REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 375 OF 2017

Modi Rubber Limited **…Appellant(s)**

Versus

Continental Carbon India Ltd. **…Respondent(s)**

WITH

CIVIL APPEAL NO. 377 OF 2017

OCL India Limited **…Appellant(s)**

Versus

Andrew Yule & Co. Ltd. & Ors. **…Respondent(s)**

WITH

CIVIL APPEAL NO. 379 OF 2017

TVS Sewing Needles Ltd. **…Appellant(s)**

Versus

Singer India Ltd. & Ors. **…Respondent(s)**

WITH

TRANSFER PETITION (C) NO. 543 OF 2016

TVS Sewing Needles Ltd. …Appellant(s)

Versus

Singer India Ltd. & Ors. …Respondent(s)

AND

CIVIL APPEAL NO. 1755 OF 2023
(@ SLP (C) No. 4282 of 2020)

M/s. Titagarh Wagons Limited …Appellant(s)

Versus

M/s. Amar Forging Pvt. Ltd. & Ors. …Respondent(s)

J U D G M E N T

M.R. SHAH, J.

1. As common question of law and facts arise in these group of appeals, they are being disposed of by this common judgment and order.

Civil Appeal No. 375 of 2017 - (To be treated as the lead matter)

2. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Delhi at New Delhi passed in Writ Petition (C) No. 4854 of 2011 by which the Division Bench of the High Court has allowed the said writ petition preferred by the respondent No. 1 herein – Continental Carbon India Ltd. (unsecured creditor) and has

held that the original writ petitioner is an unsecured creditor and has the option not to accept the scaled down value of its dues and may wait till the scheme of rehabilitation of the appellant company [company before the BIFR under Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "SICA")] has worked itself out with an option to recover its debt post such rehabilitation, the original respondent No. 1 – Modi Rubber Ltd. has preferred the present Civil Appeal No. 375 of 2017.

Civil Appeal No. 377 of 2017

2.1 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Delhi at New Delhi passed in Writ Petition (C) No. 8154 of 2010 by which the Division Bench of the High Court has dismissed the said writ petition preferred by the appellant herein confirming the orders passed by BIFR and AAIFR taking the view that the appellant herein, on obtaining the decree in its favour has to stand in the queue alongwith other unsecured creditors, who were to be given 54 paisa in a rupee as per the scheme of revival sanctioned under the SICA, the original writ petitioner – OCL India Ltd. (unsecured creditor) has preferred the present Civil Appeal No. 377 of 2017.

Civil Appeal No. 379 of 2017

2.2 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Division Bench of the High Court of Delhi at

New Delhi dated 02.03.2016 passed in Writ Petition (C) No. 832 of 2016 by which the Division Bench of the High Court has doubted the correctness of the judgment and order passed by the High Court of Delhi in the case of **Continental Carbon India Ltd. Vs. Modi Rubber Ltd., 2012 (131) DRJ 294 (DB)**, which is the subject matter of Civil Appeal No. 375 of 2017 before this Court and has referred the matter to the Larger Bench, the original respondent – TVS Sewing Needles Ltd. has preferred the present Civil Appeal No. 379 of 2017.

TRANSFER PETITION (C) NO. 543 OF 2016

2.3 Present Transfer Petition has been preferred by the petitioner – TVS Sewing Needles Ltd. to transfer the pending Writ Petition (C) No. 832 of 2016 pending before the Delhi High Court, which is also the subject matter of Civil Appeal No. 379 of 2017 as the issue involved in the writ petition is the same arising in Civil appeal No. 375 of 2017 as the correctness of the said decision, which is the subject matter of Civil Appeal No. 375 of 2017 is doubted in Writ Petition (C) No. 832 of 2016.

Civil Appeal No. 1755 of 2023 (@ SLP (C) No. 4282 of 2020)

Leave granted.

2.4 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Madhya Pradesh Bench at Gwalior passed in Civil Revision No. 96 of 2018 by which the High Court has dismissed the said revision application relying upon the decision of

the Delhi High Court in the case of **Continental Carbon India Ltd. (supra),** which is the subject matter of Civil Appeal No. 375 of 2017, the original revisionist – M/s. Titagarh Wagons Limited, the judgment debtor has preferred the present appeal.

3. Following question of law arise in the present group of appeals:-

> Whether on approval of a scheme by the BIFR under the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as the 'SICA'), an unsecured creditor has the option not to accept the scaled down value of its dues, and to wait till the scheme for rehabilitation of the respondent – Company has worked itself out, with an option to recover the debt with interest post such rehabilitation?

4. For the sake of convenience Civil Appeal No. 375 of 2017 is treated as the lead matter. The facts leading to the Civil Appeal No. 375 of 2017 are as under:-

4.1 That the scheme of rehabilitation of the respondent – company was approved on 08.04.2008 under the SICA. The dues of the unsecured creditors was dealt with in para 5.1.3 of the sanctioned scheme, under which the payment to the unsecured creditors was to be made as under:-

> "5.1.3. UNSECURED PRESSING CREDITOR
> (RS. 7390.20 LACS)

Pressing creditors have been identified as under:-

Raw Material Suppliers :	2690.50
Acceptances :	3908.37
Dealers and C & F :	289.33
Inter corporate deposits :	500.00

The above creditors shall accept their outstanding dues as per one of the following three options:

a) To accept 30% of the principal outstanding as full and final payment. The payment shall be made within 3 months of the sanction of the scheme by the BIFR. Or

b) To accept 40% of the principal outstanding as full the final payment. The payment shall be made in 3 equal annual installments from the cut off date (i.e. 31.3.2008). The first installment shall be payable within 3 months of the sanction of the Scheme by the BIFR

c) To accept 50% of the principal outstanding as full and final payment. The payment shall be made in one go at the end of 3rd year from the sanction of the Scheme by the BIFR.

Raw-material Suppliers: MRL has already entered into Memorandum of Understanding with 30 Suppliers out of total 36 Pressing Raw Material suppliers They have accepted for payment as per option (a). Discussions with others are underway by the company management.

Acceptances: MRL has already received acceptance from PNB about their Hundi acceptances settlement as per option (a). Efforts are being made to settle with other banks namely Federal Bank, Dhanlakshmi Bank, etc in respect of Hundi Acceptances. The negotiations are at advance stage."

4.2 Clause 5.1.4 provides for payment to other unsecured creditors as under:-

"5.1.4 OTHER unsecured creditors (Rs. 1840.42 lacs)

To accept 20% of the principal outstanding as full and final payment. The payment shall be made at the end of 3rd year from the sanction of the Scheme by the BIFR."

4.3 That the respondent herein was an unsecured creditor – a carbon black supplier, who did not accept the amount offered under the rehabilitation scheme sanctioned under SICA. According to the original writ petitioner – respondent No. 1 herein, the debts recovered in the scheme due to it were much less than the actual debts. Therefore, aggrieved by the rehabilitation scheme, the respondent No. 1 – unsecured creditor preferred an appeal before the AAIFR to the extent it provided a dispensation for payment of unsecured creditors.

4.4 The AAIFR dismissed the appeal vide order dated 23.06.2011. The order passed by the AAIFR was the subject matter of writ petition before the High Court.

4.5 By the impugned judgment and order, the Division Bench of the High Court has allowed the writ petition and has set aside the order passe by the AAIFR dated 23.06.2011 by holding that the respondent No. 1 – original writ petitioner as an unsecured creditor has the option not to accept the scaled down value of its dues and wait till the scheme of rehabilitation of the respondent company has worked itself out with an option to recover its debt post such rehabilitation. Holding so, the

Division Bench was of the view that the contract *inter se* the parties arrived at whereafter the company has become sick, cannot be compulsorily overridden by the provisions of the SICA if the creditor is willing to wait till such time as the company is financially rehabilitated to claim its dues. The High Court is of the opinion that there would be only suspension of legal proceedings as envisaged under Section 22 of the SICA and the enforcement of the remedy remains suspended and that is why even in computing period of limitation, the period is excluded as per sub-section (5) of Section 22 of the SICA. The impugned judgment and order passed by the Division Bench of the High Court is the subject matter of present Civil Appeal No. 375 of 2017.

5. Shri Jayant Bhushan, learned senior counsel appearing on behalf of the appellant - Modi Rubber Limited in Civil Appeal No. 375 of 2017 while assailing the impugned judgment and order passed by the High Court has submitted as under:-

(i) That in the instant case, notwithstanding the mandatory provisions of Section 18(8) of SICA read with Section 32 of SICA, the High Court by the impugned judgment and order has allowed the unsecured creditor to stay outside the rigours of the scheme sanctioned under Section 18(4) of SICA read with Section 32 of SICA, thus, putting at naught the very purpose, rationale and scheme of SICA;

(ii) The schemes whether under the Companies Act or under specific insolvency legislations like, SICA are binding on all the creditors including the decree holders / arbitration award holders / industrial award holders covered by the scheme. No creditor including decree holders etc. covered by a scheme can opt out of the scheme once the statutory requirements are complied with. It is submitted that even the binding effect of a scheme is based on the statutory provisions. It is submitted that under such statutory provisions enabling framing and sanction of schemes and their binding effect is founded upon larger public interest. Reliance is placed upon the decision of this Court in the case of **Navnit R. Kamani Vs. R.R. Kamani, (1988) 4 SCC 387.** It is submitted that once the rehabilitation scheme is sanctioned under the statutory provisions of the SICA, the concerned insolvent companies can lead a debt free future life and can use this as a second chance / fresh start to succeed;

(iii) That no creditor including the decree holders / arbitration award holders / industrial award holders can claim super priority of their claims specially when the prescribed entities mentioned in Section 19(1) may be required to take severe cuts to help revive sick companies, the other creditors including the decree holders

/ arbitration award holders / industrial award holders cannot claim to have better rights;

(iv) Learned senior counsel appearing on behalf of the appellant has taken us to the object and purpose of SICA, 1985. He has also taken us to the procedure to be followed under the SICA while considering and/or sanctioning the rehabilitation scheme under Section 18(4) read with Section 32 of SICA. It is submitted that SICA has done away with classification of creditors and shareholders, separate meetings of classes of creditors and shareholders. It submitted that done away with the vexed distinctions in law between composition, arrangements, reconstruction etc. The SICA has also done away with individual notices to and separate meetings of unsecured creditors and shareholders. It is submitted that SICA treats all creditors including decree holders / arbitration award holders / industrial award holders as one class so as to avoid giving veto power to the minority creditors in value. It is further submitted that the rehabilitation scheme under SICA discharges debt by operation of law. It is submitted that SICA, 1985 was not a consent based regime rather it was an operation by law based regime;

(v) It is further submitted by learned senior counsel appearing on behalf of the appellant that in case of insolvent company, from

practical and commercial point of view, there is in effect, no scaling down of debt of ordinary creditors – unsecured creditors as the real market value of debts owed to the ordinary creditors including the decree holders / arbitration award holders / industrial award holders covered by the scheme is nothing. The nominal value of debt may appear to have been scaled down, however, in reality, the unsecured creditors normally do not get anything;

(vi) It is submitted that subsequently, legislatures in response to societal and economic changes have enacted separate insolvency legislations providing a mandatory system to reorganize business which shielded the insolvent companies with automatic stay against recovery of the debts. It is submitted that invocation of insolvency legislations are usually involuntary. It is submitted that the Parliaments of different countries recognized the need to have separate insolvency legislations as the fallout of insolvency and eventual winding up leading to dissolution of companies was having serious economic and social implications for the society at large;

(vii) It is further submitted that the commercial laws have two types of laws, one, mandatory laws and second, permissive opting out laws. Insolvency/bankruptcy laws are mandatory laws and not permissive opting out laws. Insolvency/ bankruptcy laws

provides a mandatory system wherein creditors' bargain take place within a common collection pool;

(viii) It is further submitted that a sanctioned scheme whether under Companies Act or under specific insolvency laws like SICA or IBC, 2013 is to operate as a discharge of debt / liability owed by the insolvent company to all creditors including decree holders / arbitration award holders / industrial award holders. All creditors are entitled to collect the amount of debt as provided in the scheme and not the full amount of debt. It is submitted that a decree or an award does not confer any superior right to a creditor holding such a decree or an award. Decree holders or award holders do not form a separate class;

(ix) On the scheme of SICA, more particularly, the rehabilitation scheme, it is submitted as under :-

a) Section 18(1) deals with the measures that a scheme with respect to a sick industrial company can provide for. The scheme under section 18(1)(a) and 18(2)(h) can provide for "financial reconstruction of the sick industrial company" Section 18(1)(e) enable a scheme to provide for such other preventive, ameliorative and remedial measures as may be appropriate". Financial reconstruction would normally entail reduction / sacrifice of portion of debts as otherwise, no financial reconstruction of a financially distressed company

would be possible. Section 18(1)(f) is the residuary clause dealing with incidental, consequential or supplemental measures that may be necessary or expedient in connection with or for the purposes of the measures specified in clauses (a) to (e) of Section 18(1). Section 18(2) delineates various aspects that the scheme may provide for to fully and effectively carry out reconstruction, amalgamation or other measures mentioned therein.

b) The words financial reconstruction provided in section 18(1)(a) are of widest amplitude. Under this sub-section the BIFR can reorganize, modify, vary, reduce, defer the dues of creditors.

c) Section 18(3)(a) provides for publication of draft scheme in daily newspapers for suggestions and objections. Section 18(3)(b) specifically provides that BIFR may modify draft scheme in the light of suggestions and objections received from creditors, amongst others, of sick company.

d) Section 18(8) of SICA provides that a sanctioned scheme shall be binding on the sick industrial company, shareholders, creditors, guarantors and employees of the company.

e) Section 19(1) deals with financial assistance, sacrifices to he provided by central and state governments, scheduled banks

or other bank, public financial institutions, state level institution or any institution or other authority. Section 19(2) provides that only in the case of above mentioned prescribed entities that their consent is imperative as they may be required to give financial assistance. This sub-section requires the consent to be given within a span of 60 days from the date of circulation of scheme or within such further period not exceeding 60 days, as allowed by BIFR. It is imperative that the consent is given within the prescribed period of 60 days or within such further period not exceeding 60 days, as allowed by BIFR. Otherwise, this sub-section mandatorily provides that the consent will be deemed to have been given.

f) Section 32 of the SICA provides that the provisions of the scheme framed under the SICA, i.e., the sanctioned scheme, shall override all other laws except the Foreign Exchange Regulations Act, 1973 and the Urban Land (Ceiling and Regulations) Act, 1976. The section states that a scheme framed under the SICA will override also the memorandum and articles of association of a sick industrial company or any other instrument having effect by virtue of any law other than this Act.

g) After amendments made in SICA in 1994 (w.e.f. 1.2.1994), in particular, in section 18(1)(a), 18(3)(a), 18(8) it becomes amply clear that BIFR has the power to scale down/ vary the dues of the creditors including decree holders/ arbitration award holders/industrial award holders.

(x) It is further submitted that as such in the case of winding up, the ordinary creditors including decree holders etc. normally do not get anything. Thus, when the BIFR scales down the dues owed to the creditors including the unsecured creditors, in effect, there is no confiscation of property. Rather, if the sick company becomes healthy, the unsecured creditors including decree holders / arbitration award holders / industrial award holders can do business with the healthy company.

(xi) It is further submitted that Section 22(1) does not provide for any period of the implementation of scheme. The protective umbrella of Section 22 is not terminable on networth becoming positive. The scheme is binding on all covered and creditors including decree holders etc., who cannot have the option of opting out.

(xii) It is further submitted that Section 22(5) of SICA dealing with exclusion of limitation period cannot be relied upon to argue that it indicates that the dues of the creditors can be deferred to

a period when the company's networth becomes positive or when the scheme is fully implemented. It is submitted that if such an argument is accepted, no creditor will like to give financial assistance or make sacrifices. The resultant effect may be that the company whose networth has turned positive with the assistance of financial assistance and sacrifices may again become sick making the whole effort of taking a company out of sickness futile.

(xiii) It is submitted that such a submission / argument would be against the foundational principle of SICA and, in general, other insolvency legislations that their purpose is to rescue the sick companies from the throes of their inevitable death / liquidation and are not mechanisms for recovery of debts of creditors.

(xiv) Now, so far as the submission on behalf of the respondents that the scaling down/reduction/waiver of dues of creditors is violative of Article 300A of the Constitution of India is concerned, it is submitted that Article 300A of the Constitution of India shall have no application to a rehabilitation scheme sanctioned by BIFR under the framework of SICA. It is submitted that there is no deprivation of and/or confiscation of property when the dues owed to a creditor other than prescribed entities under Section 19(1) of SICA, is unilaterally reduced after complying with the procedure stated in Section

18(3)(a) including publication of draft rehabilitation scheme inviting objections and suggestions, as the same is done by authority of law i.e., SICA. It is submitted that SICA has been enacted to secure the principles specified in Article 39(a) and (b). It is submitted that in reality, there is no real property or interest in favour of creditors which get affected. In the case of winding up of a sick industrial company whose networth is eroded, the ordinary creditors including decree holders do not normally get anything.

(xv) It is submitted that the High Court has interpreted the provisions of SICA by juxtaposing them with the provisions of Companies Act, 1956 in a way which is contrary to the general principle that no person can stay out of insolvency regime. The High Court has by its interpretation allowed the creditors to stay out of the insolvency regime, which is impermissible. The High Court has failed to appreciate the full import of various provisions of Sections 18(3)(a), 18(4), 18(8), 19(1), 19(2) etc. The purpose of SICA is to expeditiously rehabilitate a sick company by framing and sanctioning a scheme of rehabilitation and the timeline fixed to complete the process is 90 days. The Parliament in its wisdom provided for public notice rather than individual notices as the same was neither practical nor of commercial utility.

(xvi) It is submitted that in the case of **Tata Motors Limited Vs. Pharmaceutical Products of India Limited and Anr., (2008) 7 SCC 619**, it is specifically observed and held by this Court that the provisions of a special Act will override the provisions of a general act. It is observed that SICA is a special statute and is a self-contained code. The Companies Act, 1956 is a general act. Therefore, wherever any inconsistency is seen between the provisions of the two Acts, SICA would prevail. It is further submitted that in the said decision, it is also further observed that the SICA has been enacted to secure the principles specified in Article 39 of the Constitution. It seeks to give effect to the larger public interest and it should be given primacy because of its higher public purpose.

(xvii) It is further submitted that in the case of **Raheja Universal Limited Vs. NRC Limited and Ors., (2012) 4 SCC 148** taking into consideration the object and purpose and nature of SICA and its provisions, it is observed and held by this Court that the matters connected with sanctioning and implementation of rehabilitation / restructuring scheme from the date of its presentation or date of its coming into effect, whichever is earlier, fall exclusively within the jurisdiction of BIFR. It is further observed that in such a case of creditors' demand, even if not made part of the scheme, would not merely for that

reasons stand executed from BIFR's jurisdiction, which extends to making changes in instruments, documents etc., which create rights and liabilities vis-à-vis sick industrial company and its properties. It is observed that any other view would defeat the very purpose of SICA. It is submitted that it is further observed and held in the said decision that the SICA is a special law vis-à-vis Transfer of Property Act, which is a general law.

(xviii) It is further submitted by the learned senior counsel appearing on behalf of the appellant – Modi Rubber Ltd. that even subsequently, the Division Bench of the High Court has doubted the correctness of the present impugned decision by observing that prima facie the view taken in **Modi Rubber Ltd. (supra)** is not in sync with the view taken by the various Division Benches of the High Court, which have been distinguished by the Division Bench in **Modi Rubber Ltd. (supra)** with a simple observation that the point therein was on a slightly different question. It is submitted that in the case of **Singer India Ltd. (supra)** while not agreeing with the view taken in the case of **Modi Rubber Ltd. (supra)**, it is observed that there is no distinction between secured and unsecured creditors except those creditors, who have given financial assistance under a scheme to a sick company. In other words, every creditor stand

on a same footing with respect to the power of the Board to sanction a scheme. It is further observed that those creditors, which have to provide financial assistance would form a sub-category and their consent alone would be necessary with respect to the financial assistance to be provided.

(xix) Making above submissions and relying upon the above decisions, it prayed to allow the present appeals and set aside the impugned judgment and order taking the view that an unsecured creditor has the option not to accept the scaled down value of its dues and wait till the scheme of rehabilitation of the appellant company has worked itself out with an option to recover its debt post such rehabilitation.

6. Shri C.U. Singh, learned Senior Advocate, appearing on behalf of the appellant / petitioner in Civil Appeal arising out of SLP (C) No. 4282 of 2020 has vehemently submitted that the Hon'ble Madhya Pradesh High Court has erred in treating the judgment of the Delhi High Court in the case of **Continental Carbon India Ltd. (supra)** as a binding precedent and even the said judgment was contrary to the several earlier and later judgments of the Delhi High Court and, therefore, the Madhya Pradesh High Court ought to have independently examined the issue.

6.1 It is further submitted by Shri C.U. Singh, learned Senior Advocate that the sanction accorded by the BIFR under section 18(4) is under section 18(7) treated as conclusive evidence that all requirements relating to reconstruction or amalgamation or any other measure specified therein have been complied with, and a certified copy thereof shall in all legal proceedings be admitted as evidence. Further, on and from the date of sanction, the scheme and every provision thereof shall be binding on the sick industrial company, and, inter alia, its shareholders, creditors, guarantors, and employees, in terms of section 18(8) of SICA. Reliance is placed on the decisions of this Court as well as the decision of the Bombay and Delhi High Court in the case of :

(i) **Raheja Universal Limited Vs. NRC Limited and Ors., (2012) 4 SCC 148**;

(ii) **Kanpur Fertilizers and Cement Limited Vs. State of Uttar Pradesh and Anr., (2018) 17 SCC 309**;

(iii) **Kotak Mahindra Finance Ltd. Vs. Mafatlal Industries Ltd., (2004) 5 Bom. CR 792 (Bom.)**;

(iv) **Nasik People's Co-operative Bank Ltd. Vs. Datar Switchgear and Anr., 2007 SCC Online Del 2067(DB)**;

(v) **Oman International Bank S.A.O.G. Vs. Appellate Authority for Industrial and Financial Reconstruction, (2010) 169 DLT 618 (DB)**;

(vi) **International Finance Corporation, Washington Vs. Bihar Sponge & Iron Ltd. & Ors., AIR 2010 Del 142 (DB)**; and

(vii) **Union of India Vs. Cimmco Ltd. and Ors.** reported in **2014 SCC OnLine Del 909**.

6.2 Shri C.U. Singh, learned Senior Advocate has further submitted that the judgment in the case of **Continental Carbon India Ltd. (supra)** has made a complete departure from all prior decisions as to the scope and effect and Sections 18 and 22 of SICA and the effect thereof would be to completely negate the purpose for which a Scheme has been framed by BIFR. It is submitted that it is no longer res integra that the provisions of SICA did not envisage any prior consent being obtained from unsecured creditors, yet dues of such unsecured creditors could be completely or partially written off under a revival scheme framed under section 18 of SICA.

6.3 It is further submitted that under Section 18 of SICA, the operating agency prepares a scheme with respect to the sick company and the scheme can provide any of the measures specified in Section 18(1) and 18(2). The provisions of 18(1) and 18(2) are extremely broad and there is power to provide for such incidental and consequential measures as are necessary. Specifically, Section 18(2)(f) and (m) provide:

> (f) the reduction of the interest or rights which the shareholders have in the sick industrial company to such extent as the Board considers necessary in the interests of the reconstruction, revival or rehabilitation of the sick industrial company or for the maintenance of the business of the sick industrial company;
>
> (m) such incidental, consequential and supplemental matters as may be necessary to secure that the reconstruction or amalgamation or other measures

mentioned in the scheme are fully and effectively carried out.

6.4 It is further submitted that the draft Scheme is examined by the Board and then published in daily newspapers for suggestions and objections [Section 18(3)(a)]. Thereafter, the Board makes such modifications as considered necessary in light of the suggestions and objections received [Section 18:31(b)]. Thereafter the scheme is sanctioned by the Board [Section 18(4)].

6.5 It is submitted that SICA being a special statute, the provisions thereof, shall prevail over the general law for recovery of money in respect of price of goods sold and delivered. SICA provides for a special mechanism for revival of a company declared sick, and the fate of such a scheme cannot be upset by the refusal of one creditor, secured or unsecured, to adhere to the provisions of the scheme.

6.6 It is submitted that the scheme framed by the BIFR in terms of the provisions of SICA is binding on all creditors of the sick company and it is not open to any creditor to contend that the scheme framed shall not bind such creditor irrespective of whether such consent of such unsecured creditor was not taken prior to sanction of the scheme. The provisions of SICA do not provide for the creditors' consent white framing of the scheme under Section 18 or its implementation. In section 19(2), the scheme under Section 19(1) is required to be circulated to every

person providing financial assistance "for his consent". However, the scheme under Section 18 envisages no such "consent.

6.7 Further, the Scheme under Section 18 remains binding even after revival of the company. Here, it is necessary to contrast the provisions of Section 22, which provide that legal proceedings, contracts, etc., in respect of a sick company against whom an inquiry is pending under Section 16, or a scheme is under preparation or implementation, etc., shall remain suspended in terms of a declaration of the Board under Section 22(3), and would revive upon the declaration ceasing to have effect [Section 22(4)]. However, the scheme under Section 18 does not lose its finality/efficacy upon revival of the company.

6.8 It is further submitted that SICA, being a special Act, the provisions thereof and the scheme sanctioned thereunder, would prevail over any other obligation that may have arisen against a sick company under any other law for the time being in force. Section 32 of SICA clearly provides that a scheme framed by the BIFR shall prevail and have effect over any other law for the time being in force notwithstanding the same.

6.9 It is submitted that the entire purpose of formulating a scheme under SICA is to rehabilitate the sick company. If the sick company is wound up, then the unsecured creditors would get nothing. Hence is the

very scheme that ensures that all creditors get some of their property, albeit to a reduced extent.

7. Shri P.S. Sudheer, learned counsel appearing on behalf of the respondent – Continental Carbon India Ltd. – unsecured creditor has vehemently submitted that the Hon'ble High Court after examining various provisions of the SICA, 1985 and various judgments has answered the question and has held that the unsecured creditor has the option not to accept the scaled down value of its dues and may wait till the scheme of rehabilitation of the sick company has worked itself out with the option to recover its debt post such rehabilitation, which is not required to be interfered with by this Court.

7.1 It is submitted that there is no provision under the SICA to compel an unsecured creditor to accept the scaled down value of its dues. In absence of any such provision, the unsecured creditor – respondent cannot be compelled to accept a lesser amount, which would tantamount to taking the right to property in the goods without appropriate consideration and would be violative of Article 300A of the Constitution of India.

7.2 It is submitted that the scheme under the SICA, 1985 provides for preparation and sanction of the scheme for rehabilitation under Section 18. It is submitted that sub-clause (e) of sub-section (1) of Section 18 of

the SICA provides for preventive, ameliorative and remedial measures as may be appropriate, while Section 19 of the SICA deals with rehabilitation by giving financial assistance qua such preventive, ameliorative and remedial measures. The same would apply to a class of creditors which did not include unsecured creditors and, therefore, there is no specific provision in the SICA which authorized the BIFR to deprive the unsecured creditor of its full value of unsecured debt.

7.3 It is submitted that even if Section 18/19 are interpreted as the provisions providing for deprivation of property of an unsecured creditor in the form of sacrifices and that no consent for said sacrifice is required, then also there is no provision in the SICA, 1985 which provides for making an unsecured creditor, in the first place, to be a part of the scheme without his consent. It is submitted that in other words, once an unsecured creditor is ready to be part of the scheme then even if no consent of his is required before asking him to sacrifice does not mean that he has to be forced to become a part of the scheme.

7.4 It is submitted that as such the interpretation to the scheme of the SICA, 1985 as given by the High Court would, in fact, render the provisions of the Act more workable and reasonable. It is further submitted that the fact that an unsecured creditor is permitted to stand outside the scheme, in no manner can cause prejudice to the rehabilitation of a Sick Company. This is also clear from the fact that the

period of the scheme is completely independent from the net worth of the Sick Company turning positive. It is submitted that in the present case, the period of the rehabilitation scheme is to continue till 2013, whereas the very same scheme contemplated the networth of the petitioner company turning positive by 2007-2008 and the loss completely wiped off by 2008-2009. It is submitted that therefore the petitioner company ceased to be a Sick Industrial Undertaking as per its Balance Sheet of 31.03.2009.

7.5 It is further submitted that even otherwise, the BIFR had no authority to scale down the debts of an unsecured creditor without their consent. It is submitted that in absence of any provision permitting BIFR to scale down the debts of the unsecured creditor without its consent would be violative of Article 300A of the Constitution. It is submitted that Article 300A of the Constitution provides that no person shall be deprived of his property save by authority of law. It is submitted that money is undoubtedly property and, therefore, the right to a sum of money is also a property. It is submitted that hence, the aforesaid right of the respondent – unsecured creditor to receive the sum of money is a Constitutional Right and, further, the said Constitutional Right to property can be taken away / deprived only by authority of law.

7.6 It is submitted that the expression ‘law’ in Article 300A would mean a Parliamentary Act or an Act of State Legislature or Statutory having the

force of law. It is submitted that while enacting such a law, Parliament cannot be presumed to have taken away a right in property. It is submitted that the provision taking away such right to property has to be provided explicitly.

7.7 It is further submitted that so far as the Insolvency and Bankruptcy Code, 2016 is concerned, it contains the definition of the term 'Creditor' and the same includes an 'Unsecured Creditor'. It is submitted that therefore, the regime under the SICA, 1985 and the Insolvency and Bankruptcy Code, 2016 are completely different. It is submitted that the Insolvency and Bankruptcy Code, 2016 specifically provides for distribution of assets under Section 53. Thus, the Insolvency and Bankruptcy Code, 2016 specifically provides for provisions for dealing with 'Unsecured Creditors' whereas in the SICA, 1985, there is no provision to deal with 'Unsecured Creditors' without their consent.

7.8 Making above submissions, it is prayed not to interfere with the impugned judgment and order passed by the Division Bench of the High Court.

8. While supporting the view taken by the Delhi High Court followed by the Madhya Pradesh High Court, it is submitted by Shri A.K. Shrivastava, learned senior counsel appearing on behalf of the unsecured creditor – decree holders that in the present case, the

scheme sanctioned for revival of the company has been substantially implemented and the net worth of the company has turned positive substantially by Rs. 31 crores.

8.1 It is submitted that in the present case, the appellant company moved an application before the BIFR for discharging the company from the purview of SICA as its net worth has turned positive. It is submitted that the BIFR thereafter has allowed the said application vide order dated 07.12.2010 and the applicant company has been discharged from the provisions of SICA. It is submitted that therefore, the execution application filed by the respondent shall have to be proceeded further and there would not be any bar under Section 22 of the SICA, 1985 as contended on behalf of the appellant before the High Court. It is submitted that once the appellant on its own motion got discharged from the purview of SICA and such relief having been granted, the appellant thereafter cannot take shelter under any of the provisions of SICA, 1985. Shri Shrivastava, learned senior counsel appearing on behalf of the respondent in Civil Appeal arising out of SLP (C) No. 4282 of 2020 has prayed to consider the following factual background:-

8.1.1 That the answering respondent raised invoices in the 1991-92 for supply of goods and services provided to the foundry unit of petitioner at Gwalior which remained outstanding. Thereafter in the year 1996 the answering respondent filed a

Civil Suit No. 172B/1996 for recovery of Rs 7,76,138/- alongwith interest @ 25%.

8.1.2 That on 24.02.2000 the money decree was passed by the Trial court, in favour of the answering respondent and against the petitioner vide judgement dated 24.02.2000.

8.1.3 That the petitioner thereafter challenged the decree dated 21.02.2000 in First Appeal No. 65/2000 before the Hon'ble High Court of Madhya Pradesh. The said First Appeal was dismissed on 19-10-2005 and the order of High Court became final as it was not assailed before this Court.

8.1.4 That the petitioner subsequently filed reference under Section 15(1) of SICA in June 2000. Subsequently the BIFR on 21.08.2000 declared the petitioner to be a sick company under Section 3(1)(0) of SICA, 1985 and appointed IDBI as operating agency. That the petitioner did not disclose about the BIFR proceedings in the appeal preferred by them before the High Court. The BIFR also did not pass any order under Section 22(2) of the SICA for suspension of pending legal proceedings.

8.1.5 That the Hon'ble High Court dismissed the First Appeal No. 65/2000 vide order dated 10.10.2005 and hence the judgement and decree dated 24.02.2000 was affirmed and

order dated 10.10.2005 attained finality as the petitioner never challenged the order dated 10.10.2005.

8.1.6 That thereafter the proceedings continued before the BIFR for revival of the petitioner. That on 07.12.2010, the petitioner company was declared revived and was discharged from the purview of the SICA.

8.1.7 That after the revival of the appellant company the answering respondent filed execution petition on 03.11.2011.

8.1.8 That the petitioner thereafter filed an application seeking direction to the respondent to accept the cheque for a meager amount of Rs 70,452/- in terms of the scheme which is the scaled down value of the claim amount and further prayed for closing the execution proceedings. The learned executing court dismissed the application of the appellant vide order dated 13.03.2014. This order was never challenged by the petitioner and hence attained finality.

8.1.9 That the appellant thereafter again filed written objection to the execution proceedings on the same grounds as were earlier raised by them. Such objections are barred by the principles of res-judicata as vide earlier order the identical pleas of the petitioner was rejected by the Learned Executing Court on 13.03.2014.

8.1.10 That the answering respondent filed reply to the written objections filed by the petitioner.

8.1.11 That the Learned Executing Court again vide detailed order dated 06.11.2017 rejected the objections raised by the petitioner.

8.1.12 That in Feb 2018 the petitioner filed Civil Revision No. 96/2018 under Section 115 of CPC before the Hon'ble High Court of Madhya Pradesh at Gwalior.

8.1.13 That on 17.08.2019 in the pending execution proceedings, part of the land of petitioner admeasuring 4.025 hectares was attached by the Executing Court.

8.1.14 That the Hon'ble High Court vide impugned order dated 18.10,2019 dismissed the Civil Revision field by the petitioner.

8.1.15 That the petitioner thereafter had fled SLP(C) No. 42822/2020 before the Hon'ble Supreme Court. The Hon'ble Supreme Court vide order dated 20.02.2020 issued notice and granted interim protection till the next date of hearing.

8.1.16 That thereafter the matter came up for hearing on 20.05.2022, the petitioner stated that they are willing to deposit the entire decretal amount with the Registry of the Hon'ble Supreme Court. The Court upon such statement

directed the appellant to deposit the entire decretal amount on or before 11.07.2022.

8.1.17 That it appears that the appellant has deposited an amount of Rs 61,31,490/- stating it to be the decretal amount. The answering respondent most respectfully submits that the correct decretal amount is Rs 68,21,918/ as on 11.07.2022. Therefore, the answering respondents disputes the amount of Rs 61,31,490 to be the entire decretal amount.

8.1.18 That the Hon'ble Supreme Court on 11.07.2022, in view of the above deposit made by the appellant, directed release of the attached property,

8.2 It is submitted that in view of the above factual background there is no infirmity in the orders passed by the High Court, which is passed following the decision of the Delhi High Court in the case of **Continental Carbon India Ltd. (supra)**, which still holds the field and it is prayed to release the entire decretal amount in favour of the respondent.

9. Heard, the learned counsel for the respective parties at length.

10. The short question, which is posed for the consideration of this Court is :-

> "Whether on approval of a scheme by the BIFR under the Sick Industrial Companies (Special Provisions) Act, 1985,

an unsecured creditor has the option not to accept the scaled down value of its dues, and to wait till the scheme for rehabilitation of the respondent – sick company has worked itself out, with an option to recover the debt with interest post such rehabilitation?"

11. While appreciating the submissions made on behalf of the respective parties on the aforesaid issue, few decisions of this Court and the legislative scheme of the SICA, 1985 are required to be referred to:-

Legislative Scheme of SICA, 1985

11.1 The framers of law felt that the existing institutional arrangements and procedure for revival and rehabilitation of potentially viable sick industrial companies are both inadequate and time consuming. Multiplicity of law and the regulatory agencies makes the adoption of a coordinated approach for dealing with sick industrial companies difficult. Thus, a need was felt to enact, in public interest, a legislation to provide for timely determination, by a body of experts, of the preventive, ameliorative, remedial and other measures that would be needed to be adopted with respect to such companies and for enforcement of the appropriate measures with utmost practicable dispatch.

11.2 The ill effects of sickness in industrial companies, such as cessation of production, loss of employment, loss of revenue to the Central and State Governments and blocking up of investible funds of

the banks and financial institutions, were of serious concern to the Government as well as the society at large. It had repercussions on the industrial growth of the country. With the passage of time the number of sick industrial units increased rapidly. Therefore, it was imperative to salvage the productive assets and release, to the extent possible, the amounts due to the banks and financial institutions from non-viable sick industrial debtor companies by liquidation of those companies or through formulation of rehabilitation schemes.

11.3 With these objects, the Bill was introduced with the salient features inter alia of identification of sickness in the industrial companies, on the basis of symptomatic indices of cash losses for the specified periods. Wherever the Government or Reserve Bank were satisfied that an industrial company has become sick, they were required to make a reference to BIFR. BIFR consists of experts, in various relevant fields, with powers to inquire into and determine the incidences of sickness in the industrial companies and devise suitable measures through appropriate schemes to revive them. An appeal lies from the order of BIFR to an appellate authority (Aaifr) consisting of members selected from amongst Supreme Court or High Court Judges or Secretaries to the Government of India.

11.4 With this background, objects and reasons, this Bill was passed by the Indian Parliament and it received the assent of the President of India

on 8-1-1986. Thus, it became an Act of Parliament intended to revolutionise the mechanism of revival or liquidation of sick industrial units and channelisation of the complete administrative-cum-quasi-judicial process within the framework of SICA 1985.

11.5 The statement of Objects and Reasons for enactment of SICA, 1985 is as under:-

> **"Statement of Objects and Reasons**.—The ill effects of sickness in industrial companies such as loss of production, loss of employment, loss of revenue to the Central and State Governments and locking up of investible funds of banks and financial institutions are of serious concern to the Government and the society at large. The concern of the Government is accentuated by the alarming increase in the incidence of sickness in industrial companies. It has been recognised that in order to fully utilise the productive industrial assets; afford maximum protection of employment and optimize the use of the funds of the banks and financial institutions, it would be imperative to revive and rehabilitate the potentially viable sick industrial companies as quickly as possible. It would also be equally imperative to salvage the productive assets and realise the amounts due to the banks and financial institutions, to the extent possible, from the non-viable sick industrial companies through liquidation of those companies.
>
> It has been the experience that the existing institutional arrangements and procedures for revival and rehabilitation of potentially viable sick industrial companies are both inadequate and time-consuming. A multiplicity of laws and agencies makes the adoption of a co-ordinated approach for dealing with sick industrial companies difficult. A need has, therefore, been felt to enact in public interest a legislation to provide for timely detection of sickness in industrial companies and for expeditious determination by a body of experts of the

preventive, ameliorative, remedial and other measures that would need to be adopted with respect to such companies and for enforcement of the measures considered appropriate with utmost practicable despatch."

11.6 Thus, the SICA, 1985 basically and predominantly is a remedial and ameliorative enactment, insofar as it empowers a quasi-judicial Body - BIFR to take appropriate measures for revival and rehabilitation of the potentially viable sick industrial companies as quickly as possible and also to salvage the productive assets and realise the amounts due to the banks and financial institutions, to the extent possible, from the non-viable sick industrial companies through liquidation of those companies.

11.7 Now, let us consider the scheme under the BIFR and the relevant provisions of SICA, 1985, which are relevant for our consideration:-

"**35.** Section 15 of SICA 1985 places an obligation upon an industrial company, which has become sick in terms of that provision, to make a reference to BIFR established under Section 4 of SICA 1985 within the period of limitation prescribed. While under Section 15(2) where the Central Government or Reserve Bank of India or a State Government or a public financial institution has sufficient reasons to believe that any industrial company has become, for the purpose of SICA 1985, a sick industrial company, would also make a reference of such company to the Board for determination of the measures which may be adopted with regard to such company.

36. Section 16 of SICA 1985 deals with the conduct of an inquiry by BIFR and the manner in which BIFR is expected to deal with the matter upon receipt of a

reference under Section 15 of SICA 1985. Section 16 vests BIFR with very wide powers of inquiry and passing appropriate orders. Section 16(2) empowers BIFR to pass an order, in its discretion, directing any operating agency to inquire into and to make a report with regard to the matters as may be specified in the order. Such operating agency is expected to complete the inquiry expeditiously and preferably within 60 days from the date of commencement of inquiry. BIFR is vested with powers such as appointing special Directors for the sick company and issuing directions to the special Directors in relation to discharge of their duties and to improve the performance of any or all of the functions postulated under Section 16(6) of SICA 1985.

37. After the inquiry by BIFR or by the operating agency is completed, BIFR if satisfied that the company has become sick and upon considering all relevant facts and circumstances of the case in exercise of its powers under Section 17 of SICA 1985, may pass orders requiring the company to make its net worth exceed the accumulated losses within a reasonable time and for that purpose it may impose such restrictions or conditions as may be specified in the order in terms of Section 17(2) of SICA 1985. Further, where BIFR decides that it is not practicable for a sick industrial company to make its net worth exceed the accumulated losses within a reasonable time and that it is otherwise necessary or expedient in public interest to adopt all or any of the measures specified in Section 18 of SICA 1985 in relation to the said company, it may, having regard to the guidelines, as may be specified, pass an order formulating a scheme providing for such measures in relation to the sick industrial company. In the event of non-compliance with the restrictions or conditions specified in the order of BIFR or where the company fails to revive itself in pursuance to the order, BIFR can pass any of the directions/orders as required under Section 17(4) of SICA 1985.

38. Section 18 of SICA 1985 again is a remedial provision which contains specified guidelines for the

preparation and sanction of the schemes for the revival of the sick industrial company. Where an order is made under Section 17(3) in relation to a sick industrial company, the operating agency is required to prepare, as expeditiously as possible, ordinarily within 90 days from the date of such order, a scheme with respect to such company providing for any one or more of the measures stated under clauses (a) to (f) of Section 18(1) of SICA 1985. The scheme so framed may provide for any one or more of the measures stated under clauses (a) to (m) of Section 18(2) of SICA 1985.

39. The scheme which has been prepared in consonance with the provisions of Sections 18(1) and 18(2) then has to be examined by BIFR in terms of Section 18(3) of SICA 1985 and if BIFR makes any modifications to the scheme, the same draft scheme, in brief, shall be published or caused to be published in such daily newspapers as BIFR may consider necessary, for receipt of suggestions and objections, if any. In the light of the suggestions and objections received in response to such publication, BIFR may still make further modifications. Also, where the scheme relates to amalgamation of the companies, the procedures specified therein shall be followed. In such cases, the shareholders of the company, other than the sick industrial company, are expected to pass a resolution of approval of the scheme.

40. The scheme thereafter shall be sanctioned by BIFR and shall come into force on such date as BIFR may specify in this behalf and in exercise of the powers vested in it under Section 18(4) of SICA 1985. This scheme does not attain finality which is unalterable. Once the scheme is sanctioned and comes into force even then, on the recommendation of the operating agency, BIFR can consider further modifications or even prepare a fresh scheme providing for such measures as the operating agency may consider it necessary and recommended in terms of Section 18(5) of SICA 1985.

41. Section 18(7) of SICA 1985 is an important provision which provides that the sanction accorded by BIFR shall be conclusive evidence that all the requirements of the scheme relating to reconstruction or amalgamation or any measure specified therein have been complied with and a copy of the sanctioned scheme certified in writing by an officer of BIFR to be a true copy thereof shall be admissible as evidence in all legal proceedings. To resolve the difficulties that may arise in giving effect to the provisions to the sanctioned scheme, BIFR may, on the recommendation of the operating agency or otherwise, by order do anything, not inconsistent with such provisions, which appears to it to be necessary or expedient for the purpose of removing difficulty in terms of Section 18(9) of SICA 1985.

42. The role of BIFR does not end here and it may even periodically monitor the implementation of the scheme. Where the scheme relates to preventive, ameliorative, remedial and other measures with respect to any sick industrial company, the scheme may provide for financial assistance by way of loans, advances or guarantees from the Government or financial institutions. Before any financial institution is called upon to proceed to release the financial assistance to the sick industrial company in fulfilment of the requirements in that regard, the procedure contemplated under the provisions of Section 19 of SICA 1985 has to be followed.

43. Where BIFR, after making inquiry under Section 16 of SICA 1985, considering all relevant facts and circumstances and giving an opportunity of being heard to all parties concerned, is of the opinion that the sick industrial company is not likely to make its net worth exceed the accumulated losses within a reasonable time while meeting all its financial obligations and that the company as a result thereof is not likely to become viable in future and that it is just and equitable that the company should be wound up, it may record and forward its opinion to the High Court concerned as per the provisions of Section 20 of SICA 1985 whereafter the company shall be

> wound up in accordance with the provisions of the Companies Act, 1956. The High Court may even appoint any officer of the operating agency as the liquidator of the sick industrial company. Section 21 of SICA 1985 requires the operating agency to prepare an inventory, if so directed by BIFR."

11.8 Thus, the primary concern of the Board would be the revival of the sick company and to save the sick company from winding up. That is why with a view to see that there is no impediment in framing the rehabilitation scheme and to get out the sick company from sickness. Section 22 provides for suspension of legal proceedings, contracts etc. On a bare reading of Section 22 and Section 22A of SICA, it appears that these two provisions primarily ensure that the scheme prepared by BIFR does not get frustrated because of certain other legal proceedings and to prevent untimely and unwarranted disposal of the assets of the sick industrial company. These sections clearly state certain restrictions which will impact upon the implementation of the scheme as well as on the assets of the company.

11.9 As observed and held by this Court in the case of **Tata Motors Limited (supra)**, SICA, 1985 has been enacted to secure the principles specified in Article 39 of the Constitution of India. It seeks to give effect to the larger public interest and, therefore, it should be given primacy over other laws because of its higher public purpose.

11.10 In the case of **Raheja Universal Limited (supra)**, it is observed and held that the SICA, 1985 is a special law, giving overriding effect vis-à-vis other laws and the provisions of general laws like Companies Act for regulation, incorporation, winding up etc. of the companies would have still been overridden to the extent of inconsistency. In the case of **NGEF Ltd. Vs. Chandra Developers (P) Ltd., (2005) 8 SCC 219**, it is specifically observed by this Court that the SICA, 1985 is a special statute, which is a complete code in itself.

11.11 As observed and held by this Court in the aforesaid decisions, the provisions of SICA, 1985 shall normally override other laws except the laws, which have been specifically excluded by the legislature under Section 32 of SICA, 1985.

11.12 Keeping in mind the statement of objects and reasons for enactment of SICA, 1985 and the powers exercised by the BIFR and the primary concern to revive the sick industry for which the rehabilitation scheme is to be framed under Section 18, the question posed is required to be considered.

11.13 As per the statutory provisions under SICA, 1985, the rehabilitation scheme is provided under Section 18 of the SICA, 1985, which shall be made after making the inquiry under Section 16 by the Board. Section 18 reads as under:-

"**18. Preparation and sanction of schemes.**—(1) Where an order is made under sub-section (3) of Section 17 in relation to any sick industrial company, the operating agency specified in the order shall prepare, as expeditiously as possible and ordinarily within a period of ninety days from the date of such order, a scheme with respect to such company providing for any one or more of the following measures, namely:—

(a) the financial reconstruction of the sick industrial company;

(b) the proper management of the sick industrial company by change in, or take over of, management of the sick industrial company;

(c) the amalgamation of—

(i) the sick industrial company with any other company; or

(ii) any other company with the sick industrial company;

(hereafter in this section, in the case of sub-clause (i), the other company, and in the case of sub-clause (ii), the sick industrial company, referred to as "transferee company";

(d) the sale or lease of a part or whole of any industrial undertaking of the sick industrial company;

(da) the rationalisation of managerial personnel, supervisory staff and workmen in accordance with law;

(e) such other preventive, ameliorative and remedial measures as may be appropriate;

(f) such incidental, consequential or supplemental measures as may be necessary or expedient in connection with or for the purposes of the measures specified in clauses (a) to (e).

(2) The scheme referred to in sub-section (1) may provide for any one or more of the following, namely:—

(a) the constitution, name and registered office, the capital, assets, powers, rights, interest,

authorities and privileges, duties and obligations of the sick industrial company or, as the case may be, of the transferee company;

(b) the transfer to the transferee company of the business, properties, assets, and liabilities of the sick industrial company on such terms and conditions as may be specified in the scheme;

(c) any change in the Board of Directors, or the appointment of a new Board of Directors, of the sick industrial company and the authority by whom, the manner in which and the other terms and conditions on which, such change or appointment shall be made and in the case of appointment of a new Board of Directors or of any director, the period for which such appointment shall be made;

(d) the alteration of the memorandum or articles of association of the sick industrial company or as the case may be, of the transferee company for the purpose of altering the capital structure thereof or for such other purposes as may be necessary to give effect to the reconstruction or amalgamation;

(e) the continuation by, or against, the sick industrial company or, as the case may be, the transferee company of any action or other legal proceeding pending against the sick industrial company immediately before the date of the order made under sub-section (3) of Section 17;

(f) the reduction of the interest or rights which the shareholders have in the sick industrial company to such extent as the Board considers necessary in the interests of the reconstruction, revival or rehabilitation of the sick industrial company or for the maintenance of the business of the sick industrial company;

(g) the allotment to the shareholders of the sick industrial company of shares in the sick industrial company or, as the case may be, in the 29[transferee company] and where any shareholder claims payment in cash and not allotment of shares, or where it is not possible to

allot shares to any shareholder the payment of cash to those shareholders in full satisfaction of their claims—

(i) in respect of their interest in shares in the sick industrial company before its reconstruction or amalgamation; or

(ii) where such interest has been reduced under clause (f) in respect of their interest in shares as so reduced;

(h) any other terms and conditions for the reconstruction or amalgamation of the sick industrial company;

(i) sale of the industrial undertaking of the sick industrial company free from all encumbrances and all liabilities of the company or other such encumbrances and liabilities as may be specified, to any person, including a cooperative society formed by the employees of such undertaking and fixing of reserve price for such sale;

(j) lease of the industrial undertaking of the sick industrial company to any person, including a cooperative society formed by the employees of such undertaking;

(k) method of sale of the assets of the industrial undertaking of the sick industrial company such as by public auction or by inviting tenders or in any other manner as may be specified and for the manner of publicity therefor;

(l) transfer or issue of the shares in the sick industrial company at the face value or at the intrinsic value which may be at discount value or such other value as may be specified to any industrial company or any person including the executives and employees of the sick industrial company;

(m) such incidental, consequential and supplemental matters as may be necessary to secure that the reconstruction or amalgamation or other measures mentioned in the scheme are fully and effectively carried out.

(3) (a) The scheme prepared by the operating agency shall be examined by the Board and a copy of the scheme with modification, if any, made by the Board shall be sent, in draft, to the sick industrial company and the operating agency and in the case of amalgamation, also to any other company concerned, and the Board shall publish or cause to be published the draft scheme in brief in such daily newspapers as the Board may consider necessary, for suggestions and objections, if any, within such period as the Board may specify.

(b) The Board may make such modifications, if any, in the draft scheme as it may consider necessary in the light of the suggestions and objections received from the sick industrial company and the operating agency and also from the transferee industrial company and any other company concerned in the amalgamation and from any shareholder or any creditors or employees of such companies:

Provided that where the scheme relates to amalgamation 33[* * *] the said scheme shall be laid before [the company other than the sick industrial company]34 in the general meeting for the approval of the scheme by its shareholders and no such scheme shall be proceeded with unless it has been approved, with or without modification, by a special resolution passed by the shareholders of [the company other than the sick industrial company]35.

(4) The scheme shall thereafter be sanctioned as soon as may be, by the Board (hereinafter referred to as the ‘sanctioned scheme’) and shall come into force on such date as the Board may specify in this behalf:

Provided that different dates may be specified for different provisions of the scheme.

(5) The Board may on the recommendations of the operating agency or otherwise, review any sanctioned scheme and make such modifications as it may deem fit or may by order in writing direct any operating agency specified in the order, having regard to such guidelines as may be specified in the order, to prepare a fresh scheme

providing for such measures as the operating agency may consider necessary.

(6) When a fresh scheme is prepared under sub-section (5), the provisions of sub-sections (3) and (4) shall apply in relation thereto as they apply to in relation to a scheme prepared under sub-section (1).

(6-A) Where a sanctioned scheme provides for the transfer of any property or liability of the sick industrial company in favour of any other company or person or where such scheme provides for the transfer of any property or liability of any other company or person in favour of the sick industrial company, then, by virtue of, and to the extent provided in the scheme, on and from the date of coming into operation of the sanctioned scheme or any provision thereof, the property shall be transferred to, and vest in, and the liability shall become the liability of, such other company or person or, as the case may be, the sick industrial company.

(7) The sanction accorded by the Board under sub-section (4) shall be conclusive evidence that all the requirements of this scheme relating to the reconstruction or amalgamation, or any other measure specified therein have been complied with and a copy of the sanctioned scheme certified in writing by an officer of the Board to be a true copy thereof, shall, in all legal proceedings (whether in appeal or otherwise) be admitted as evidence.

(8) On and from the date of the coming into operation of the sanctioned scheme or any provision thereof, the scheme or such provision shall be binding on the sick industrial company and the transferee company or, as the case may be, the other company and also on the shareholders, creditors and guarantors and employees of the said companies.

(9) If any difficulty arises in giving effect to the provisions of the sanctioned scheme, the Board may, on the recommendation of the operating agency 38[or otherwise], by order do anything, not inconsistent with such provisions, which appears to it to be necessary or expedient for the purpose of removing the difficulty.

(10) The Board may, if it deems necessary or expedient so to do, by order in writing, direct any operating agency specified in the order to implement a sanctioned scheme with such terms and conditions and in relation to such sick industrial company as may be specified in the order.

(11) Where the whole of the undertaking of the sick industrial company is sold under a sanctioned scheme, the Board may distribute the sale proceeds to the parties entitled thereto in accordance with the provisions of Section 529-A and other provisions of the Companies Act, 1956 (1 of 1956).

(12) The Board may monitor periodically the implementation of the sanctioned scheme."

11.14 Under Section 18 of the SICA, 1985, it is the operating agency to prepare a scheme with respect to the sick company providing for any one or more of the measures mentioned in Section 18, which include:-

(i) the financial reconstruction of the sick industrial company;

(ii) such other preventive, ameliorative and remedial measures as may be appropriate.

11.14.1 The operating agency is defined under Section 3(i) and it means any public financial institution, State-level institution, scheduled bank or any other person as may be specified by general or special order as its agency by the Board. No other persons including the unsecured creditors comes into picture like preparing the scheme under Section 18. Section 18 of the SICA does not provide that at the time of preparing of the scheme under Section 18 or when it is sanctioned by the Board, the unsecured creditors are required to be heard. The only

provision for the consent required is Section 19 and the agency/person, who is required to give the financial assistance, its consent is required. Once the rehabilitation scheme / scheme under Section 18 prepared by the operating agency is sanctioned by the BIFR, which may include the scaling down the value of dues of the unsecured creditors, the same shall bind all, otherwise the rehabilitation scheme shall not be workable at all and the object and purpose of enactment of the SICA, 1985 will be frustrated. If some persons / unsecured creditors and/or even the labourers are permitted to get out of the purview of the scheme and thereafter permitting such or some of the unsecured creditors to wait till the scheme for rehabilitation of the sick company has worked itself out, in that case, the scheme shall not be workable at all. To make the company viable, the concerned persons including the unsecured creditors have to sacrifice to some extent otherwise the revival efforts shall fail.

11.14.2 At this stage, it is required to be noted that if a sick company is ordered to be wind up, in that case, the unsecured creditors otherwise may not get anything. However, on the other hand on sanctioning the rehabilitation scheme under Section 18, the unsecured creditors may get part of their dues /debts, which otherwise, they may not get. At this stage, it is required to be noted that as per Section 18(8) of SICA, 1985, which has been substituted by Act 12 of 1994, on and from the date of

the coming into operation of the sanctioned scheme or any provision thereof, the scheme or such provision shall be binding on the sick industrial company and the transferee company or, as the case may be, the other company and also on the shareholders, **creditors** and guarantors and even the employees of the said companies.

11.15 Thus, the intention of the legislature is very clear. Creditors includes unsecured creditors. The submission on behalf of the unsecured creditors that the word “creditors” is not defined like IBC, 2016 and therefore, the scheme shall not bind the unsecured creditors, cannot be accepted. Looking to the object and purpose of the SICA, 1985 and the provisions of Sections 18 and 19 of the SICA, 1985, the word “creditors” shall have to be construed in a broad manner and is not required to be construed narrowly, otherwise, the object and purpose of rehabilitation scheme shall be frustrated. If the scheme binds the creditors, including other creditors like financial institutions etc., who may have a better claim than the unsecured creditors, there is no reason to treat the unsecured creditors separately and not to treat them as creditors. Therefore, even as per Section 18(8), the scheme shall bind all the creditors and guarantors and even the employees of the sick company, for whose revival the scheme is sanctioned.

11.16 If the submission on behalf of the unsecured creditors, which has been accepted by the High Court in the case of **Continental Carbon**

India Ltd. (supra) that an unsecured creditor can opt out of the scheme sanctioned by the BIFR under the SICA, 1985 and is allowed not to accept the scaled down value of its dues and may wait till the scheme for rehabilitation of the sick company has worked itself out, with an option to recover the debt post such rehabilitation is accepted / allowed, in that case, the minority creditors may frustrate the rehabilitation scheme, which may frustrate the object and purpose of enactment of SICA, 1985.

11.17 At the cost of repetition, it is observed that the primary object and purpose of SICA, 1985 is revival of a sick industrial company even by providing rehabilitation scheme under Section 18. A reading of the statement of objects and reasons says that the effect of the ill effects of sickness in industrial companies was a serious concern not only to the Government but also to the society at large. Therefore, it was found that there is a need to fully utilise the productive industrial assets; afford maximum protection of employment and optimize the use of the funds of the banks and financial institutions and it is imperative to revive and rehabilitate the potentially viable sick industrial companies. Considering Section 20 of the Act it becomes clear that winding up of a company is only resorted to as a last resort and only when it is just and equitable to wind up the sick industrial company.

11.18 Thus, minority creditors and that too some unsecured creditors cannot be permitted to stall the rehabilitation of the sick company by not

accepting the scaled down value of its dues. Unless and until there is a sacrifice by all concerned, including the creditors, financial institutions, unsecured creditors, labourers, there shall not be any revival of the sick industrial company / company.

12. Now, so far as the submission on behalf of the unsecured creditors that the unsecured creditors should have an option not to accept the scaled down value of its dues and to wait till the scheme for rehabilitation of the sick company has worked itself out, with an option to recover the debt post such rehabilitation is concerned, the same has no substance and cannot be accepted. It is required to be noted that in a given case, because of the scaling down of the value of the dues of the creditors, the company survives. The company has survived in view of the rehabilitation scheme because of the sacrifice / scaling down the value of the dues of the creditors including the financial institutions. How such a benefit can be permitted to be given to the unsecured creditors, who does not accept the scaled down value of its dues. Such an unsecured creditor cannot be permitted to take the benefit of the revival scheme, which is at the cost of other creditors including the financial institutions and even the labourers.

13. Now, so far as the view taken by the High Court that the unsecured creditor had an option not to accept the scaled down value of its dues and can wait till the scheme for rehabilitation of the company has

worked itself out with an option to recover the debt with interest post such rehabilitation is accepted, in a given case, the sick company, which has been able to revive because of the scaling down the value of the dues, may again become sick, if the entire dues of the unsecured creditors are to be paid thereafter. It may again lead to becoming such a revived company again as a sick company. If such a thing is permitted, in that case, it will again frustrate the object and purpose of enactment of the SICA, 1985.

14. Now, so far as the submission on behalf of the unsecured creditors that to compel the unsecured creditors to accept the scaled down value of its dues would tantamount to and would be violative of Article 300A of the Constitution of India is concerned, the same has also no substance. Scaling down the value of the dues is under the rehabilitation scheme prepared under Section 18 of the SICA, which has a binding effect on all the creditors. Therefore, the same cannot be said to be violative of Article 300A of the Constitution of India. The law permits framing of the scheme taking into consideration and to provide the measures contemplated under Section 18, therefore, the rehabilitation scheme which provides for scaling down the value of dues of the creditors /unsecured creditors and even that of the labourers cannot be said to be violative of Article 300A of the Constitution of India as submitted on behalf of the unsecured creditors.

15. In view of the above and for the reasons stated above, the view taken by the High Court of Delhi in **Continental Carbon India Ltd. (supra)** that on approval of a scheme by the BIFR under the Sick Industrial Companies (Special Provisions) Act, 1985, the unsecured creditors has an option not to accept the scaling down value of its dues and to wait till the rehabilitation scheme of the sick company has worked itself out with an option to recover the debt with interest post such rehabilitation is erroneous and contrary to the scheme of SICA, 1985 and the same deserves to be quashed and set aside and is accordingly quashed and set aside.

It is observed and held that the rehabilitation scheme under Section 18 of the SICA, 1985 shall bind all the creditors including the unsecured creditors and the unsecured creditors have to accept the scaled down value of its dues provided under the rehabilitation scheme.

Conclusion:-

(i) Civil Appeal No. 375 of 2017 is accordingly allowed. No costs.

(ii) The transfer petition being Transfer Petition (C) No. 543 of 2016 is allowed and is ordered to be transferred to this Court.

(iii) Civil Appeal No. 1755 of 2023 (arising out of SLP (C) No. 4282 of 2020) is allowed and the impugned judgment and order passed by the Madhya Pradesh High Court relying upon the decision of the

Delhi High Court in the case of **Continental Carbon India Ltd. (supra)**, which has been set aside by the present order also deserves to be allowed and the impugned judgment and order passed by the High Court of Madhya Pradesh in Civil Revision No. 96 of 2018 is hereby quashed and set aside.

(iv) On being set aside the judgment and order passed by the High Court of Delhi in the case of **Continental Carbon India Ltd. (supra)**, Civil Appeal No. 377 of 2017 stands dismissed.

(v) In view of the above and for the reasons stated above and quashing and setting aside the judgment and order passed by the High Court of Delhi in the case of **Continental Carbon India Ltd. (supra)**, Civil Appeal No. 379 of 2017 and Transfer Petition (C) No. 543 of 2016 stands disposed of and consequently the writ petition before the High Court being Writ Petition (C) No. 832 of 2016 stands dismissed.

…….J.
[M.R. SHAH]

NEW DELHI;
MARCH 17, 2023.

…….J.
[SUDHANSHU DHULIA]