Yashdeep Trexim Vs Board for Industrial and Financial Reconstruction and Others

Court: Calcutta High Court

Date of Decision: Jan. 25, 2011

Acts Referred: Banking Regulation Act, 1949 â€" Section 5
Central Sales Tax Act, 1956 â€" Section 8
Companies Act, 1866 â€" Section 582, 583, 584, 589, 591
Lease and Rent Control Act, 1960 â€" Section 2
Minimum Wages Act, 1948 â€" Section 20
Payment of Bonus Act, 1965 â€" Section 2
Penal Code, 1860 (IPC) â€" Section 21
Reserve Bank of India Act, 1934 â€" Section 45
Sick Industrial Companies (Special Provisions) Act, 1985 â€" Section 15, 19, 22, 25, 29

Citation: (2011) 106 SCL 530

Hon'ble Judges: Dipankar Datta, J

Bench: Single Bench

Advocate: Kalyan Kumar Bandopadhyay, Jaydeep Kar, Sakya Sen and Subhrangshu Ganguly, in W.P. No. 12377 W of 2010, Surajit Nath Mitra, Kishore Datta and Dibanath Dey, in W.P. No. 12406 W of 2010, Manju Agarwal and Bimal Chatterjee, in W.P. No. 12412 W of 2010, for the Appellant; P.C. Sen, for Respondents 2 and 3 in W.P. No. 12377 and 12412 (W) of 2010, S.N. Mukherjee and Jai Kumar Surana for Baranagore Jute Factory Shramik Karmochari Union, B.R. Bhattacharya and Rudrajit Sarkar for Respondent 21 in W.P. No. 12377 (W) of 2010, L.C. Bihani and N.C. Bihani for Baranagore Jute Mills Employees Union and Barana-gore Chatkal Shramik Sabha, Pratap Chatterjee and C.S. Paul for Baranagore Jute Factory PLC Workers'' Union, Tilak Kumar Bose and D.K. Singh for the Official Liquidator, Saptangshu Basu and Ranabir Roy Chowdhury for Baranagar Chatkal Mazdoor Union, Asoke Kumar Banerjee, for Baranagore Jute Mills Clerical Staff and Workmen Association Debasis Kundu and R.N. Barik for Baranagore Jute Factory PLC Mazdoor Sangh S.C. Prasad, for Provident Fund Commissioner, Debangshu Basak, for Steel Emporium, Anindya Kumar Mitra Joy Saha Jayjeet Ganguly and P. Sancheti for Baranagore Jute Factory PLC Samaraditya Pal Prasanta Naskar for Axis Overseas (Added Respondent in W.P. No. 12412 (W) of 2010), for the Respondent

Judgement

Dipankar Datta, J.
Ambit and coverage of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereafter the SICA) do not

extend to a foreign company carrying on business in this country, is the point vehemently argued by learned Counsel for each of the petitioners and

some of the respondents herein while assailing the order passed by the Board for Industrial and Financial Reconstruction (hereafter the BIFR)

sanctioning a scheme for revival of Baranagore Jute Company PLC (hereafter BJC), a company incorporated in England under the laws of that

country and having its registered office in London. Per contra, each of the learned Counsel for those respondents who have urged the Court not to

entertain the writ petitions have strongly contended that on proper interpretation of SICA, it ought to be held that the ambit and coverage of SICA

extends to embrace a foreign company, a fortiorari, BJC.

2. The writ proceedings presently under consideration have been prefaced by series of litigation in this Court, starting with an application for

winding up of BJC filed in October 1987. One particular order (dated March 3, 2004) passed by a Division Bench was carried in appeal to the

Supreme Court. The decision dated May 24, 2006 in Radheshyam Ajitsaria and Another Vs. Bengal Chatkal Mazdoor Union and Others,

narrates the history of proceedings initiated under the Companies Act. This is one reason why I refrain from discussing the antecedent facts in

substantial detail here. Suffice it to note that in pursuance of an order dated November 18, 2004 passed by a Division Bench of this Court, a

Committee of Management has been functioning as on date the writ petitions were presented. It is, however, noteworthy that a reference petition

u/s 15 of SICA was filed allegedly by the management of BJC on the basis of its annual accounts as on October 31, 2004, which was registered

as BIFR Case No. 294 of 2004 on September 16, 2004. Alleging that the BIFR was not proceeding with adjudication of the reference, a writ

petition (W.P. No. 221 of 2006) was presented before this Court sometime on February 16, 2006 by one Ridh Karan Rakecha (claiming to be a

Director of BJC) and BJC as joint petitioners. The BIFR was the sole respondent in the writ petition. By an order dated February 20, 2006, a

learned Judge of this Court was pleased to order as follows:

In this application the grievance of the petitioners is that they have been registered with the BIFR u/s 15 of SICA as early as on 16th September,

2004. But since then the BIFR is not proceeding with the matter. Under the circumstances, I direct the BIFR to dispose of the entire matter

including framing of a scheme within a period of Eighteen Months from the date of communication of this order. All parties are to act on a signed

copy of the minutes of this order on the usual undertakings.

3. After communication of the aforesaid order, the BIFR set itself in motion and conducted regular hearing. BJC was declared a sick industrial

company in terms of Section 3(1)(o) of SICA in the hearing held on June 7, 2006 and the Industrial Development Bank of India (hereafter the

IDBI) was appointed as Operating Agency u/s 17(3) thereof to examine viability of formulating a rehabilitation scheme, if feasible. Based on the

revival scheme submitted by the IDBI vide its letter dated June 30, 2008, the BIFR prepared a draft rehabilitation scheme (hereafter the DRS) for

revival of BJC which was circulated to all concerned.

4. Further hearing had been fixed on February 19, 2009. On that date the BIFR observed that a letter dated February 19, 2009 had been

received from M/s. L.P. Manot, Advocates (hereafter LPMC) wherein the reference itself was challenged on the ground that it is the outcome of

gross suppression and misrepresentation of material facts and that the entire proceedings had been initiated in wilful and gross violation of orders

passed by the Hon''ble Court without having any locus standi, jurisdiction and authority. However, since the relevant documents had not been

enclosed with the letter under reference, the BIFR observed that it would look into the issues stated after the relevant documents are submitted.

Having considered the submissions and the materials on record, the BIFR issued several directions for compliance by all concerned. The relevant

directions are quoted hereunder:

i) The company will file its rejoinder on the written submissions filedby LPMC within 15 days to the Board and IDBI (OA).

ii)****

iii)****

iv)****

v) OA (IDBI) will submit the comments to the Board on the applicationof LPMC and rejoinder being filed by the company on the

writtensubmissions of LPMC within further 15 days.

vi) The next hearing of the case will be on 6.4.2009.

5. The hearing, as directed earlier, was taken up on April 6, 2009. While passing several directions, July 16, 2009 was fixed as the next date of

hearing. I consider it pertinent to quote below one paragraph from the order of the BIFR dated April 6, 2009. It reads:

4.17 The representative of IDBI (OA) submitted that in the last hearing, the Bench had directed that OA (IDBI) would submit its comments to the

Board on the submissions of LPMC, and the rejoinder filed by the company on the written submissions of LPMC. Continuing he submitted that the

company had filed its rejoinder on the submissions of LHMC. He further submitted that it was true that the company was incorporated in England

with its Head office there and its only unit in India. But the company had been registered in India u/s 591(2) of Indian Companies Act 1956 vide

Registration No. F-149 issued by the Registrar of Companies, Delhi. The company had also denied that it was in liquidation. The winding up

orders were stayed vide order dated 14.9.2004 by Hon''ble HCC. Subsequently, Division Bench of Hon''ble HCC vide order dated 18.11.2004

set-aside the winding up orders and directed company to file application for stay of the winding up proceedings to the Company Judge. The

Company Judge had granted stay on the winding up. Hon''ble Supreme Court vide order dated 24.5.2006 concluded that winding up orders had

been permanently stayed. With respect to the LHMC''s objections that the company had un-secured creditors above Rs. 10.00 crores and

petitioner has outstanding principal dues of Rs. 155.31 lakhs, the representative of IDBI (OA) submitted that LHMC had filed its claim before the

Hon''ble HCC and Company Judge vide its order dated 5.8.2008 had ordered that the claim of the petitioner was relegated to a suit and thus the

petition was dismissed. At this juncture, the ld advocate appearing on behalf of the company submitted that Hon''ble SCI in case of Rishab Agro

had observed that even if a company was under liquidation, the Board had jurisdiction to explore the possibility of its revival.

6. On the next date of hearing i.e. July 16, 2009, the BIFR considered the objection contained in the letter of LPMC and this is what it observed:

5.1 In the hearing held to-day, the representative of IDBI (OA) submitted that the Board vide order dated 2.12.2008 had circulated the DRS with

the direction that mandatory hearing of the case would be held on 19.2.2009. Just one day before the hearing M/s. L.P. Manot & Co. (LPMC)

had stated that the reference of the company had been filed in gross suppression and mis-representation of material facts and suppression of facts

of serveral orders passed by the Hon''ble Supreme Court of India and Hon''ble High Court of Kolkata since 1987. The ld. Advocate of LPMC

had also stated that the company was registered in London, as such the revival scheme cannot be considered by the Board. However, in the

hearing held on 6.4.2009, the issue was considered and Board had directed that although the company was incorporated in India, with its Head

Office there, but the company had been registered in India u/s 591(2) of Indian Companies, Delhi....

Several other directions were passed and hearing was adjourned till November 4, 2009.

7. On the adjourned date i.e. November 4, 2009, the BIFR after hearing all the parties passed an order sanctioning a scheme (SS-09) u/s 19(3)

and 18(4) of SICA for immediate implementation by all concerned. As noted earlier, the order dated November 4, 2009 sanctioning SS-09 is

under challenge in all these three writ petitions.

8. . It is placed on record that SS-09 was earlier challenged by an unsecured creditor M/s. Sohanlal Chandanmul & Co. before this Court by filing

W.P. No. 1166 of 2009 (since renumbered W.P. No. 5535(W) of 2010). On December 7, 2009, a learned Judge of this Court was pleased to

pass an interim order restraining the respondents from taking any step or further step for selling any property of BJC or creating any charge in

respect of the assets thereof without obtaining specific leave of Court. The petitioner, however, did not wish to proceed with the said writ petition

and an order was recorded on June 16, 2010 that the writ petition stands dismissed as withdrawn. It was only after termination of the earlier writ

proceedings that these writ petitions were presented before this Court.

9. SICA itself provides a forum where an order passed by the BIFR is open to challenge. The private respondent Baranagore Jute Factory (PLC)

Mazdoor Sangh, private respondent in all these writ petitions represented by Mr. Debashis Kundu, learned Counsel, has exercised its right of

appeal conferred by Section 25 of SICA by challenging the order of the BIFR dated November 4, 2009. One other union has also carried the

same order in appeal. I have been informed that the same point i.e. non-applicability of SICA to a foreign company, has also been taken in such

appeals. However, the point raised before this Court being one essentially questioning the jurisdiction of the BIFR to entertain a reference in

respect of a foreign company, I considered it appropriate not to dismiss the writ petitions for availability of an appellate forum as an alternative

remedy and proceeded to hear the parties at length.

10. In course of hearing, the parties had orally undertaken not to change the status quo. Such undertaking was recorded and the same was

directed to continue till delivery of judgment on these writ petitions. In view thereof, neither the BIFR has proceeded further nor the Appellate

Authority for Industrial and Financial Reconstruction has heard the appeals preferred by the aggrieved parties before it, except that after hearing

was closed and judgment reserved, it was brought to the notice of this Court that BJC had filed an application before the BIFR while arguments

were being advanced and that such application had been disposed of on August 16, 2010 recording change in the directors of BJC that took place

before the scheme was sanctioned, without prejudice to the rights of the other parties. Since a pure question of law relating to jurisdiction of the

BIFR to proceed with the reference was raised, the parties agreed to disposal of the writ petitions without exchange of affidavits (though not

recorded in the order-sheets). However, written notes of arguments were filed by some of the parties and the same are part of the records.

11. Mr. Bandopadhyay, learned senior counsel assisted by Mr. Joydeep Kar, learned Counsel, Mr. Surojit Nath Mitra, learned senior counsel

assisted by Mr. Kishore Datta, learned Counsel and Mrs. Manju Agarwal, learned Counsel appearing for the respective writ petitioners contended

that provisions of SICA, read literally, would admit of no doubt that its ambit and coverage do not extend to a foreign company. According to

them, the language of SICA is plain, clear and unambiguous and, therefore, no external aid is required for understanding its provisions. By referring

to earlier orders passed by the Company Court in proceedings initiated for winding up of BJC under the Companies Act as well as orders passed

by the Supreme Court, it was contended that the reference before the BIFR was not maintainable. Common prayer was made by them to quash

the proceedings before the BIFR including the order impugned passed by it.

12. Mr. P.C. Sen, learned senior counsel representing Chaitan Choudhary and Ridh Karan Rakecha, private respondents in all the three writ

petitions (allegedly members of the Committee of Management as it appears from the cause title of W.P. No. 12406(W) of 2010)), echoed the

submissions of learned Counsel noted above and contended that SS-09 is unworkable. Replying to a query of the Court as to how appearing for

Ridh Karan Rakecha a plea could be taken that the BIFR had no jurisdiction to entertain the reference, it was submitted that Ridh Karan Rakecha

had since realized that an error had been committed in first referring BJC to the BIFR, and then again in preferring W.P. No. 221 of 2006 for a

direction on the BIFR to adjudicate. The suggestion was that a wrong action need not be continued and hence the change in stand. Referring to

paragraph 46 of the decision in Morgan Securities & Credit (P) Ltd. v. Modi Rubber Ltd. reported in (2006) 12 SCC 642 where it has been held

that ""(W)hile exercising its power under Sub-section (3) of Section 22, the Board cannot ignore an order passed by a superior court. It may be

bound by the doctrine of judicial discipline."", he contended that having regard to the pending proceedings before the Company Court, judicial

discipline demanded that the BIFR abstain from proceeding with the reference.

13. Mr. Kundu advanced submissions from a different angle. He referred to the definition of ''company'' in various other Central statutes, viz.

Reserve Bank of India Act (Section 45-I(aa)), the Banking Regulation Act (Section 5(d)), and the Payment of Bonus Act (Section 2(9)). The

common definition of ''company'' there reads: ''company'' means any company as defined in Section 3 of the Companies Act, 1956 (1 of 1956),

and includes a foreign company within the meaning of Section 591 of that Act."" According to him if the Parliament indeed had intended that the

word ''company'', wherever it occurs in SICA, would include a ''foreign company'' and thus SICA would be applicable to it, the Parliament would

surely have incorporated the inclusive definition of ''company'' found in the aforesaid Acts (quoted supra) in SICA. The very fact that ''company'' in

Section 3(1)(d) of SICA has been defined to mean a ''company'' as defined in Section 3 of the Companies Act leaves no manner of doubt that the

Parliament intended to keep a "foreign company" beyond the purview of SICA.

14. Next, he referred to the definition of "company" in SICA prior to its amendment by Act 57 of 1991. Section 3(1)(d) of SICA earlier read:

"Company" means a company as defined in Section 3 of the Companies Act, 1956 (1 of 1956), but does not include a Government Company as

defined in Section 617 of that Act"". According to him purposive construction need not be applied when a statute has been amended from time to

time on the basis of fresh needs and has thus not remained static. In such a case, literal interpretation is to be applied and in support of such

submission, he placed reliance on the decision in Dental Council of India and Another Vs. Hari Parkash and Others, The said decision as well as

the decision in Union of India (UOI) Vs. Rajiv Kumar, was also relied on for the proposition that intention of the legislature is primarily to be

gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. The latter

decision was also relied on to contend that a casus omissus ought not to be created by interpretation, save in some case of strong necessity.

15. He further submitted that in view of user of the word "means" as a suffix to the term "company", the same indicates that the definition is

exhaustive and not extensive and in this connection reliance was placed on the decision in P. Kasilingam and others Vs. P.S.G. College of

Technology and others,

16. The decisions in Kiran Singh and Others Vs. Chaman Paswan and Others, , Calcutta Discount Company Limited Vs. Income Tax Officer,

Companies District, I and Another, and Smt. Ujjam Bai Vs. State of Uttar Pradesh, were relied on to contend that the decision of a Tribunal which

lacks inherent jurisdiction over the subject matter of dispute or reference is a nullity, going to the root of Dipankar Datta, J. .matter and invalidity

thereof may be set up whenever and wherever it is sought to be enforced or relied on, even at the stage of execution and even in collateral

proceedings.

17. Next, he endeavoured to demonstrate how SS-09 would be unworkable. It was his contention that implementation of SS-09 would never

result in revival of BJC. He, therefore, supported the stand of the writ petitioners and made similar prayer to set aside SS-09 and for a direction to

allow the Committee of Management to function for managing the affairs of BJC till further orders are passed by the Company Court.

18. The stand of the writ petitioners was supported by Mr. Saptangshu Basu, learned senior counsel for one of the unions, who submitted that the

workers were happy with the present management. The industrial establishment was running in good condition and the workers are being paid their

dues. Since the workers are surviving, he urged the Court not to disturb the current arrangement.

19. Mr. Anindya Kumar Mitra, learned senior counsel appearing for BJC, ably assisted by Mr. Joy Saha, learned Counsel, contended that having

regard to the opening words of Section 3 of SICA viz. ""In this Act, unless the context otherwise requires"", it is not mandatory that wherever the

word "company" occurs in SICA one should mechanically attribute to it the meaning assigned in Section 3(1)(d) thereof. Ordinarily, to understand

the meaning of "company" the definition of the same in SICA ought to apply, but where the context does not permit or the context requires

otherwise, the meaning assigned to it in Clause (d) need not be applied by way of restrictive interpretation to mean only a company as defined in

Section 3(1)(i) of the Companies Act. While reading SICA and to understand what "company" means, it is only where the context so requires that

the definition in the Companies Act would be attracted. SICA, read in the context of and in harmony with Article 39 of the Constitution, ought to

be interpreted to cover and/or include an industrial undertaking operating within India and belonging to a company incorporated outside India,

which might have become sick or is potentially sick. SICA does not expressly exclude a scheduled industry owned by a foreign company. A

foreign company thus cannot be excluded from the purview of SICA by reason of the interpretation clause. Having regard to the purpose of SICA,

the word "company" therein cannot be restricted to exclude a company incorporated outside India. If so interpreted, that would deprive Indian

shareholders, creditors, workers, etc. the protection that SICA seeks to offer and this would militate against public interest, which is the crux of

SICA.

20. He further contended that the phrase ""In this Act, unless the context otherwise requires"" has been judicially interpreted to mean that a definition

provided thereunder would be an inclusive and not an exclusive definition. The scheme of SICA does not exclude a foreign company and,

therefore, BIFR did have jurisdiction to pass the orders it did.

21. In support of his submission, Mr. Mitra relied on the decisions in Printers (Mysore) Ltd. and Another Vs. Asstt. Commercial Tax Officer and

Others, (interpreting the words "goods" in Section 8(3) of the Central Sales Tax Act, 1956 thrice in terms of the defined meaning and the last time

differently having regard to the context in which it is used), S.S. Dhanoa Vs. Municipal Corporation, Delhi and Others, (ruling that a "corporation"

in the context of clause twelfth of Section 21, Indian Penal Code must mean a corporation created by the legislature and not a body or society

brought into existence by an act of a group of individuals), The State of Maharashtra Vs. Indian Medical Association and Others, (where the

defined meaning of the expression ''management'' was not attributed to the word ''management'' in Section 64 of the Maharashtra University of

Health Sciences Act, 1998), National Insurance Co. Ltd. Vs. Deepa Devi and Others, (construing the definition of ''owner'' in the Motor Vehicles

Act, 1988 and holding that in the fact situation it has to be understood in the common sense point of view), Ramanlal Bhailal Patel and Others Vs.

State of Gujarat, (explaining the legal meaning of the word ''person'' in the General Clauses Act, 1897) and Leelabai Gajanan Pansare v. Oriental

Insurance Co. Ltd. reported in AIR 2009 SC 523 (where it was held that interpretation placed by the High Court on the word ''PS Us'' in Section

3(1)(b) of the Maharashtra Rent Control Act, 1999 amounts to judicial legislation and further it defeats the very object of Section 3(1)(b)).

22. Countering the argument of the respective writ petitioners that since BJC had been wound up, the Official Liquidator has been appointed and

the Committee of Management constituted in terms of orders passed by this Court has been functioning and, therefore, the Board of Directors had

no jurisdiction to move the BIFR, Mr. Mitra relied on the decision in M/s. Rishabh Agro Industries Ltd. Vs. P.N.B. Capital Services Ltd., where

similar contention was not accepted.

23. According to him, the BIFR did not act without jurisdiction in sanctioning the scheme for revival of BJC despite pendency of proceedings

before the Company Court and while praying for dismissal of the writ petitions, urged to the Court to uphold the scheme.

24. Mr. Bikash Ranjan Bhattacharya, learned senior counsel representing Namokar Vinimay Private Limited, the respondent No. 21 in W.P. No.

12377(W) of 2010 while praying for dismissal of the said writ petition invited my attention to Section 2 of SICA. According to him, SICA being

social welfare legislation enacted, inter alia, to protect the interest of workmen employed in a sick industrial company ought not to be interpreted in

a constricted manner; on the contrary, it calls for a liberal interpretation. Literal interpretation of the word ''company'' in SICA would result in

absurdity and, therefore, on an interpretative exercise, the word ''company'' ought to be held to include a foreign company. The decisions in

Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another, and Andhra University Vs. Regional Provident Fund

Commissioner of Andhra Pradesh and Others, were relied on by him in support of the proposition that a beneficent legislation ought to be liberally

construed. The decision in Maharashtra Tubes Ltd. Vs. State Industrial and Investment Corporation of Maharashtra Ltd. and Another, was cited

where the Supreme Court had the occasion to consider the term ''proceedings'' in Section 22(1) of SICA and had ruled, upon consideration of the

State Financial Corporations Act, 1951, that if the Corporation is permitted to proceed u/s 29 thereof when proceedings under Sections 15 to 19

of SICA are pending, that would render the entire process nugatory. The decisions in Pali Devi and others Vs. Chairman, Managing Committee

and another, (holding that the word ''employee'' in Section 20(2) of the Minimum Wages Act includes ex-employee), S. Gopal Reddy Vs. State of

Andhra Pradesh, (where ''marriage'' in the Dowry Prohibition Act, 1961 was ruled to include proposed marriage which did not ultimately take

place), K.V. Muthu Vs. Angamuthu Ammal, (where the word ''family'' in Section 2(6-A) of the Tamilnadu Buildings (Lease and Rent) Control

Act, 1960 was read in the context to include a foster son) were relied on in support of the submission that user of the word ""means"" to define an

expression in the statute is not decisive; what is important is the context in which the expression has been used. On interpretation of statutes, the

decisions in D. Saibaba Vs. Bar Council of India and Another, (ruling that if literal construction or plain meaning causes hardship, futility, absurdity

or uncertainty, the Court may prefer purposive or contextual construction to arrive at a more just, reasonable, and sensible result), Rai Vimal

Krishna and Others Vs. State of Bihar and Others, (observing that words in statutory provisions take their colour from their context and object,

keeping pace with the time when the word is being construed), Tata Motors Ltd. v. Pharmaceutical Products of India Ltd. reported in AIR 2008

SC 2805 (holding that SICA was enacted to secure the principles specified in Article 39 of the Constitution and since it seeks to give effect to

larger public interest, it must have primacy over other general law because of its higher public purpose), and Allahabad Bank and Another Vs. All

India Allahabad Bank Retired Emps. Assn., reiterating the law that welfare statutes must always receive liberal construction and that it should be so

construed so as to secure the relief contemplated by the statute) were relied on by him to assist the Court for correctly interpreting SICA, as well

as for the proposition that SICA being a self-contained statute, the jurisdiction of the Company Judge would be subject to the provisions of SICA,

since reference has been made to the BIFR.

25. Mr. Samaraditya Pal, learned senior counsel for Axis Overseas, the added respondent in W.P. No. 12412(W) of 2010, argued that the

contention of the petitioners that SICA has no application to a foreign company like BJC is thoroughly misconceived. According to him, the

Constitution as well as laws validly enacted by the Parliament or the State Legislatures would apply to foreigners, unless excluded either expressly

or impliedly. Companies incorporated/registered under the laws of a foreign country carrying on business in India, therefore, would be subject to

all obligations and enjoy all the rights to the extent provided in laws of India.

26. Mr. Pal contended that on a plain reading of SICA, it is clear that BJC is covered. He invited the attention of the Court to Section 3(1)(d) of

SICA and submitted that it is only Clause (i) of Section 3(1) of the Companies Act that is attracted and not the other clauses/Sub-sections of

Section 3. In view of Clause (i), what is to be seen is the occurrence of formation and registration of a company under the Companies Act. The

Companies Act does neither say that the persons who constitute the formation must be Indians, nor does it say that formation of the company must

physically be in India. Insofar as registration is concerned, while referring to Section 591(2) of the Companies Act, it was contended that the

expression ""as if it were a company incorporated in India"" creates a legal fiction i.e. the foreign company is to be treated as one incorporated in

India. The effect of using a legal fiction is that the fiction must be treated as a fact. Hence, without recourse to any principles of interpretation, a

plain reading of SICA and the Companies Act would show that SICA covers a foreign company like BJC.

27. Mr. Pal next submitted that assuming the situation calls for an interpretative exercise, reference of BJC to the BIFR was proper and valid on

true and correct application of principles of interpretation of a statute. Referring to the object and purpose of SICA, it was contended that it is

clearly concerned with the socio-economic sphere, viz. industrial health of the country, revival of the sick industry and enabling it to stand on its

own feet, stemming unemployment, etc., and, therefore, conceived in national and public interest. Hence to interpret SICA, a broad and liberal

approach ought to be adopted instead of a restrictive approach.

28. According to Mr. Pal, consideration and proper application of different rules of interpretation would converge to the view that SICA covers a

foreign company. Foundational rule of statutory interpretation is that the statute under consideration must be consistent with the provisions of the

Constitution. In the event the argument that SICA does not cover a foreign company is accepted, SICA would be wholly and directly inconsistent

with Article 14 for, in such a case, option for reviving the sick company would be closed, the workers would become unemployed, the creditors

would not get their dues, the financial institutions would be unable to recover their loans, etc. This differential treatment would be arbitrary and have

no nexus with the object of SICA and thereby frustrate it. In such a situation interpretation of SICA in the manner the petitioners wish the Court to

interpret would make it vulnerable to a constitutional challenge on the ground of infraction of the guarantee of equality and, consequently, the Court

ought to read the Companies Act and SICA together in a way so that there is no discrimination, violating Article 14. Reliance was placed on the

decision in State Bank of Travancore Vs. Mohammed Mohammed Khan, He next argued that although literal reading of a statute is the usual

principle in a given situation, departure might be warranted to avoid absurdity. The decisions in Ramaswamy Nadar Vs. The State of Madras, ,

Commissioner of Income Tax, Central, Calcutta Vs. National Taj Traders, 370, Girdhari Lal and Sons Vs. Balbir Nath Mathur and Others, ,

Hameedia Hardware Stores, represented by its partner S. Peer Mohammed Vs. B. Mohan Lal Sowcar, and Western Bank Ltd. v. Schindler

reported in Ch. 1977-1were relied on in this connection. A strained interpretation is also permissible in a given case, for which reference was made

to the decision in High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat reported in AIR 2003 SC 1201. For dynamic interpretation of

SICA, the decisions in R v. R reported in (1991) 4 All ER 481, State of Punjab and Others Vs. Amritsar Beverages Ltd. and Others, and Anuj

Garg and Others Vs. Hotel Association of India and Others, were referred to. For the proposition that Courts while construing provisions of

socio-economic legislation must interpret them in a manner which furthers its purpose rather than frustrates it, he relied on the decision in Bharat

Prasad and Others Vs. The State of Bihar and Others,

29. Scope of the phrase ""*** unless the context otherwise requires"", which is inevitably prefaced in a definition clause, according to him, was

considered in various other decisions, apart from those cited by Mr. Mitra and Mr. Bhattacharya, and those were relied on, viz. the decision of the

House of Lords in Knightsbridge Estates Trust Ltd. v. Byrne reported in (1940) All ER 401 holding that the mortgage was a debenture within the

meaning of the Companies Act, 1929, and the Supreme Court decisions in Reserve Bank of India Vs. Peerless General Finance and Investment

Co. Ltd. and Others, dealing with the definition of "prize chit" under the Prize Chits and Money Circulation Schemes (Banning) Act, 1978,

National Building Construction Corporation Vs. Pritam Singh Gill and Others, where the definition of "workman" in the context of the Industrial

Disputes Act, 1947 was considered, The Vanguard Fire and General Insurance Co. Ltd., Madras Vs. Fraser and Ross and Another, where

"insurer" defined in the Insurance Act, 1938 was held to include one who has closed his business, and Paul Enterprises and Others Vs. Rajib

Chatterjee and Co. and Others, in which an advertisement inviting applications for grant of liquor licence from ''unemployed youth'' was construed

and it was held that although the respondents were earning some money for bare sustenance, the same would not disentitle them to take part in the

selection process. The decision in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, was relied on to contend that

definition is only a guide. On purposive interpretation of a statute, the decisions reported in Saibaba (supra), and of the Delhi High Court in

Telesound India Ltd., In re. reported in Vol. 53 Company Cases 940 were relied on. For functional and purposive approach, the decision in

Directorate of Enforcement Vs. Deepak Mahajan and another, and on rectifying construction, the decision in Inco Europe Ltd v. First Choice

Distribution reported in (2000) 2 All ER 109 were relied on.

30. While replying to the Court''s query regarding the scope, effect and import of ''company'' in the explanation appended to Section 34 of SICA,

Mr. Pal contended that the role of the explanation to Section 34 is limited only to the operation of Section 34 and no other section of SICA and it

merely widens the meaning of the words ''company'' and ""Director'' in the sole context of Section 34. The decision in Km. Sonia Bhatia Vs. State

of U.P. and Others, was cited for considering the effect of an explanation provided in a statute.

31. Mr. Pal also contended that the conduct of the writ petitioner in W.P. 12412 (W) of 2010 is such that it ought not to be permitted to invoke

the discretionary jurisdiction under Article 226. Referring to paragraphs 75, 76, 78 and 87 of the writ petition, he sought to demonstrate before the

Court that the statement made in paragraph 3 to the effect that the petitioner was shocked and surprised in March, 2009 that BJC had been

referred to BIFR was false and misleading. A learned advocate had represented the writ petitioner and orders passed by the BIFR from time to

time were within its knowledge.

32. The locus standi of the writ petitioner to maintain the petition was also questioned. Referring to an order passed by a learned Judge of the

Company Court dated August 5, 2008, it was submitted that the petitioner was relegated to a civil suit for enforcing its claim. The writ petitioner

being a post scheme creditor had applied for intervention in the proceedings before the BIFR which was declined. The Company Court by the said

order having fixed the forum for enforcement of its claim, the writ petitioner currently has no locus standi to challenge SS-09. The writ petitioner

not being covered by SS-09, it cannot be interested in either setting aside of the scheme or continuance thereof.

33. Mr. Pal lastly contended that the writ petitioner having appeared before the BIFR, objection in respect of jurisdiction should have been taken

at the inception and since no such objection was raised in clear terms, the writ petition is not maintainable. Accordingly, it was prayed that W.P.

No. 12412(W) of 2010 be dismissed with exemplary costs.

34. Mr. Sakti Nath Mukherjee, learned senior counsel for the respondent No. 14 in W.P. No. 12377(W) of 2010 in his short submission

contended that setting aside of the scheme framed by the BIFR would impede revival of BJC instead of promoting it. The jurisdiction of the Writ

Court is discretionary and though the Court may record that an act is without jurisdiction, yet, it may refuse to interfere. This is based on the

principle that a Writ Court does not interfere in all cases of illegality. Reference in this connection was made to the decisions in Master Marine

Services Pvt. Ltd. Vs. Metcalfe and Hodgkinson Pvt. Ltd. and Another, M.C. Mehta Vs. Union of India (UOI) and Others, and Secretary Salkia

Sri Krishna Vidyalaya Vs. Kailash Nath Rai and Others, . He further contended that since no one would stand to benefit if BJC is wound up, all

out efforts must be made to make SS-09 workable.

35. Mr. Pratap Chatterjee, Mr. L.C. Bihani and Mr. Asoke Kumar Banerjee, learned senior counsel representing various unions and Mr.

Debangshu Basak, learned Counsel for M/s. Steel Emporium, who are respondents in these petitions, argued on similar lines as above and urged

this Court to advance the remedy and suppress the mischief that SICA seeks to achieve and thereby dismiss the writ petitions while holding that

the BIFR did not act without jurisdiction.

36. Mr. Bimal Chatterjee, learned senior counsel appearing for the petitioner in W.P. No. 12412(W) of 2010, in reply, forcefully argued that

Section 3(1)(d) of SICA means what it says and that the Court would not be justified in reading words in the provision to enlarge or expand it.

BJC is not an existing company within the meaning of Section 3(1)(i) of the Companies Act, not having been incorporated under any of the Acts

mentioned in Clauses (a) to (e) of Section 3(1)(ii) thereof. Having regard to the provisions in Parts X and XI of the Companies Act, more

particularly Sections 582 to 584, 589 and 591(2), a foreign company has to be dealt with differently from an existing company.

37. According to him, it is inconceivable that Indian Parliament would introduce measures to rescue BJC under the Indian laws. Benefit of

beneficial legislation to a foreign company is not the purpose or object of SICA. Section 3(1)(d) cannot thus be made elastic to include a foreign

company. The proceedings of the BIFR, thus, ought to be set aside was his ultimate submission.

38. Mr. S.C. Prasad, learned Counsel for the Provident Fund Commissioner argued in support of the writ petitioners while questioning the

propriety of SS-09, while Mr. Tilak Kumar Basu, learned senior counsel for the Official Liquidator took a neutral stand and submitted that

whatever order the Court passes would be complied with by him.

39. I have extensively heard learned Counsel for the parties, perused the materials on record and considered all the authorities cited at the bar.

40. First, I propose to deal with the last contention raised by Mr. Pal, as noted above. I am of the view, on reading the orders of the BIFR quoted

supra, that an objection had indeed been raised regarding jurisdiction of the BIFR to entertain the reference but such objection was not considered

with proper application of mind and no order supported with reasons was ever passed. Jurisdiction could have been exercised by the BIFR in

respect of BJC only if it was satisfied that SICA applies to it. It was thus a jurisdictional fact. Jurisdictional fact is a fact, which must exist before a

Court or Tribunal can properly assume jurisdiction of a particular claim or dispute. This issue was never decided. On the authority of the decisions

in Kiran Singh (supra), Calcutta Discount Co. Ltd. (supra) and Ujjambai (supra), I am inclined to hold that whenever a question touching the

jurisdiction of the subordinate Tribunal to adjudicate a dispute is raised by contending that the decision passed by it is a nullity being vitiated on the

sole ground of error in jurisdictional fact, thereby suffering from lack of inherent jurisdiction, participation in the proceedings by the objector would

not be fatal so as to deprive him an order on the objection raised by him before a superior Court. The objection, accordingly, is overruled.

41. I may, at this juncture, deal with and dispose of the contention raised by Mr. Mukherjee. No doubt, writ remedy is discretionary; extraordinary

power under Article 226 may not be exercised to correct mere errors of law, which do not occasion substantial injustice. A Writ Court may not

interfere though the party approaching it has set up a valid claim on merits, if interference would not be in furtherance of public interest. However, if

an order has been passed in flagrant violation of fundamental principles of law or suffers from gross jurisdictional error, the Court would be failing

in its duty to render justice to the parties if interference is declined on the specious plea that the remedy is discretionary. The discretion vested in

the Courts is exercised according to wellsettled judicial principles. If the BIFR did not have jurisdiction to adjudicate the reference, interference

must follow as a matter of course. The decisions cited by Mr. Mukherjee, having regard to the peculiar facts involved therein, are distinguishable.

42. The question of locus standi of the writ petitioner in W.P. No. 12412(W) of 2010, an unsecured creditor, needs to be addressed next.

Indubitably, the Company Court by its order dated August 5, 2008 has relegated the writ petitioner to a civil suit for enforcement of its claim

against BJC and though the same has been carried in appeal before the Division Bench of this Court, till date there has been no order in connection

therewith. There is substance in the contention of Mr. Pal that the writ petitioner is not in the scheme and even if the proceedings before the BIFR

are continued it is not affected at all. It is settled law that mere filing of an appeal does not operate as a stay of the order impugned. The writ

petitioner must, until circumstances change, be held to be bound by such order. In order to maintain a writ petition, the party approaching the

Court ought to have a judicially enforecable right as well as a legally protected right. The writ petitioner has not been denied a legal right. Till such

time the Division Bench interferes with the order dated August 5, 2008, the writ petitioner has no right to seek its remedy before the Writ Court in

respect of proceedings before the BIFR. I am convinced that W.P. No. 12412(W) of 2010 is not maintainable and, therefore, liable to fail.

43. I may record here that invalidity of the claim raised by the other two writ petitioners (the first petitioner in W.P. No. 12377(W) of 2010, a

company registered under the Companies Act, claims to be a shareholder of BJC and the second petitioner thereof is a Director of such company,

and the petitioner in W.P. No. 12406(W) of 2010 is one amongst several trade unions of workers of BJC) in respect of the BIFR proceedings on

the ground of non-maintainability of their respective petitions has not been argued, though some arguments appear in the written notes that were

filed. Since such points were not argued in open Court, I propose not to deal with the same.

44. Now, a brief survey of the relevant provisions of SICA that have been referred to by learned Counsel for the parties would be fruitful for

deciding the core issue raised herein. They read as follows:

2. Declaration.- It is hereby declared that this Act is for giving effect to the policy of the State towards securing the principles specified in Clauses

(b) and (c) of Article 39 of the Constitution.

3. Definitions.-(1) In this Act, unless the context otherwise requires,

(d) ''company'' means a company as defined in Section 3 of the Companies Act, 1956 (1 of 1956) ;

(e) ''industrial company'' means a company which owns one or more industrial undertakings;

(f) ''industrial undertakings'' means any undertaking pertaining to a scheduled industry carried on in one or more factories by any company but does

not include-

(i) an ancillary industrial undertaking as defined in Clause (aa) of Section 3 of the Industries (Development and Regulation) Act, 1951 (65 of

1951); and

(ii) a small scale industrial undertaking as defined in Clause

(j) of the aforesaid Section 3;

(n) ''scheduled industry'' means any of the industries specified for the time being in the First Schedule to the Industries (Development and

Regulation) Act, 1951 (65 of 1951);

(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. Explanation.-For the removal of doubts, it is hereby declared that an

industrial company existing immediately before the commencement of the Sick Industrial Companies (Special Provisions) Amendment Act, 1993,

registered for not less than five years and having at the end of any financial year accumulated losses equal to or exceeding its entire net worth, shall

be deemed to be a sick industrial company;

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 ....

45. From the above provisions it is clear that a decision on the surviving petitions would involve proper interpretation of Section 3(1)(d) of SICA,

seeking to define ''company''. The definition of ''company'' in the Companies Act, 1956 (hereafter the Companies Act) has been incorporated in

SICA by reference.

Section 2(10) and 3(1) of the Companies Act (to the extent relevant) read as under:

2. Definitions (10) ''company'' means a company as defined in Section 3;

3. Definitions of ''company'', ''existing company'', ''private company'' and ''public company''. -

(1) In this Act, unless the context otherwise requires, the expressions ''company'', ''existing company'', ''private company'' and ''public company''

shall, subject to the provisions of Sub-section (2), have the meanings specified below -

(i) ''company'' means a company formed and registered under this Act or an existing company as defined in Clause (ii);

ii) ""existing company"" means a company formed and registered under any of the previous companies laws specified below

(a) Any Act or Acts relating to companies in force before the Indian Companies Act, 1866 and repealed by that Act;

(b) The Indian Companies Act, 1866;

(c) The Indian Companies Act, 1882;

(d) The Indian Companies Act, 1913;

(e) The Registration of Transferred Companies Ordinance, 1942; and

(f) Any law corresponding to any of the Acts or the Ordinance aforesaid and in force ....

46. For the purpose of guidance on how and in what manner a particular statute ought to be interpreted, the decision in M/s. Girdhari Lal & Sons

(supra) cited by Mr. Pal may be referred to. Paragraphs 6 to 9 thereof contain an enlightening discussion on principles of interpretation of statutes

through the speaking voice of Hon''ble Chinappa Reddy, J, the thrust being to find out the legislative intent and to interpret the law accordingly. The

same are quoted below:

6. It may be worthwhile to restate and explain at this stage certain well-known principles of interpretation of statutes: Words are but mere vehicles

of thought. They are meant to express or convey one''s thoughts. Generally, a person''s words and thoughts are coincidental. No problem arises

then, but, not infrequently, they are not. It is common experience with most men, that occasionally there are no adequate words to express some of

their thoughts. Words which very nearly express the thoughts may be found but not words which will express precisely. There is then a great

fumbling for words. Long-winded explanations and, in conversation, even gestures are resorted to. Ambiguous words and words which unwittingly

convey more that one meaning are used. Where different interpretations are likely to be put on words and a question arises what an individual

meant when he used certain words, he may be asked to explain himself and he may do so and say that he meant one thing and not the other. But if

it is the legislature that has expressed itself by making the laws and difficulties arise in interpreting what the legislature has said, a legislature cannot

be asked to sit to resolve those difficulties. The legislatures, unlike individuals, cannot come forward to explain themselves as often as difficulties of

interpretation arise. So the task of interpreting the laws by finding out what the legislature meant is allotted to the courts. Now, if one person puts

into words the thoughts of another (as the draftsman puts into words the thoughts of the legislature) and a third person (the court) is to find out

what they meant, more difficulties are bound to crop up. The draftsman may not have caught the spirit of the legislation at all; the words used by

him may not adequately convey what is meant to be conveyed; the words may be ambiguous: they may be words capable of being differently

understood by different persons. How are the courts to set about the task of resolving difficulties of interpretation of the laws? The foremost task

of a court, as we conceive it, in the interpretation of statutes, is to find out the intention of the legislature. Of course, where words are clear and

unambiguous no question of construction may arise. Such words ordinarily speak for themselves. Since the words must have spoken as clearly to

legislators as to judges, it may be safely presumed that the legislature intended what the words plainly say. This is the real basis of the so-called

golden rule of construction that where the words of statutes are plain and unambiguous effect must be given to them. A court should give effect to

plain words, not because there is any charm or magic in the plainness of such words but because plain words may be expected to convey plainly

the intention of the legislature to others as well as judges. Intention of the legislature and not the words is paramount. Even where the words of

statutes appear to be prima facie clear and unambiguous it may sometimes be possible that the plain meaning of the words does not convey and

may even defeat the intention of the legislature; in such cases there, is no reason why the true intention of the legislature, if it can be determined,

clearly by other means, should not be given effect. Words are meant to serve and not to govern and we are not to add the tyranny of words to the

other tyrannies of the world.

7. Parliamentary intention may be gathered from several sources. First, of course, it must be gathered from the statute itself, next from the preamble

to the statute, next from the Statement of Objects and Reasons, thereafter from parliamentary debates, reports of committees and commissions

which preceded the legislation and finally from all legitimate and admissible sources from where there may be light. Regard must be had to

legislative history too.

8. Once parliamentary intention is ascertained and the object and purpose of the legislation is known, it then becomes the duty of the court to give

the statute a purposeful or a functional interpretation. This is what is meant when, for example, it is said that measures aimed at social amelioration

should receive liberal or beneficent construction. Again, the words of a statute may not be designed to meet the several uncontemplated forensic

situations that may arise. The draftsman may have designed his words to meet what Lord Simon of Glaisdale calls the ''primary situation''. It will

then become necessary for the court to impute an intention to Parliament in regard to ''secondary situations''. Such ''secondary intention'' may be

imputed in relation to a secondary situation so as to best serve the same purpose as the primary statutory intention does in relation to a primary

situation.

9. So we see that the primary and foremost task of a court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed.

Having ascertained the intention, the court must then strive to so interpret the statute as to promote or advance the object and purpose of the

enactment. For this purpose, where necessary the court may even depart from the rule that plain words should be interpreted according to their

plain meaning. There need be no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to

avoid invalidation of a law, the court would be well justified in departing from the so-called golden rule of construction so as to give effect to the

object and purpose of the enactment by supplementing the written word if necessary.

47. Another discussion on interpretation of statutes, full of clarity and precision, and to some extent leaning in favour of interpretation of the stated

words in an enactment keeping in mind what has not been stated, is found in the decision in V. Jagannadha Rao v. State of A.P. reported in (2001)

10 SCC 401.

Hon"ble Pasayat, J. speaking for the Bench observed in paragraph 18 as follows:

18. ... No provision or word in a statute has to be read in isolation. In fact, the statute has to be read as a whole. A statute is an edict of the

legislature. .... The intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid as to

what has been said as also to what has not been said. (See Mohammad Ali Khan and Others Vs. Commissioner of Wealth Tax, New Delhi, and

Institute of Chartered Accountants of India Vs. Price Waterhouse and Another,). As a consequence a construction which requires for its support

addition or substitution of words or which resorts to rejection of words as meaningless, has to be avoided. As stated by the Privy Council in

Robert Wigram Crawford v. Richard Spooner, (1846) 6 Moore PCC 1,: "We cannot aid the legislature"s defective phrasing of an Act, we cannot

add or mend and, by construction make deficiencies which are left there." The aforesaid decision was referred to by this Court in State of Gujarat

and Others Vs. Dilipbhai Nathjibhai Patel and Another, . It is contrary to all rules of construction to read words into an Act unless it is absolutely

necessary to do so. (See Stock v. Frank Jones (Tipton) Ltd. (1978) All ER 948 (HL)). Similarly, it is wrong and dangerous to proceed by

substituting some other words for words of the statute. (See Pinner v. Everett (1969) 3 All ER 257(HL)). In other words, there should be no

attempt to substitute or paraphrase of general application. Attention should be confined to what is necessary for deciding a particular case. Much

trouble is made by substituting other phrases assumed to be equivalent, which then are reasoned from as if they were in the Act. In Union of India

and another Vs. Deoki Nandan Aggarwal, it was observed that the court cannot reframe the legislation for the very good reason that it has no

power to legislate. It is incumbent on the court to avoid the construction if reasonably permissible on the language which would render a part of the

statute devoid of any meaning or application. In the interpretation of statutes, the courts always presume that the legislature inserted every part

thereof for a purpose and the legislative intention is that every part of the statute should have an effect.

(underlining for emphasis by me)

48. Also, the decision in Seaford Court Estates Ltd. v. Asher reported in (1949) 2 All ER 155 (CA) rendered by Lord Denning on purposive

approach cannot be kept out of consideration. It was observed therein as follows:

The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen

of Acts of Parliament have often been unfairly criticised. A Judge, believing himself to be fettered by the supposed rule that he must look to the

language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would

certainly save the Judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect

appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of

Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it

and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give ''force and life'' to the intention of

the legislature.... A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it,

they would have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but

he can and should iron out the creases.

(underlining for emphasis by me)

49. The Supreme Court in the decisions in M. Pentiah and Others Vs. Muddala Veeramallappa and Others, and Ahmedabad Municipal Corpn.

Another Vs. Nilaybhai R. Thakore and Another, has consistently accepted the aforesaid statement of law.

50. There could be no two opinions that if a caution is sounded by the opening words in an interpretation clause or definition clause by user of the

expression ""unless the context otherwise requires"", it is not at all necessary that an interpretation clause should apply every time a word defined in it

occurs in the Act. Learned Counsel opposing the writ petitions are, therefore, right in their contention that the context in which the word

''company'' has been used in SICA ought to be the guiding factor. In other words, if the context permits, ''company'' may be construed to include a

''foreign company'' even.

51. On a bare perusal of SICA and the Companies Act it is clear that a single section of the latter Act has been introduced in the former Act. It

would be worthwhile to refer to the decision of the House of Lords in the Mayor, Aldermen, and Burgesses of the Borough of Portsmouth v.

Charles Bovil Smith reported in 1885 (10)Appeal Cases 364 where Lord Blackburn expressed how such an incorporated provision ought to be

read. The relevant passage from the said decision is quoted below:

Where a single section of an Act of Parliament is introduced into another Act, I think it must be read in the sense which it bore in the original Act

from which it is taken, and that consequently it is perfectly legitimate to refer to all the rest of that Act in order to ascertain what the section meant,

though those other sections are not incorporated in the new Act. I do not mean that if there was in the original Act a section not incorporated,

which came by way of a proviso or exception on that which is incorporated, that should be referred to. But all others, including the interpretation

clause, if there be one, may be referred to. It is a dangerous mode of draftsmanship to incorporate a section from a former Act; for unless the

draftsman has a much clearer recollection of the whole of the former Act than can always be expected, there is great risk that something may be

expressed which was not intended.

52. I have no reason to disagree with the above exposition of law. Therefore, it would be prudent to understand the meaning of the word

''company'' in SICA in the sense it has been defined in the Companies Act (vide Section 3(1)) and apply it wherever it occurs in SICA.

However, at this stage, the submission of Mr. Pal that without recourse to any principles of interpretation a plain reading of the provisions of SICA

and the Companies Act show that BJC is squarely covered by SICA is taken up for consideration. Apart from Mr. Pal, none else have advanced

this extreme argument.

53. The Companies Act does not define a foreign company, but it stands to reason that in terms thereof a company incorporated outside India is a

foreign company. Provisions in the Companies Act enabling a foreign company to establish a place of business in India are found in Part XI.

Section 591(1) of the Companies Act expressly mandates that Sections 592 to 602 thereof shall be applicable to foreign companies classified

therein. In terms of Sub-section (2) of Section 591, notwithstanding anything contained in Sub-section (1) thereof, a company incorporated outside

India and fulfilling the components mentioned therein is bound to comply with such of the provisions of the Companies Act, as may be prescribed,

as if it were a company incorporated in India. Reading of the Companies Act would reveal that a foreign company is not included in Parts I and II

thereof. Merely because a foreign company in terms of Section 591(2) has to comply with the provisions as may be prescribed as if it were a

company incorporated in India, and in terms of Section 592 it is under an obligation to deliver documents to the Registrar for registration, does not

render it a "company" registered within the meaning of Section 3(1) of the Companies Act. The legal fiction created by Section 591(2), as argued

by Mr. Pal, does not confer on a foreign company an exalted status to be treated as one incorporated in India. Any company incorporated out

side India is included in the definition of body corporate, as defined in Section 2(7) of the Companies Act. Therefore a "foreign company" which

was carrying on business in India upon ceasing to carry on business would be liable to be wound up as an unregistered company under Part X of

the Companies Act, notwithstanding that such foreign company might have been dissolved or otherwise ceased to exist in terms of the laws of the

country under which it was incorporated. Then again, the proviso to Section 589(2) of the Companies Act ordains that an unregistered company

shall not be deemed to be a company under the Companies Act, except in the event of its being wound up and limited to the extent provided by

Part X. As a matter of fact, a "foreign company" under the Companies Act is nothing better than an unregistered company. A "company" that

answers the definition in Section 3 of the Companies Act and a "foreign company" referred to in Section 591 thereof are, therefore, distinct juristic

entities for the purposes of the Companies Act. The question that has to be posed in the circumstances is whether BJC is a company formed and

registered under the 1956 Act? The answer has to be in the negative and, therefore, question of SICA being applicable to a foreign company, on a

plain reading thereof as well as the Companies Act, without any interpretative exercise, does not arise. The contention of Mr. Pal, accordingly,

stands overruled.

54. Section 3(1)(d) says that ""Company means ...", and not ""Company includes ...". In Punjab Land Development and Reclamation Corporation

Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others, while considering whether the definition of "retrenchment" in

Section 2(oo) of the Industrial Disputes Act, 1947 ought to be understood in its narrow, natural and contextual meaning or in its wider literal

meaning, a Constitution Bench relying on the decision in Gough v. Gough reported in (1891) QB 665, held that:

When a statute says that a word or phrase shall "mean" - not merely that it shall "include" - certain things or acts, "the definition is a hard-and-fast

definition, and no other meaning can be assigned to the expression than is put down in definition." A definition is an explicit statement of the full

connotation of a term.

55. Read literally and in the sense the word "company" is defined in Section 3(1) of the Companies Act, there could be no doubt that a restrictive

meaning has to be attached to the word "company" wherever used in SICA. However, the expression ""*** unless, the context otherwise requires

would enable the Court, while construing provisions of SICA wherever the word "company" is used, to ascertain the context in which it has been

used and if the context does not so require, to attach a wider meaning in keeping with the legislative intent. In my view, a Court may be justified

while construing a provision in an enactment to ascertain the legislative intent only if a literal reading of such provision leads to a result manifestly

unintelligible, absurd, unreasonable, unworkable or irreconcilable with the rest of the provisions thereof. Though SICA has been sought to be

repealed by Act I of 2004, it is yet to be enforced. During two and half decades of its existence, the need to judicially interpret the word

"company" vis-r-vis applicability of SICA to a foreign company did not exercise the consideration of any High Court or even the Supreme Court.

It would, therefore, be my endeavour to ascertain the legislative intent by reading the entire provision of SICA to find out whether ambit and

coverage thereof extends to a foreign company or not.

56. SICA, as its title suggests, is a special provision. The preamble reveals that it was framed in public interest for (i) timely detection of sick and

potentially sick companies owning industrial undertakings, (ii) speedy determination by a Board of experts of the preventive, ameliorative, remedial

and other measures which are required to be taken with respect to such companies, (iii) the expeditious enforcement of the measures so

determined, and for matters connected therewith or incidental thereto.

Apart from the definition of the word "company" in Section 3(1)(d), one finds an explanation of the same word "company", wherever used in

Section 34 of SICA.

Section 34 together with the explanation is quoted below:

34. Offences by companies.-

(1) Where any offence, punishable under this Act has been committed by a company, every person who, at the time the offence was committed

was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed

to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this Sub-section shall render any such person liable to any punishment, if he proves that the offence was

committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in Sub-section (1), where any offence punishable under this Act has been committed by a company and it

is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director,

manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that

offence and shall be liable to be proceeded against and punished accordingly.

Explanation.-For the purposes of this section,-

(a) ''company'' means any body corporate and includes a firm orother association of individuals; and

(b) ''director'', in relation to a firm, means a partner in the firm.

57. Mr. Pal, in course of his argument, as noted above, has admitted and there can also be no dispute that the meaning of the word ''company'' as

explained at the foot of Section 34 of SICA is wider than the meaning attributed to it by Section 3(1) of the Companies Act. A ''company'' is

nothing but an association of individuals formed for some common object or objects. The same applies in respect of a ''foreign company'' too. If

indeed the beneficial effects of SICA to revive a sick industrial company were intended to include a ''foreign company'', the Parliament would not

have restricted the definition of ''company'' in Section 3(1)(d) by bodily lifting the provision in Section 3 of the Companies Act but, as a logical

corollary, could have used an inclusive definition to expand the ambit and coverage of SICA to embrace a ''foreign company''. Since the wider

meaning of ''company'' is restricted only for the exclusive purposes of Section 34 of SICA, I do not consider it to be well conceived that the same

wide meaning must also control the expression ''sick industrial company'' wherever used in the various sections of SICA. The wider meaning of

''company'' in Section 34 rules out any possible attempt to read the word ''company'' in Sections 15 to 19 of SICA or elsewhere liberally to give it

an expanded meaning to include a ''foreign company'' that could be revived upon being declared sick or found to be potentially sick.

58. There is one other weighty reason for which I am inclined to hold that though SICA is a beneficent piece of social welfare legislation, it does

not warrant broad and liberal construction as specifically argued by Mr. Mitra, Mr. Bhattacharya and Mr. Pal.

Mr. Kundu has referred to the definitions of ''company'', appearing in the Reserve Bank of India Act (Section 45-I(aa)), the Banking Regulation

Act (Section 5(d)), and the Payment of Bonus Act (Section 2(9)). In these enactments, the common definition of ''company'' has been noted

above.

59. The objects of enactment of the Reserve Bank of India and the Banking Regulation Act are obviously different from the object for which SICA

was enacted. It would, therefore, not be proper to take the definition of ''company'', appearing in those two Acts relating to banking matters, as a

proper guide to arrive at a decision on the core issue involved herein. However, the Payment of Bonus Act is also a beneficent piece of social

welfare legislation enacted to provide for the payment of bonus to persons employed in certain establishments on the basis of profits or on the basis

of production or productivity and for matters connected therewith. It is important to note that the Parliament in its wisdom specifically intended a

''company'' referred to in the Payment of Bonus Act to include a foreign company u/s 591(2) of the Companies Act and such foreign company as

employer, being an establishment in private sector, would be subject to all its provisions regarding payment of bonus to employees.

60. I consider it to be settled law on the basis of the authorities noticed hereinabove that it is the duty of the Court to see what Parliament has said,

instead of reading into the law what ought to have been said. Where exact and precise words are used, they clearly show the intention of the

Parliament. It is not open to the Court to speculate as to what may be the supposed intention of the Parliament, because a case has arisen which is

not covered by the exact and precise words used by the Parliament. The Court has to judge the intention of the legislature not by speculating as to

what it had in its mind but only by its expression of that mind through the language of the enacted provisions.

61. Argument advanced by learned senior counsel on behalf of the parties seeking to sustain the BIFR''s order and consequently SS-09 requires

reading of words like ''"and includes a foreign company within the meaning of Section 591(2) of the Companies Act"'' after the words expressed in

Section 3(1)(d) of SICA. The question is, whether any compulsive necessity or justification arises to depart from the rule of plain and natural

construction and read additional words in Section 3(1)(d) when such words do not find mention and can be presumed to have been omitted by the

law framers? I think not.

62. The Payment of Bonus Act as well as SICA has been enacted by the Parliament. SICA is, however, of recent origin. In view of the difference

in the definition of the term ''company'' in the two Acts, it would be reasonable, logical and proper to hold that the Parliament did intend to convey

that "company" in SICA would not include a "foreign company". Speculative opinion as to what the Parliament probably would have meant,

although there has been an omission to enact it, ought to be eschewed. Courts are not entitled to usurp the legislative function in the guise of

interpretation and ought to avoid the danger of determination of the meaning of a provision based on their preconceived notions of ideological

structure or scheme into which the provision to be interpreted is some how fitted, is settled law (see: District Mining Officer and Others Vs. Tata

Iron and Steel Co. and Another,

63. SICA is not intended to revive an industrial unit of a sick company; on the contrary, its purpose is salutary keeping in view the provisions of

Article 39 of the Constitution. But at the same time if indeed the Parliament intended SICA to apply to a foreign company, the same definition of

company as appearing in the Payment of Bonus Act could have been incorporated in SICA. It is obvious that in case of the Payment of Bonus Act

the Parliament intended that the same should also cover a foreign company whereas insofar as SICA is concerned, its ambit and coverage would

not extend to a foreign company. If a matter is altogether omitted from a statute, it is clearly not allowable to insert it by an interpretative exercise,

for to do so would not be to construe SICA but alter it. Howsoever high the public purpose behind enactment of SICA, I do not feel that as a

judge I am competent to modify the language of an Act of Parliament to bring it in accordance with what is right or reasonable.

64. I have noted that in Leelabai Gajanan Pansare (supra) the Supreme Court relied on the decision in Union of India (UOI) and Others Vs. Shri

R.C. Jain and Others, where it has been ruled that ""The definition of an expression in one Act must not be imported into another"". There, the Delhi

Development Authority had been paying bonus to its employees under the Payment of Bonus Act for quite sometime. However, on the advice of

the Ministry of Law, payment was abruptly stopped. According to the Payment of Bonus Act, nothing therein shall apply to employees employed

by an establishment engaged in any industry carried on by or under the authority of any Department of the Central Government or State

Government or Local Authority. The stoppage of payment was questioned before the High Court and the challenge succeeded. The question that

arose for consideration was whether the Delhi Development Authority is a local authority or not. If it were a local authority, the Payment of Bonus

Act would not apply. The Payment of Bonus Act did not define "local authority". Considering the provisions of Section 3(31) of the General

Clauses Act, 1897, it was held that the Delhi Development Authority is a "local authority" and thus the Payment of Bonus Act did not apply to it. I

find that it was in the context of ''local fund'' appearing in Section 3(31) of the General Clauses Act that the Court refrained from relying on its

definition in the Fundamental Rules and the Treasury Code, and sounded the caution noticed above.

65. The situation is not quite the same here. There is no question of seeking the meaning of the word ''company'' used in SICA in the definition

clause of another Act, other than the Companies Act because of incorporation of the definition. On the contrary, what has exercised my

consideration is that the same word i.e. ''company'' has been restrictively defined in Clause (d) of Section 3(1) of SICA whereas the same word in

comparatively wide terms has been expressed in one section of SICA and also in the Payment of Bonus Act. The differences are conspicuous and

SICA being a subsequent statute, it would be a fair presumption that the alteration in the language used in SICA is intentional, and the Court by

judicial legislation ought not to rule that SICA is applicable also in respect of a "foreign company".

66. I am also of the considered view that the provisions of SICA cannot be strained to meet the justice of an individual case. It is absolutely a

matter of coincidence that majority shareholders of BJC (almost 99%) are Indians and that its only functional unit is at Baranagore, Kolkata. If

SICA were to apply to a ''foreign company'', it would require close examination how far proceedings thereunder would be practicable and

feasible. A company incorporated under the laws of a foreign country may have industrial establishments not only in India but all over the world.

Whether in such case the BIFR would have the authority to conduct proceedings for revival is a question of great importance. Declaration of law is

not to be made in isolation, keeping in mind any one particular company. The judgment, declaring the law, would operate in rem. Submissions of

substantial worth have not been urged by reference to specific provisions of SICA regarding its inapplicability to a foreign company (Mr.

Chatterjee did make a halfhearted attempt to hint at it in reply) and hence I have considered it improper to embark on a detailed discussion on this

aspect, not to speak of giving a final decision. Such question is left open for an appropriate decision in a properly argued case, in future.

67. I accept the submission of Mr. Kundu that while interpreting the word ''company'' as defined in SICA, attention must be paid to what has been

said and what has not been said. Extending the ambit and coverage of SICA to a ''foreign company'' would lead to altering the material of which

SICA is woven, instead of ironing out the creases. I also accept the submission of Mr. Chatterjee that Section 3(1)(d) of SICA means what it

says. It is absolutely a different thing altogether that the writ petition argued by him has failed for a different reason.

68. For the foregoing reasons, I am of the firm opinion that coverage of SICA does not extend to take within its fold, a foreign company; a

fortiorari, it follows that reference of BJC to the BIFR was not legal and valid and the BIFR usurped a jurisdiction not conferred on it by law.

69. In the result, the proceedings before the BIFR being Case No. 294 of 2004 including all orders passed in connection therewith and SS-09

stand quashed.

70. W.P. No. 12377 (W) of 2010 and W.P. No. 12406 (W) of 2010 are allowed, whereas W.P. No. 12412 (W) of 2010 stands dismissed.

71. Records of W.P. No. 221 of 2006 shall stand de-tagged and be sent down to the department.

72. I express sincere gratitude to all learned Counsels for their able assistance.

73. Urgent photostat certified copy of the order, if applied for, be given to the parties at an early date.