002. The Delhi High Court

opined that something more concrete has to be done by the secured creditors. But the Delhi High Court did not go beyond and articulate as to

what that concrete thing actually was.

In so far as the decision of the Orissa High Court in Noble Aqua was concerned, the Delhi High Court disagreed with the opinion rendered

therein. After extracting paragraphs 19 to 21 of the decision of the Orissa High Court, the Delhi High Court held in the concluding portion of

paragraph 10 of its decision that ""the pendency of reference, referred to in the third proviso to Section 15(1), would include even the preparation

of the Revival Scheme pursuant to the reference, that is taking of any action by the BIFR including the preparation of a Scheme pursuant to the

reference"".

After pointing out that in order to avail the principle laid down in the decision of the Orissa High Court in Noble Aqua, it will have to be

demonstrated that a Scheme had been framed by BIFR, the Delhi High Court concluded in the last two lines of its decision in paragraph 10 that

even if a Scheme had been framed, it would make no difference to the import of the third proviso to Section 15(1).

Two important observations were made by the Delhi High Court, which deserve to be taken note of. They are (i) that with the insertion of the third

proviso to Section 15(1) of SICA, the jurisdiction of BIFR itself was divested; and (ii) that the question of harmonious construction of both SICA

and Securitisation Act, 2002, did not arise as by the 2002 Act, the jurisdiction of BIFR was taken away.

For coming to the above conclusion, the Delhi High Court quoted with approval a decision of the Division Bench of the Bombay High Court (at

Nagpur) in Ravi Spinning Ltd. and Others Vs. Union of India (UOI) and Another, .

(iv) In Kanakadhara Spinning Mills vs. The Registrar {W.P. No. 10600 of 2007 decided on 23.7.2009}, the Borrower Company, challenged a

notice issued u/s 13(2) of the Securitisation Act, 2002, before a Division Bench of this Court, on the ground that a reference was pending before

BIFR. In that case, the decision of the Division Bench of the Orissa High Court in Noble Aqua, was relied upon by the Borrower Company. But

the said decision was distinguished by Division Bench of this Court, on the sole ground that in that case, the reference was only pending and that it

had not gone far beyond.

(v) In Intergrated Rubian Exports Ltd. Vs. Industrial Finance Corporation of India Ltd. Ors., , the borrower Company made a challenge to the

measures taken by the secured creditors under the Securitisation Act, 2002, on the ground that there was a bar u/s 22(1) of SICA. Reliance was

placed on the decision of the Orissa High Court in Noble Aqua. Thottathil B. Radhakrishnan, J., while dismissing the writ petition, held that it was

not even necessary to go into the question whether the proceedings before BIFR was pending only at the stage of reference or had gone beyond

that. The learned Judge held that Section 35 of the Securitisation Act, 2002, which is a later enactment, overrides the provisions of Section 22 of

SICA, which was a previous enactment. In other words, the learned Judge of the Kerala High Court went to the extent of holding that in the light

of Section 35 of the Securitisation Act, 2002, Section 22 of SICA does not survive anymore.

(vi) In Nabha Industries Ltd. Vs. Punjab State Industrial Development Corporation and Another, , a Division Bench of the Punjab and Haryana

High Court considered the question whether the provisions of Securitisation Act, will override SICA. After taking note of the decision of the

Orissa High Court in Noble Aqua as well as all the judgments to which we have made a reference above, the Division Bench of the Punjab and

Haryana High Court held that the Securitisation Act, will override SICA. But there are two interesting observations in the said decision. They are

(i) in paragraph 15 of its decision, the Division Bench of the Punjab and Haryana High Court held that the decision of the Orissa High Court in

Noble Aqua, did not take note of Section 35 of the Securitisation Act, 2002 and that therefore, it was per incuriam and (ii) in paragraph 29, the

Punjab and Haryana High Court held that the mere pendency of a reference before BIFR will not be a bar to proceedings under the Securitisation

Act, 2002, though in exceptional situations, where a Scheme is already approved, the issue can be gone into in a writ proceedings. In other words,

a small opening was left for exploitation by Borrower Companies. But this opinion about exceptional situations is irreconcilable, with the other

opinion that the Securitisation Act overrides SICA. If 2002 Act overrides SICA, the survival of the schemes already approved by BIFR is a moot

question unless there has been a saving clause.

(vii) In Paschim Petrochem Ltd. Vs. Authorised Officer, Kotak Mahindra Bank Ltd., , a learned Judge of the Gujarat High Court held, while

distinguishing the Division Bench of the Orissa High court in Noble Aqua, that ""a reference takes into its sweep, Sections 16, 17, 18 and 19 of

SICA and would continue to remain pending when the Scheme is sanctioned, modified, reviewed, monitored and operated successfully"". The

learned Judge firmly rejected the contention of the Borrower that a reference ceases to continue or gets terminated on passing an order u/s 17(3).

The learned Judge also held that reference under Chapter III of SICA is a genus and everything else that follows are species and that therefore the

reference should be taken to be pending at all stages.

(viii) In Nouveaw Exports Private Limited Vs. Appellate Authority for Industrial Industrial and Financial Reconstruction Co. and Others, , a

Division Bench of the Bombay High Court took note of all the above decisions, including the decision of this Court in Triveni Alloys and the

decision of the Orissa High Court in Noble Aqua and ultimately held that the expression ""reference"" occurring in the third proviso to Section 15(1)

of SICA, cannot be given a restrictive meaning. Expressing disagreement with the decision in Noble Aqua, the Bombay High Court rejected in

paragraph 24 of its decision, the contention that the expression ""reference"" is referable only to the stage of determining the measures.

22. From the above discussion, the following positions emerge:-

(i) The decision of the Division Bench of the Orissa High Court stands isolated in its opinion that abatement in terms of the third proviso to Section

15(1) of SICA would arise only at the stage of reference and not when the proceedings before BIFR had gone beyond the stage of reference. All

other High Courts, namely, Bombay, Delhi, Madras, Kerala, Gujarat and Punjab and Haryana High Courts, are of the view that the proceedings

would abate irrespective of the stage at which the reference stands or the stage to which the proceedings had gone.

(ii) Even among the High Courts which take a view contrary to that of the Orissa High Court, there is no unanimity of opinion on one aspect and

that aspect is this. While some of them take the extreme view that Securitisation Act, 2002 overrides SICA in view of Section 35 and hence one

need not even take recourse to the third proviso to Section 15(1) of SICA, the other High Courts stop only with the opinion that the expression

reference"" would include (a) an enquiry u/s 16, (b) declaration of sickness u/s 17(1), (c) appointment of Operating Agency u/s 17(3),(d)

preparation and sanction of Schemes u/s 18,(e) rehabilitation u/s 19 and (f) winding up u/s 20.

(iii) The divergence of views expressed by various High Courts, appears to have arisen primarily on account of two things, namely, (a) that u/s

32(1) of SICA 1985, the provisions of the Act and even the Schemes made thereunder, were given effect notwithstanding anything inconsistent

with any other law except the provisions of the Foreign Exchange Regulation Act, 1973 (now FEMA 1999) and the Urban Land (Ceiling and

Regulation) Act, 1976; (b) that though the Securitisation Act, 2002 also contained a similar provision u/s 35, a confusion was created by Section

37 of the Securitisation Act, 2002, retaining the application of other laws. Section 37 did not merely stop by making the provisions of the

Securitisation Act, 2002 in addition and to not in derogation of the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the

Securities and Exchange Board of Act, 1992 and the RDDB Act, 1993, but also contained an additional (perhaps unnecessary) expression ""or

any other law for the time being in force"". By amending SICA 1985 u/s 41 read with the Schedule to the Securitisation Act, 2002, the Parliament

also gave an indication that they had taken note of the existence of Section 32 in SICA 1985 and yet did not choose to give overriding effect for

Securitisation Act, 2002 over SICA 1985. It is this confusion that has created a judicial divide, on the purport of (a) the effect of Securitisation

Act, 2002 and (b) the third proviso to Section 15(1) of SICA.

23. Therefore, for resolving the above conflict and sinking all the differences of opinion, it may first be necessary to take note of 3 developments

that have taken place, one in the year 2002 in the form of Companies (Second Amendment) Act, 2002, the second in the same year 2002 in the

form of Sick Industrial Companies (Special Provisions) Repeal Act, 2003 and the third in the year 2004 in the form of Enforcement of Security

Interest and Recovery of Debts Laws (Amendment) Act, 2004.

Companies (Second Amendment) Act, 2002

24. First let us take note of what led to the Companies (Second Amendment) Act, 2002. In the year 1999, the Government constituted a

Committee under the Chairmanship of Justice V. Balakrishna Eradi, a retired Judge of the Supreme Court, to review the law relating to Insolvency

and Winding up of Companies. The Committee presented a Report on 31.7.2000, under the caption ""Report of The High Level Committee on

Law Relating to Insolvency and Winding up of Companies"". Chapter 5 of the said Report dealt with the subject that would provide some clue on

the issues raised before us. The title given to Chapter 5 was ""Revival or Winding up of Companies-Linkages between Companies Act, 1956

(Part-VII) and Sick Industrial Companies (Special Provisions) Act, 1985"".

25. Paragraph 5.8 (in Chapter 5) of the said Report dealt with the ""Review of the performance of BIFR"". It requires to be extracted as under:-

5.8 Review of the performance of BIFR:

5.8.1 The Committee had the benefit of hearing the views of the Union Labour Secretary, Union Banking Secretary and experts representing

financial institutions, commercial bodies and Indian Bankers Association on the subject. These organisations and persons have with one voice

expressed a clear opinion that the BIFR and AAIFR have not been able to fulfil the purpose and mandate as envisaged under the SICA, of

providing viable schemes for the revival of sick companies in a reasonable short time frame.

The Committee, at the request of the members of the BIFR gave them a hearing. The submissions were made with regard to the status of cases

registered with the BIFR as on 30th June, 2000, and the Committee was informed that out of 3,068 cases referred to the BIFR from 1987 to

2000, all but 1,062 cases have been disposed of. Out of the cases disposed of, 264 cases were revived, 375 cases were under negotiation for

revival process, 741 cases were recommended for winding up and 626 cases were dismissed as not maintainable.

5.8.2 The detailed year-wise statistics in this regard furnished by BIFR are as under:

TABLE II

BOARD FOR INDUSTRIAL AND FINANCIAL RECONSTRUCTION

Status of cases registered with BIFR as on 30-6-2000

26. In paragraph 5.9, the Eradi Committee made the following observations on the utility of the institution of BIFR and the provisions of SICA:-

5.9 Desirability of continuance of SICA and BIFR.--The above facts and figures speak for themselves and they place a big question-mark on the

utility of the institution of the BIFR and the SICA. The problem of endemic delays inherent in SICA procedures of revival and reconstruction is to

a great extent exacerbated by the large scale abuse of the provisions relating to suspension of legal proceedings, suits and enforcement of contracts

and other remedies contained in Section 22 of the Act. The recent decision of the Supreme Court in M/s. Rishabh Agro Industries Ltd. Vs. P.N.B.

Capital Services Ltd., , is an illustration of the point under discussion. The other criticism levelled against the BIFR and the provisions of SICA in

the course of presentations before the Committee also deserve brief notice:

(i) The main drawback of the SICA scheme is that it leaves the debtor company in possession of the assets which creates an asymmetry and

imbalance between the debtor company and its creditors conferring on the inefficient or inept management an unmerited advantage. Indeed, there

are judicial decisions in support of the proposition that the pendency of a reference u/s 16 of the SICA does not create a legal bar to the sick

company disposing of its assets during such pendency in U.P. State Sugar Corpn. Ltd. Vs. U.P. State Sugar Corpn. Karamchari Assn. and

Others, .

(ii) The debtor in possession allows the promoters to leverage information advantages and to create tailor made delays in the proceedings by taking

recourse to the suspension of legal proceedings under the provisions of Section 22 of the Act.

(iii) The implementation by the BIFR of the various steps and measures under the scheme sanctioned with reference to Section 18 or 19 of the Act

in a sequential rather than concurrent manner is an additional contributory factor leading to long and avoidable delays in the disposal of cases and

proceedings.

27. Again in paragraph 5.15, the Eradi Committee pointed out that ""the effectiveness of SICA has been severely undermined by reason of the

enormous delays involved in the disposal of cases by BIFR"". The Committee also observed that ""the success rate of revival of sick companies has

fallen far too short of the expectations"". Consequently, the Committee recommended that SICA should be repealed and the provisions contained

therein for revival and rehabilitation, should be telescoped into the structure of the Companies Act, 1956 itself.

28. As pointed out earlier, the Eradi Committee submitted its Report on 31.7.2000. On the basis of the said Report, the Companies (Amendment)

Bill 2001 was prepared and after it was passed by both Houses of Parliament, it received the assent of the President on 13.1.2002. The Act

provided for the Constitution of a National Company Law Tribunal, which was supposed to be a substitute for the Company Law Board, the High

Court, BIFR and AAIFR. With the Constitution of the National Company Law Tribunal, all proceedings pending before the High Courts and the

Company Law Board, were made liable to be transferred to the said Tribunal. The question of abolishing BIFR and AAIFR was left to be taken

care of by a separate repealing Act for SICA 1985. Interestingly, the Companies (Second Amendment) Act, 2002, omitted to include a provision

similar to Section 22(1) of SICA, for the protection of companies whose reference is pending before the National Company Law Tribunal.

Consequently, the creditors were given the liberty to file suits or initiate other proceedings for recovery of dues despite the pendency of

proceedings for the revival of rehabilitation of a sick Company, before the National Company Law Tribunal.

29. Closely on the heels of the Companies (Second Amendment) Act, 2002, came the Securitisation Act, 2002. While the Companies (Second

Amendment) Act, 2002 received the assent of the President on 13.1.2002, the Securitisation Act, 2002 received the assent of the President on

17.12.2012. While the Companies (Second Amendment) Act, 2002 sought among other things, to create a National Company Law Tribunal as a

substitute for BIFR, the Securitisation Act, 2002 sought to make inroads into the powers of the BIFR when secured creditors representing three

fourths of the dues decided to initiate action u/s 13(4). With these objects in view, the Parliament passed the third enactment, namely, Sick

Industrial Companies (Special Provisions) Repeal Act, 2003, for abolishing BIFR and AAIFR, within a few months of the passing of the

Securitisation Act, 2002. This Act received the assent of the President on 1.1.2004 and was actually published in the Gazette of India on

2.1.2004.

30. Thus 3 things happened in quick succession. They were (i) the enactment of the Companies (Second Amendment) Act, 2002 for the

constitution of a National Company Law Tribunal as a substitute for BIFR among other things (ii) the enactment of the Securitisation Act, 2002, by

which the role of the BIFR was reduced sizably and (iii) the enactment of SICA (Repeal) Act, 2003 for the abolition of BIFR and AAIFR, in the

fond hope that the National Company Law Tribunal would become a reality very soon.

31. But unfortunately, the provisions of the Companies (Second Amendment) Act, 2002, came under challenge before a Division Bench of this

Court in R. Gandhi vs. Union of India {W.P. No. 2198 of 2003 decided on 30.3.2004}. The challenge was upheld and the Constitution of the

National Company Law Tribunal as a substitute for BIFR, eventually paving the way for the repeal of SICA, became a distant dream. Even after

the decision of the Supreme court in Union of India vs. R. Gandhi, the path is yet to be cleared for the constitution of the National Company Law

Tribunal. Therefore, the Government could not notify the abolition of BIFR as per the repealing Act of 2003. This is the only reason why BIFR is

still surviving.

32. While on the one hand, the Companies (Second Amendment) Act, 2002, which received the assent of the President on 13.1.2002, was facing

some road blocks in the form of opposition to the constitution of a National Company Law Tribunal, on the other hand, the provisions of

Securitisation Act, 2002 were also facing a challenge before several High Courts, till the Supreme Court settled all the issues in Mardia Chemicals

Ltd. Vs. Union of India (UOI) and Others Etc. Etc., .

33. After the decision of the Apex court in Mardia Chemicals Ltd., upholding the validity of the Securitisation Act, 2002 except the provisions of

Section 17(2), the Parliament passed another Act known as ""The Enforcement of Security Interest and Recovery of Debts Laws (Amendment)

Act, 2004"". This Act received the assent of the President on 24.12.2004 and was published in the Gazette on 30.12.2004. This Act was intended

to bring some provisions of the Securitisation Act, 2002, in tune with the observations made by the Supreme court in Mardia Chemicals.

34. Thus 4 enactments came to be passed, within a span of about 2 years. They were (i) the Companies (Second Amendment) Act, 2002, based

upon the recommendations of Eradi Committee (ii) the Securitisation Act, 2002, on the basis of the recommendations of Narasimham Committee I

and II and Andhyarujina Committee (iii) the SICA (Repeal) Act, 2003 and (iv) the Enforcement of Security Interest and Recovery of Debts Laws

(Amendment) Act, 2004. All these enactments appear to have had a common economic agenda in so far as industrial growth and the security of

banking industry were concerned.

35. Under the Companies (Second Amendment) Act, 2002, a new Chapter namely, Part VI-A was inserted in the Companies Act, 1956. The

heading given to the Chapter was ""Revival and Rehabilitation of Sick Industrial Companies"". Sections 424-A to 424-L were inserted by the 2002

Amendment and these provisions were similar to those contained in Sections 16 to 20 of SICA 1985.

36. Interestingly, when Companies (Second Amendment) Act, 2002, was enacted (assent given in January 2002), the bar u/s 22(1) of SICA

1985 was absolute. Hence, Section 424-A of the Companies Act, 1956, which was given the Section-heading as ""Reference to Tribunal"", was

almost similar to Section 15(1) of SICA 1985. But after the Securitisation Act, 2002 was passed in 2002, introducing the third proviso to Section

15(1) of SICA 1985, Section 424-A of the Companies Act, 1956, also required a consequential amendment. Therefore, Section 424-A inserted

under the Companies (Second Amendment) Act, 2002, was amended by the Enforcement of Security Interest and Recovery of Debts Laws

(Amendment) Act, 2004. By this amendment, two provisos were inserted u/s 424-A(1), below the two provisos which were already in existence.

37. The two provisos inserted by the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004, under the 2 pre-

existing provisos of Section 424-A(1) of the Companies Act, 1956, read as follows:-

Provided also that in case any reference had been made before the Tribunal and a scheme for revival and rehabilitation submitted before the

commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004, such reference shall abate if the

secured creditors representing three-fourth in value of the amount outstanding against financial assistance disbursed to the borrower have taken

measures to recover their secured debt under sub-section (4) of Section 13 of the Securitisation and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002 (54) of 2002):

Provided also that no reference shall be made under this Section if the secured creditors representing three-fourth in value of the amount

outstanding against financial assistance disbursed to the borrower have taken measures to recover their secured debt under sub-section (4) of

Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002).}

38. A comparative reading of both enactments would show that the terminology used in Sections 15 to 21 of SICA, 1985, is simply borrowed and

incorporated into Sections 424-A to Section 424-H of the Companies Act, 1956. This can be appreciated from the following:-

(i) Section 15 of SICA 1985 was imported into Section 424-A, with some modifications. The Company itself is required u/s 424-A to submit a

Scheme of revival and rehabilitation even at the time of making a reference to the National Company Law Tribunal. Additionally, the Company is

required to furnish a certificate from an Auditor on the panel approved by the National Company Law Tribunal giving reasons for such reference.

(ii) The provisions of Section 16, to some extent were incorporated into Section 424-A(5). Under this provision, the National Company Law

Tribunal should first examine as a preliminary issue whether the Company is a sick industrial Company or not.

(iii) The provisions of Sections 17 and 18 were incorporated into Sections 424-C and 424-D.

(iv) The provisions of Sections 19 and 19-A of SICA 1985 were incorporated in Section 424-E and F. Significantly, no provision parallel to

Section 22 of SICA 1985 was incorporated in Part VI-A of the Companies Act.

39. A comparative table will also demonstrate this:-

40. It appears from the above that the Eradi Committee Report was accepted for telescoping Sections 15 to 21 of SICA, 1985 into the

Companies Act, 1956 and all the expressions such as reference, enquiry, sanction of schemes, operating agency, rehabilitation etc., have been

imported into the Companies Act, 1956, with the same meaning as these expressions had in SICA 1985.

41. The amendment made by the 2004 Act to the Companies Act, 1956 makes it clear that the intention of the Parliament was to make the third

proviso to section 424-A(1) of the Companies Act, 1956, in pari materia with the third proviso to section 15(1) of SICA. While making it so, the

law-makers also ensured that the principle of abatement would apply even if the reference had been submitted along with a draft scheme for revival

and rehabilitation as required by section 424-A(1). It may be seen that unlike u/s 15(1) of SICA, the industrial company making a reference is

itself bound to submit a scheme u/s 424-A. Therefore, along with the expression ""reference"", the third proviso to section 424-A included the

phrase ""and a scheme for revival and rehabilitation submitted before the commencement of the Enforcement of Security Interest and Recovery of

Debts Laws (Amendment) Act, 2004"". Another important feature to be taken note of, is that the National Company Law Tribunal is conceived

under the Companies (Second Amendment) Act, 2002 to be a forum higher in status, powers and responsibilities, than that of BIFR and AAIFR.

It is actually a substitute for the Company Court (this court). Still, the principle of abatement was made applicable, even to a reference made to

such a Tribunal by virtue of the third proviso to section 424-A. What is more significant, is the fact that atleast under SICA, the industrial company

was afforded protection from any proceedings for recovery in terms of section 22(1) of the Act, if a reference was pending before BIFR. But u/s

424-A to H, no such protection is given to a company, whose reference is pending before the National Company Law Tribunal. Therefore, the

rights of the secured creditors to proceed for the recovery of dues is not curtailed, when a reference is pending before the National Company Law

Tribunal, irrespective of the stage at which such reference is. This is a clear signal to the fact that the right conferred upon secured creditors under

the third proviso to section 15 (1) was intended to be absolute.

42. Even if we do not draw any inspiration from section 424-A of the Companies Act, we think we would still arrive at the same conclusion. The

proper way of interpreting the expression ""reference"", appearing in the third proviso to section 15(1) of SICA, in our opinion, would be as

follows:-

(i) what is made u/s 15(1) of SICA is a reference.

(ii) What is undertaken u/s 16 is an enquiry on such reference.

(iii) What is prepared and sanctioned u/s 18 is a scheme on such reference.

(iv) What Section 19 provides for, is the rehabilitation of a sick industrial Company, which has come up before them by way of a reference.

(v) What happens at the stage of Section 20 is a recommendation by BIFR for the winding up of the sick company, on the reference made by such

company to BIFR.

43. Mr. AR. L. Sundaresan, learned Senior Counsel for the writ petitioner, contended that if the expression ""reference"" appearing in the third

proviso to Section 15(1), is intended to encompass within itself, all stages of the proceedings before BIFR, then the Parliament would have used

the more appropriate expression, namely, ""proceedings"". He also contended that if the intention of the Parliament was to make the whole

proceeding abate, irrespective of the stage at which it stood, then the third proviso would have been inserted u/s 22 and not u/s 15(1).

44. We are unable to countenance both the above submissions. The expression ""proceedings"", in our opinion, was not used by the Parliament in

the third proviso to Section 15(1), due to a specific reason. Section 22(1) of SICA gives an immunity to the sick industrial company from any kind

of action including suits or other proceedings for recovery of money. Since the bar u/s 22(1) covers all types of proceedings for recovery of dues,

including winding up proceedings, the heading given to Section 22 itself is ""suspension of legal proceedings, contracts etc."". Therefore, it is clear

that the expression ""proceedings"" had to be used cautiously.

45. In view of this constraint, the lawmakers appear to have chosen the expression ""reference"", to a proceeding initiated by the sick industrial

company, u/s 15(1). By contrast, they used the expression ""proceedings"" u/s 22, to denote an action initiated against a sick industrial company. If

the very same expression ""proceedings"" had been used both in Section 15 and in Section 22, it would have led to a lot of confusion, forcing the

higher Judiciary to spend a lot of time on legal research, leaving the secured creditors in the lurch.

46. The second contention that the principle of abatement could have been inserted in Section 22(1) rather than Section 15(1), does not also

appeal to us. The soul of SICA is to be found in Sections 15 to 21. What is found in Section 22 is only a protective gear. The right to invoke the

protection u/s 22(1) of SICA is born, immediately upon a reference being registered u/s 15(1). Therefore, it was only logical that the death-knell

for such a protection was also incorporated in the very same place where the right is born. Hence, the incorporation of the principle of abatement

in Section 15(1) is more appropriate than its incorporation in Section 22(1). The incorporation of the principle of abatement in Section 15(1) of

SICA, is not an indication of the fact that the benefit of abatement would not extend beyond the stage of reference.

47. We have already extracted the relevant portion of paragraph 5.8 of the Report of the Eradi Committee along with Table II contained therein,

to show the status of cases registered with BIFR as on 30.6.2000. The website of BIFR itself provides in a tabular form, the status of cases filed in

the years 1987 to 2012 and which are still pending, despite a lapse of 25 years. It is to be noted that though SICA 1985 was passed into an Act in

1985, some of the provisions of the Act came into force only with effect from 12.1.1987. The provisions of Sections 15 to 34 came into force only

with effect from 15.5.1987. The details furnished in the website of SICA reveal that as many as 11 references made in the year 1987, were still

pending even in 2012. From the tabulations furnished in the website of the BIFR, indicating the current status of cases pending as of the year 2012,

ever since the constitution of the BIFR in 1987, we have culled out relevant details. This information can be presented in a Tabular Column as

follows:-

48. The above Table shows that more than about 500 cases are actually pending before BIFR for more than 10 years. All these companies have

been enjoying the immunity granted u/s 22(1) driving the secured creditors crazy. Even when the Eradi Committee submitted a Report in 2000, the

problem had attained alarming proportions. Therefore, any interpretation to an Amendment introduced to Section 15(1), should be in consonance

with the object of the Amendment.

49. In the ""Report on Trend and Progress of Banking in India 2011-2012"" for the year ended 30.6.2012 submitted by the Reserve Bank of India

to the Central Government in terms of Section 36(2) of the Banking Regulation Act, 1949, the ever increasing problem of Non-Performing Assets

is presented in the form of a Table which would shock one''s conscience. In Table IV. 14, the Report provides the statistics regarding Trends in

Non-Performing Assets, Bank-wise, Group-wise. As per the said Table, the opening balance of Non-Performing Assets in Public Sector Banks

for the year 2011-2012 was Rs. 746 Billion. But the closing balance for 2011-2012 was Rs. 1,172 Billion. The only silver lining, pointed out in the

said Report was that though the total amount of NPAs recovered through Securitisation Act, 2002, during 2011-2012 registered a decline

compared to the previous year, the amount recovered under the SARFAESI Act, constituted 70% of the total amount recovered. The amount

recovered through DRTs constituted only 28%. Therefore, it is clear that the efficacy of Securitisation Act, is proved to be much more than that of

any other fora.

50. Keeping the above factual basis in mind, if we go back to the core of the issue, we can find that what is provided in Sections 16 to 21 of

SICA, are only different stages of processing of a reference. u/s 15(1), the proceeding before BIFR is born, with the Board of Directors of the

company making a reference. Section 16(1)(a) makes it clear that the Board initiates an inquiry, upon receipt of a reference. This is done by

assigning a case number to the reference. All orders passed u/s 17 are only on such a reference, as identified by its case number. The preparation

and sanction of schemes u/s 18 and rehabilitation u/s 19 are also only with reference to such a case number. In cases where BIFR decides to

recommend winding up u/s 20(1), it does so, only with reference to the same case number. Therefore, from the time a reference made u/s 15(1) is

assigned a particular case number by BIFR, till the time the BIFR forwards its opinion u/s 20(1) to the High Court for winding up or till the time a

revival and rehabilitation takes place, the reference is identified by only one case number.

51. If the making of the reference u/s 15(1) can be equated to a the birth of the proceedings before BIFR, the assigning of a case number while

initiating an enquiry u/s 16 can be equated to the christening of the baby. All further proceedings before BIFR are only the blossoming of the

reference into different stages. Therefore, it is impossible to think that after a declaration of sickness and the approval of a draft rehabilitation

scheme, the proceeding ceases to be a reference. In our considered opinion, the proceeding before BIFR continues to be a reference, either till a

rehabilitation takes place and the company is revived or till an opinion is rendered by BIFR to the High Court recommending winding up. If this is

so, then there is no difficulty in concluding that the expression ""reference"" found in the third proviso to Section 15(1) of SICA would encompass

within itself, the whole gamut of proceedings including enquiry u/s 16, passing of orders u/s 17, preparation and sanctioning of schemes u/s 18,

rehabilitation through financial assistance u/s 19 and the recommendation for winding up u/s 20.

52. The entire discussion that we have had as above, can be summarised in the form of bullet points as follows:-

(i) What is christened as a reference, immediately upon the submission of necessary application by a sick industrial company, continues to be a

reference (A) when an enquiry is held u/s 16, (B) when suitable orders are passed by the Board u/s 17, (C) when the Company is declared as sick

and an Operating Agency appointed u/s 17(3), (D) when a Scheme is prepared and sanctioned u/s 18, (E) when directions for financial assistance

are issued u/s 19 and (F) when recommendation for winding up is made u/s 20. In other words, the expression reference is to be equated to the

name given to a person upon being born. The same name is carried throughout, till the reference is closed as dead and a wreath is placed.

(ii) The fact that the expression ""reference"" encompasses within itself all stages from Sections 15 to 20, is fortified by the third proviso to Section

424-A(1) of the Companies Act, 1956 inserted by the 2004 Amendment. It is relevant to note that just as Section 15(1) of SICA 1985 was

amended by Securitisation Act, 2002, Section 424-A inserted by the Companies (Second Amendment) Act, 2002, was also amended only by an

Act which amended both the Securitisation Act, 2002 as well as the Companies Act, 1956. Therefore, the indication in the third proviso to Section

424-A(1) steers clear of any doubt.

(iii) Though the provisions of Sections 15 to 21 of SICA 1985 are adopted into the Companies Act, 1956 in the form of Sections 424-A to 424-

H, there is a deliberate and cautious omission of a provision equivalent to Section 22(1) of SICA, in Part VI-A of the Companies Act, 1956. This

is one more indication to the fact that the Parliament wanted to remove this protection, which actually made the many creditors sick, at the instance

of a Company which claimed to be sick.

(iv) In view of the non availability of a provision in Part VI-A of the Companies Act, identical to section 22 (1) of SICA, the hands of the secured

creditors are not fettered from taking proceedings for recovery against the borrower-companies even if a reference is pending before the National

Company Law Tribunal, u/s 424-A. When the rights of the creditors are not fettered even when the borrower is before a Tribunal of a higher

stature and status, it is impossible to think that the third proviso to section 15(1) of SICA will be toothless beyond a particular stage of the

proceeding.

(v) The Securitisation Act, 2002, by Section 41 of which, read with the Schedule thereto, the provisions of SICA 1985 were amended,

specifically omitted to include SICA 1985 along with the 3 enactments named in Section 37 of the Securitisation Act, 2002. We have already

elaborated this point elsewhere. After amending 3 enactments, at one stroke, by Section 41 and the Schedule, the Securitisation Act, 2002,

deliberately omitted to make a mention of SICA in Section 37, though the names of the other 2 enactments are mentioned. This is a clear indication

to the fact that SICA, 1985 was not intended to be used in addition to the Securitisation Act, 2002.

(vi) The historical developments that had taken place ever since the enactment of State Financial Corporations Act, 1951, through the Companies

Act, 1956, SICA 1985, RDDB Act, 1993, Companies (Second Amendment) Act, 2002, Securitisation Act, 2002, SICA (Repeal) Act, 2003

and the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 clearly indicate that there could be only one

intention behind the insertion of the third proviso u/s 15(1) of SICA 1985. The shocking revelations made in the Eradi Committee Report support

the above contentions and we had indicated the statistics above.

53. In view of the above, we answer question No. 1 as follows:-

Once an action is initiated in terms of Section 13(4) of the Securitisation Act, 2002, by the secured creditors representing three-fourths in value of

the total amount outstanding, the proceedings before BIFR would automatically abate, in view of the third proviso inserted by Act 54 of 2002 u/s

15(1) of SICA 1985.

Question No. 2:

54. The second question referred to us is as to whether the secured creditors are obliged to seek permission of BIFR u/s 22 (1) of SICA, for

taking action u/s 13(4) and for bringing to an end the proceedings before BIFR when the matter is pending at the stage of Section 15 of SICA,

1985.

55. If an action is initiated by secured creditors not representing three-fourths in value of the total amount outstanding, then they are obliged to seek

permission of BIFR u/s 22(1) of SICA. But if secured creditors, representing at least three-fourths in value of the total amount outstanding, want to

initiate action u/s 13(4), they are well entitled to do so without seeking the permission of the BIFR. This is in view of the fact that once the secured

creditors representing three-fourths in value of the total amount outstanding decide to take action in terms of Section 13(4) of the Securitisation

Act, all the proceedings before BIFR would automatically abate. Once they abate, the question of seeking permission from BIFR would not arise

at all.

Question No. 3:

56. The third question referred to us is as to whether the ratio decidendi in Triveni Alloys Ltd., requires reconsideration or represents the correct

view.

57. As we have pointed out earlier, the Division Bench of this Court drove the petitioner in Triveni Alloys Ltd., to the Debts Recovery Tribunal u/s

17 of the Securitisation Act, 2002, by holding that the third proviso to Section 15(1) would apply even at the stage where an appeal is pending.

58. Mr. Arvind P. Datar, learned Senior Counsel appearing for the first respondent submitted that while the view taken by a few Courts that the

Securitisation Act, 2002, overrides SICA 1985, represents once extreme view, the opinion rendered in Triveni Alloys Ltd., to the effect that the

third proviso to Section 15(1) would apply even during the pendency of an appeal, represented the other extreme view point. The learned Senior

Counsel submitted that there would be some difficulty in accepting the extreme proposition formulated in Triveni Alloys Ltd., that the third proviso

u/s 15(1) would come into play even at the stage of appeal. This difficulty, according to the learned Senior Counsel, would arise in view of the fact

that BIFR and the AAIFR are constituted as quasi judicial bodies, whose decisions, rendered after an adjudication, are binding upon the parties.

Therefore, the learned Senior Counsel submitted that any interpretation to the reach of the third proviso to Section 15(1) should strike a balance.

59. We have carefully considered the above submission. It is true that SICA 1985, as it was originally enacted, was intended to create a Board

and an Appellate Authority packed with experts in various fields. Section 13(3) of SICA 1985 conferred upon the Board and the Appellate

Authority (BIFR and AAIFR), the same powers as are vested in a Civil Court under the CPC in respect of certain matters. Section 14 declared

the Board and the Appellate Authority to be a Civil Court for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure.

Every proceeding before the Board and the Appellate Authority were also declared to be judicial proceedings.

60. Therefore, the question that arises is as to whether the product or outcome of such a judicial proceeding can be set at naught by a single

stroke, by the secured creditors representing not less than three-fourths in value of the total amount outstanding.

61. But it is not a question which is incapable of being resolved. As a matter of fact, we have referred to the provisions of Part VI-A of the

Companies Act, 1956, inserted by the Companies (Second Amendment) Act, 2002. If the said Act had been notified and the National Company

Law Tribunal had been constituted, the problem would have been more complicated since the Tribunal was conferred with sweeping powers

under the Companies Act, 1956 and the Tribunal was actually intended to be a substitute not only for BIFR, but also for the Company Law Board

and the Company Court itself. In other words, if Part VI-A of the Companies Act, 1956, had become a reality and the moment the National

Company Law Tribunal is constituted, we would have had a National Tribunal, certainly higher in status as well as jurisdiction and powers over

BIFR and AAIFR. Despite this position, the 2004 Amendment inserted the third proviso to Section 424-A(1), enabling the secured creditors

representing three-fourths in value, to strike at the root of any reference. The Companies (Second Amendment) Act, 2002, by which Part VI-A

was inserted, deliberately omitted to include a provision similar to section 22 of SICA, so that the secured creditors can simultaneously proceed

with the recovery of dues, irrespective of the pendency of a reference, the conduct of an inquiry, preparation and sanction of a scheme, etc. This is

a clear indication of the shift in the mind set of the law makers, to remove the unconditional and unqualified immunity enjoyed by the borrowers, by

abusing the provisions of SICA. Therefore, it is clear that the right conferred upon the secured creditors under the third proviso to Section 15(1) is

absolute.

62. One cannot lose sight of the fact that the successful implementation of any Scheme for rehabilitation depends upon the co-operation of the sick

industrial Company and the secured creditors. The power of BIFR to prepare and sanction a Scheme u/s 18 of SICA 1985, is not like a power

similar to that of a civil court to pass a decree and leave it to the parties to have the decree enforced or executed. The Scheme of SICA is that

BIFR should not only prepare and sanction a Scheme, but also ensure its implementation. Therefore, it is a continuing process on a reference.

What BIFR is obliged to do, even if a Scheme is prepared and sanctioned, can be compared to what a Company Court is obliged to do u/s 392

of the Companies Act, 1956. u/s 392 of the Companies Act, 1956, the Company Court has the power to supervise the carrying out of the

compromise or arrangement, whenever a Scheme of arrangement or compromise is sanctioned u/s 391. Consequently, under Clause (b) of sub-

section (1) of Section 392, the Company Court has power at any time after the sanctioning of a compromise or arrangement, to give such

directions or make such modifications as it may deem necessary for the proper working of the compromise. Under sub-section (2) of Section 392,

the Company Court has the power, even suo motu, to order the winding up of the Company, if a compromise or arrangement sanctioned u/s 391,

cannot be worked out satisfactorily. The same is the position of BIFR with regard to the Schemes prepared and sanctioned u/s 18. Therefore, just

as a Company Court, sanctioning a compromise or arrangement draws the curtain down finally, only after the full implementation of the

compromise or arrangement, the BIFR would also close the files only after a Company is completely revived or recommended for winding up. Till

that stage is reached, irrespective of whether it is an appeal or not, the proceeding is only a reference. Merely because the matter had gone out of

BIFR and had reached AAIFR, it cannot be contended that a quasi judicial decision is put to the risk of being annulled by a concerted action on

the part of the secured creditors. Even the non-co-operation of secured creditors in the implementation of the Scheme, may result in the failure of

the Scheme. Once the Scheme fails and the whole matter is thrown open for consideration, there is no embargo for the secured creditors to take a

concerted action to ignite the measures u/s 13(4) of Securitisation Act, 2002 and thus seal the fate of the reference before BIFR.

63. The issue can be examined from another perspective also. An appeal before AAIFR is filed u/s 25(1) of SICA 1985. Two things are to be

noted from Section 25. They are (i) any person aggrieved by an order of the BIFR can file an appeal and (ii) an appeal is maintainable against any

order of the Board. Therefore, an appeal before AAIFR can arise under various contingencies. They are:-

(i) An appeal filed by the sick industrial Company against any decision of the BIFR, refusing to entertain a reference or refusing to declare the

Company as sick or refusing to sanction a Scheme.

(ii) An appeal filed by the sick industrial Company against a Scheme sanctioned by BIFR, on the ground that it is not acceptable to them.

(iii) An appeal filed by the sick industrial Company challenging the recommendation of BIFR for winding up.

(iv) An appeal filed by a secured creditor, declaring a Company as sick and sanctioning a Scheme.

(v) An appeal filed by a secured creditor directing them to provide financial assistance to the sick Company.

(vi) An appeal filed by a secured creditor against the recommendation for winding up.

(vii) An appeal filed by a person (who has taken part in the promotion, formation or management, including the past or present Director, Manager,

Officer or employee) against whom an order is passed u/s 24(1) or Section 24(2), on allegations of misfeasance.

64. In cases covered by the contingencies referred to in Clauses (i), (ii), (iii), (vi) and (vii) of the preceding paragraph, no conflict would arise

between a quasi judicial opinion rendered by BIFR and the concerted action taken by the secured creditors representing three-fourths in value of

the dues. Therefore in these types of cases, it hardly matters whether the matter is pending before AAIFR or not.

65. It is only in respect of matters covered by Clauses (iv) and (v) of paragraph 64 above, that the fear of conflict, expressed by Mr. Arvind P.

Datar, learned Senior Counsel for the first respondent, may be real. In other words, it is only in cases where the Company is declared sick and a

draft scheme is approved or being implemented, that an action in terms of the third proviso to Section 15(1) of SICA 1985, may be seen as an

affront to a quasi judicial order. But if law confers such a benefit upon the secured creditors, in view of the past experience gained over a quarter

of a century, the Court cannot dilute such a right, for fear of consequences. In fact, the only consequence is perhaps that a quasi judicial order gets

belittled. But public interest and the interests of Banks and Financial Institutions, which led to the amendment, should be given precedence over

such small and minor procedural oddities.

66. Section 22(1) of SICA 1985, which provides for suspension of legal proceedings etc., is made applicable at all stages viz., (i) the stage of

inquiry u/s 16(ii) the stage of preparation or consideration of a Scheme u/s 17(iii) the stage where a sanctioned Scheme is under implementation

and (iv) the stage where an appeal is pending u/s 25. But the bar u/s 22(1) is not made absolute. Section 22(1) enables the secured creditors to

proceed with any action for recovery, with the consent of the BIFR or the AAIFR. Therefore, it is clear that the protection or immunity granted u/s

22(1) is not absolute. If it is not absolute, then it would follow that the secured creditors would certainly have a right to take an action in a manner

provided by the third proviso, so as to make the proceedings abate.

67. As we have already pointed out, the actions provided for under Sections 16, 17, 18, 19, 20 and 21 as well as the proceedings u/s 25 are

nothing but a continuation of the very same reference. Once it is found that an appeal is also a continuation of the original proceedings, there is no

scope for taking a different view than the one expressed in Triveni Alloys Ltd.

68. Hence, despite the fact that the decision in Triveni Alloys Ltd., did not go into greater details, we see no reason to take a different view. The

third question is answered accordingly. To summarise, our answer to all the 3 questions referred to the Full Bench, are as follows:-

(i) Once an action is initiated in terms of Section 13(4) of the Securitisation Act, 2002, by the secured creditors representing three-fourths in value

of the total amount outstanding, the proceedings before BIFR would automatically abate, in view of the third proviso inserted by Act 54 of 2002

u/s 15(1) of SICA 1985. This is the position irrespective of whether the reference is at the stage of budding u/s 15 or at the stage of blossoming

under sections 16 and 17 or at the stage of fruition under sections 18 and 19 or at the stage of rotting (deserving only winding up) u/s 20.

(ii) The secured creditors are not obliged to seek permission of BIFR u/s 22(1) of SICA, for taking action u/s 13(4) and for bringing to an end the

proceedings before BIFR, provided they represent three-fourths in value of the total amount outstanding and they take a concerted decision to

initiate action u/s 13(4) of Securitisation Act, 2002.

(iii) The view expressed in Triveni Alloys Ltd., does not require reconsideration.

As we have answered the reference as above, the Registry is directed to place the matter before the appropriate Division Bench next week for a

hearing on merits.