(10) The learned counsel for the petitioners has then argued that in the event of the basement under the verandah being demolished the whole building would fall down and the petitioners would suffer a huge loss. The learned counsel for the respondents has drawn our attention to the application dated October 7, 1974, (copy Annexure P-4), addressed by the petitioners to the Estate Officer-cum-Deputy Commissioner, Union Territory, Chandigarh, wherein it has been specifically stated that in the event of their request being not allowed, they will close down the alleged unauthorised construction of the basement under the verandah. It has thus been argued that the removal of encroachment under the verandah will not involve demolition of the whole building as such and, as stated by the petitioners themselves, the unauthorised construction of the basement can be closed without any damage to the building. We agree with the learned counsel for the respondents.

(11) The last contention of the learned counsel for the petitioners is that in case the writ petition fails, they may be allowed two months' time to remove the encroachment under the verandah of the building. The learned counsel for the respondents has no objection to this prayer being granted.

(12) In view of what has been stated above, there is no merit in this writ petition which is dismissed but without any order as to costs. The petitioners are, however, allowed two months' time to remove the encroachment of the basement under the verandah of the building.

S. S. Sandhawalia, J.—I agree.

K.T.S.

FULL BENCH

Before R. S. Narula C.J., Harbans Lal and Surinder Singh, JJ.

RADHA RAM BADRI NATH and others,—*Petitioners.*

versus

AMRITSAR SUGAR MILLS COMPANY LIMITED ETC.,—*Respondents.*

Company Petition No. 150 of 1973

April 8, 1977.

Industries (Development and Regulation) Act (65 of 1951) *as amended by Acts* (26 of 1953 *and* 72 of 1971)—*Sections* 18-*AA* (1) *and*

18-E (1) (c)—*Companies Act* (1 of 1956)—*Section* 433—*Defence and Internal Security of India Rules* 1971—*Rule* 115(2)—*Industrial undertaking which is a Company—Management of a part only of such undertaking taken over by the Central Government under Section 18-AA* (1)—*Proceedings for winding up of the Company—Whether can be commenced or continued without the consent of the Central Government under Section* 18-E (1) (c)—*Section* 18-E (1) (c)—*Whether to be construed strictly.*

Held, that in the opening part of sub-section (1) of section 18-E of the Industries (Development and Regulation) Act 1951, the applicability of the provision is made dependent upon the industrial undertaking having been taken over by the Central Government and not on any part of the industrial undertaking having been so taken over. Wherever the Legislature so intended, it has referred to the taking over of the whole or part of the undertaking. If the Legislature intended that no proceeding for winding up of an undertaking shall lie without the consent of the Central Government, even if one factory of the undertaking or a part of the undertaking had been taken over under the control of the Central Government it would surely have said so. The Legislature has consciously used two different expressions in different provisions of the Regulation Act so as to bring about clearly the distinction between the company which is the body corporate on the one hand and the industrial undertaking which is an enterprise of the Company on the other. Wherever the reference is to an industrial undertaking "being a company", or an industrial undertaking "which is a company", the expressions are intended to refer to the whole of the company unless a part thereof is clearly referred to. Where on the other hand reference is to an undertaking owned by a Company, it is intended to cover the undertaking or part thereof in respect of which some order has been passed and not necessarily the entire undertaking of the company. Thus, the provisions of clause (c) of sub-section (1) of section 18-E of the Regulation Act are not attracted to a case where the management of a part only of an industrial undertaking which is a company is taken over by the Central Government under Section 18-AA (1) of the said Act and the winding up proceedings can continue without obtaining the consent of the Central Government required under that provision. (Paras 9, 10 and 12).

Held, that the object of the provisions of the Regulation Act is to override the normal company law routine in respect of any industrial undertaking which is manufacturing or producing any of the articles referred to in the schedule to the Act by taking over the whole or limited control of its factory if any of the contingencies envisaged in section 15 of the Act exist. All impediments in the way of achieving these objects have been removed by the different provisions in the Regulation Act. Care has at the same time been taken to disturb the ordinary law of the land to the minimum

possible extent for achieving the said objectives. This effort accounts for provisions like those for taking over the control of only part of an undertaking, for obtaining permission of the High Court in certain contingencies, for fixing the maximum period for which the control can be taken over and the like. The requirement of the consent of the Central Government requisite under Section 18-E(1) (c) has to be read in the same light. This requirement being in the nature of a restriction on the right of a creditor or shareholder conferred on him by section 433 of the Companies Act 1956 has to be strictly construed. The result of strict construction of the restriction would be that if it is possible to construe the provision in both ways, that is for section 18-E being attracted only if the whole undertaking is taken over and also if a part of it is taken over, then by the process of interpretation its application would be excluded from a case where only a part of the undertaking is taken over provided such construction of the provision can be harmonious with the various other provisions of the Regulation Act and the Companies Act. **(Paras 8 and 9).**

Case referred by Hon'ble Mr. Justice Man Mohan Singh Gujral on 12th September, 1975 to a larger Bench for an important question of law involved in the case. The Larger Bench consisting of Hon'ble the Chief Justice Mr. R. S. Narula, Hon'ble Mr. Justice Harbans lal and Hon'ble Mr. Justice Surinder Singh had finally decided the case on 8th April, 1977.

Petition under Sections 433, 439 and 443 of the Companies Act 1956 praying that an order for winding up of the Company be passed and a provisional liquidator be appointed under Section 450 of the Companies Act.

It is further prayed that pending the decision of the petition respondents be restrained from holding the meeting fixed for the 2nd of May, 1975 at 11.30 A.M. for creating an additional mortgage in favour of the State Bank of India of the assets as in the proposed resolution.

Bhagirath Dass Advocate with S. K. Hiraji, Advocate, *for the petitioner.*

I. N. Sheroff, Advocate with L. M. Suri, Advocate and R. M. Suri; Advocate, *for the respondent.*

R. S. Narula, C.J.

(1) The question to be answered by us in this reference by a learned Single Judge is whether the proceedings for winding up of

an industrial undertaking which is a company as defined in the Companies Act, 1956 (hereinafter called the Companies Act) can be commenced or continued under section 433 of that Act without the consent of the Central Government required under clause (c) of sub-section (1) of section 18-E of the Industries (Development and Regulation) Act (65 of 1951) as subsequently amended (hereinafter referred to as the Regulation Act) if the management of a part only of such undertaking (one of its factories) has been taken over by the Central Government under section 18-AA(1) of the Regulation Act.

(2) It does not appear to be necessary for the purpose of answering the above question to go into any minute factual details. In order to get a bird's eye view of the relevant circumstances in which the abovementioned question has arisen, it may, however, be stated that the Amritsar Sugar Mills Company Limited (hereinafter called the Company) is an industrial undertaking duly registered under the Companies Act with registered office at Amritsar having a sugar factory in Rohana in the State of Uttar Pradesh and a Vanaspati ghee factory in Amritsar, that on January 10, 1974, the management of the sugar factory was taken over by the U.P. State Government under rule 115(2) of the Defence and Internal Security of India Rules, 1971 (hereinafter referred to as the D.I.R.), that the management of the Vanaspati ghee factory was taken over by the body of persons appointed by the Central Government under section 18-AA(1) of the Regulation Act in pursuance of the notification, dated September 13, 1974, reading as below:—

> "Whereas the Central Government is satisfied from the documentary evidence in its possession:—
>
> (i) that Amritsar Oil Works, Amritsar, a factory of the industrial undertaking known as Amritsar Sugar Mills Company Limited, Amritsar, which had been engaged in the manufacture of vanaspati has been closed for a period of not less than three months, and
>
> (ii) that such closure is prejudicial to a scheduled industry, namely the vanaspati industry, and that the financial condition of the company owning the said industrial undertaking and the condition of the plant and machinery of the said factory are such that it is

possible to restart the factory and such restarting is necessary in the interest of the general public.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 18-AA of the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Central Government hereby authorises the body of persons referred to in paragraph 2 of this Order as the Board of Management to take over the management of the said industrial undertaking in so far as it relates to the said factory subject to the following terms and conditions, namely:—

(i) The Board shall comply with all directions issued from time to time by the Central Government.

(ii) The Board shall hold office for a period of five years from the date of publication of this order in the Official Gazette.

(iii) The Central Government may terminate the appointment of the Board or of any of the persons comprising the Board earlier, if it considers it necessary to do so.

2. The Board of Management shall consist of the following, namely:—

1. Dr. N. C. B. Nath,
Director (Commercial),
Steel Authority of India,
New Delhi ... Chairman.

2. Shri F. G. T. Menezes,
Director (Vanaspati),
Department of Food,
Ministry of Agriculture,
New Delhi ... Member.

3. Shri A. C. Chakraborti,
C/o S. R. Batliboi & Company,
Calcutta ... Member.

4. Shri B. G. Roy,
General Manager,
Industrial Reconstruction,
Corporation of India,
Calcutta ... Member.

5. Shri L. K. Malhotra,
Chief Executive,
Ganesh Flour Mills Company,
(Under Government of India Management),
Delhi ... Member.

(3) This order shall have effect for a period of five years commencing from the date of its publication in the Official Gazette".

Before the taking over of the management of the Sugar Mills by the U.P. Government and the vanaspati mill by the Central Government, the petitioners had on April 30, 1973, filed this petition for the winding up of the Company, which petition had subsequently been published under the Companies (Court) Rules by the order of the Court, dated July 27, 1973. It is the common case of both sides that the taking over of the Sugar Mill by the U.P. State Government under the D.I.R. has no effect on the petition for winding up of the Company and does not attract either the provision of section 18E(1)(c) or any other such provision. Proceedings for winding up against the Company appear to be *ex-parte*. The State Bank of India (one of the secured creditors of the Company) has intervened with the leave of the Court and is contesting the petition. Consequent upon the taking over of the vanaspati mill by the Central Government, notice was issued to it under order of the learned Single Judge, dated September 27, 1974. The Central Government did not put in appearance in response to the notice.

(3) Mr. I. N. Shroff, the learned counsel for the State Bank of India, contended before the learned Single Judge that once an undertaking is taken over either in whole or in part under section 18AA(1) of the Regulation Act, section 18E(1)(c) of that Act would be attracted and the winding up proceedings cannot be either initiated or continued against such an undertaking except with the consent of the Central Government. He, therefore, submitted that the petitioners may be directed to apply for and obtain the requisite consent failing which the petition cannot proceed any further. The learned counsel for the creditor-petitioners on the other hand contended that section 18-B would apply only to those undertakings which are taken over under section 18-AA as a whole and not where only a part of the undertaking is taken over.. Gujral, J. (now M. S. Gujral, C.J. of the Sikkim High Court) noticed the rival contentions of the counsel on the above point, and observed in his order, dated

September 12, 1975 that the controversy is not free from considerable doubt and it would, therefore, be proper that the matter is decided by a larger Bench. It is in consequence of the said order of the learned Single Judge that the matter has been placed before us virtually for purposes of answering the question posed by me in the opening sentence of this judgment.

(4) The principal Regulation Act was enacted in 1951. Section 18-A series were introduced into the principal Act by the Industries (Development and Regulation) Amendment Act (26 of 1953) by adding Chapter III-A and Chapter III-B between the previously existing Chapter III and Chapter IV. I need not take notice of the various other intervening amending Acts but have to refer to the Industries (Development and Regulation) Amendment Act (72 of 1971) whereby section 18-AA was added to Chapter 3-A and Chapters III-AA, III-AB and Ill-AC were brought in after the existing Chapter III-A and before Chapter III-B. In order to appreciate the scheme of these provisions it may also be noticed that section 10-A authorising the revocation and registration of a company in certain cases, section 11-A, the provision for prescribing a licence for production or manufacture of any new articles, and section 15-A, empowering the Central Government to investigate into the affairs of a company in liquidation had also been added to the pricipal Regulation Act by the 1953 Amending Act. Section 18-A(1) and the explanation to that section may be quoted at this stage:—

"18-A(1) If the Central Government is of opinion that—

(a) an industrial undertaking to which directions have been issued in pursuance of section 16 has failed to comply with such directions, or

(b) an industrial undertaking in respect of which an investigation has been made under section 15 (whether or not any directions have been issued to the undertaking in pursuance of section 16), is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest,

the Central Government may, by notified order, authorise any person or body of persons to take over the management of the whole or any part of the undertaking or to

exercise in respect of the whole or any part of the undertaking such functions of control as may be specified in the order.

(2) * * *

Provided * * *

Explanation.—The power to authorise a body of persons under this section to take over the management of an industrial undertaking which is a company includes also a power to appoint any individual, firm or company to be the managing agent of the industrial undertaking on such terms and conditions as the Central Government may think fit."

"Industrial undertaking" is defined in section 3(d) as below:—

"'Industrial undertaking' means any undertaking pertaining to a scheduled industry carried on in one or more factories by any person or authority including Government."

The definition of "factory" is given in clause (c) of section 3 in the following words:—

"'Factory' means any premises, including the precincts thereof, in any part of which a manufacturing process is being carried on or is ordinary so carried on—

(i) with the aid of power, provided that fifty or more workers are working or were working thereon any day of the preceding twelve months; or

(ii) without the aid of power, provided that one hundred or more workers are working or were working thereon on any day of the preceding twelve months and provided further that in no part of such premises any manufacturing process is being carried on with the aid of power."

Clause (j) of section 3 states that the words and expressions used in the Regulation Act, but not defined therein and defined in the Companies Act have the meanings respectively assigned to them in that Act.

(5) A perusal of section 18-A shows that the power of the Central Government to direct a body of persons to take over the management of the whole or any part of an undertaking was confined by the 1953 Amendment Act to cases in which either an undertaking had failed to comply with the directions given to it under section 16 (on completion of an investigation under section 15) or the undertaking in respect of which an investigation had been made under that provision (section 15) was being managed in a manner highly detrimental to the scheduled industry concerned or to public interest. It is not in dispute that sugar industry as well as the vanaspati industry is a scheduled industry within the meaning of the Regulation Act. The result was that unless the Central Government was of the opinion under section 15 that—

"(a) in respect of any scheduled industry or industrial undertaking or undertakings—

(i) there has been, or is likely to be, a substantial fall in the volume of production in respect of any article or class of articles relatable to that industry or manufactured or produced in the indusrial undertaking or undertakings, as the case may be; for which, having regard to the economic conditions prevailing, there is no justification; or

(ii) there has been, or is likely to be, a marked deterioration in the quality of any article or class of articles relatable to that industry or manufactured or produced in the industrial undertaking or undertakings, as the case may be, which could have been or can be avoided; or

(iii) there has been or is likely to be a rise in the price of any article or class of article relatable to that industry or manufactured or produced in the industrial undertaking or undertakings, as the case may be, for which there is no justification; or

(iv) it is necessary to take any such action as is provided in this Chapter for the purpose of conserving any resources of national importance which are utilised in

the industry or the industrial undertaking or undertakings, as the case may be; or

(b) any industrial undertaking is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest,"

the Central Government could not make or cause to be made any investigation into the circumstances of the case under section 15 of the Act, and unless such an investigation had been made, neither any direction could issue under section 16 on the violation of which clause (a) of section 18-A(1) could come into force, nor any direction or order could be passed under clause (b) of section 18-A(1). Consequently a long time had to elapse between the forming of the opinion by the Central Government referred to in section 15 and the actual taking over of the industry under section 18-A(1) in suitable cases. It was in order to avoid difficulties of this type that section 18-AA(1), reproduced below, authorised the Central Government to take over the management of an industrial undertaking or a part thereof on the prescribed satisfaction derived from documentary or other evidence in its possession without undertaking any investigation:—

"Without prejudice to any other provision of this Act, if, from the documentary or other evidence in its possession, the Central Government is satisfied, in relation to an industrial undertaking, that—

(a) the persons in charge of such industrial undertaking have, by reckless investments or creation of encumbrances on the assets of the industrial undertaking, or by diversion of funds, brought about a situation which is likely to affect the production of articles manufactured or produced in the industrial undertaking, and that immediate action is necessary to prevent such a situation; or

(b) it has been closed for a period of not less than three months (whether by reason of the voluntary winding up of the company owning the industrial undertaking or for any other reason) and such closure is prejudicial to the concerned scheduled industry and that

the financial condition of the company owning the industrial undertaking and the condition of the plant and machinery of such undertaking are such that it is possible to restart the undertaking and such re-starting is necessary in the interests of the general public.

it may, by a notified order, authorise any person or body of persons (hereafter referred to as the 'authirised person') to take over the management of the whole or any part of the industrial undertaking or to exercise in respect of the whole or any part of the undertaking such functions of control as may be specified in the order."

The provisions of sub-section (2) of section 18A have been made applicable to a notified order made under sub-section (1) of section 18-AA so far as may be.

(6) Having armed itself with the power to take over the management of a sick undertaking either after investigation under section 15 by virtue of powers under section 18-A(1) or without any investigation in exercise of the power under section 18AA(1), the Central Government still statutorily abstained from interfering with an undertaking which was being wound up by or under the supervision of the Court. This exception was carved out by sub-section (3) of section 18AA in the following words:—

"Nothing contained in sub-section (1) and sub-section (2) shall apply to an industrial undertaking owned by a company which is being wound up by or under the supervision of the Court".

Sub-secton (5) of section 18-AA has made the provision of sections 18-A to 18-E (both inclusive) also applicable to the industrial undertaking in respect of which a notified order has been made under sub-section (1) of section 18-AA. We are concerned in the present proceedings with sub-clause (c) of sub-section 18-E(1) directly and with sub-section (2) of that section for purposes of interpreation. Both these are, therefore, noted below:—

"18-E (1) Where the management of an industrial undertaking, being a company as defined in the Indian Companies Act,

1913 is taken over by the Centarl Government, then, not with standing anything contained in the said Act or in the memorandum or articles of association of such undertaking—

(a) * * *

(b) * * *

(c) no proceeding for the winding up of such undertaking or for the appointment of a receiver in respect thereof shall lie in any court except with the consent of the Central Government.

(2) Subject to the provisions contained in sub-section (1) and to the other provisions contained in this Act and subject to such other exceptions, restrictions and limitations if any, as the Central Government may, by notification in the Official Gazette, specify in this behalf, the Indian Companies Act, 1913, shall continue to apply to such undertaking in the same manner as it applied thereto before the issue of the notified order under section 18-A."

It may admit of a little repetition to take pointed notice of the admitted facts that the Company is an industrial undertaking within the meaning of the Regulation Act, that the sugar factory in U.P. is a part of that undertaking, that the vanaspati factory at Amritsar is another part of that undertaking, that the undertaking is a company as defined in the Companies Act, and that an order under section 18 AA(1) has been passed by the Central Government during the pendency of the winding up proceedings in pursuance of which the body of persons appointed by the Central Government has taken over the actual management and control of that part of the undertaking which is situated at Amritsar. It has been rightly conceded by the counsel for the petitioners that the mere fact that liquidation proceedings had been initiated before the order under section 18-AA(1) was passed would not by itself make any difference to the application of section 18E(1)(c) as the expression "no proceeding shall lie" used in that clause includes the intiating as well as the continuing of the relevant proceedings. The argument advanced by Mr. Bhagirath Dass, the learned counsel for the petitioners, before us was that his petition is for the winding up of the Company as a

whole and not for winding up of the undertaking which has been taken over by the Central Government. In other words he submitted that he has not applied for liquidation of the vanaspati factory which alone has been taken over by the Central Government and his clients would have no objection if that unit of the Company is completely left out of the winding-up proceedings. It is on these premises that he has argued that his clients need not apply to the Central Government for its consent under section 18E(1)(c) particularly when it (the Central Government) has neither responded to the notice issued to it by this Court, nor put in appearance to support the objection raised by Mr. Shroff.

(7) I have already noticed above the scheme of the Regulation Act up to the stage of the introduction of section 18-AA(3). The obvious purpose of the introduction of Chapter III-AA containing section 18-FA is to provide for the management and control of an industrial undertaking owned by companies in liquidation which were otherwise saved from interference by the Central Government by virtue of the exception contained in section 18-AA(3). Similarly the power to provide relief to certain industrial undertakings (a subject with which we are not concerned) was brought in by the introduction of Chapter III-AB, and provisions for regulation or reconstruction of companies were made in section 18-FC to section 18-FH contained in Chapter III-AC and amendment to the power to control, supply, distribution, price, etc., of certain articles was made by the introduction of section 18-G as contained in Chapter III-B of the Regulation Act. It is in this manner that machinery has been provided for extension of the scope of interference with an industrial undertaking even when it is under liquidation or has been ordered to be wound up. The scheme of the Act, therefore, provides that the Central Government may order and hold investigation under section 15 in respect of a company, for winding up of which no petition has been presented, but it must seek leave of the Court for investigation into the affairs of a company which is being wound up, though such leave cannot be refused because of the language of sub-section (2) of that section. The whole of section 15-A is quoted below for facility of reference:—

> "(1) Where a company, owning an industrial undertaking is being wound up by or under the supervision of the High Court, and the business of such company is not being

continued, the Central Government may, if it is of opinion that it is necessary, in the interests of the general public and, in particular, in the interests of production, supply or distribution of articles or class of articles relatable to the concerned scheduled industry, to investigate into the possibility of running or re-starting the industrial under taking, make an application to the High Court praying for permission to make, or cause to be made, an investigation into such possibility by such person or body of persons as that Government may appoint for the purpose.

(2) Where an application is made by the Central Government under sub-section (1), the High Court shall, not with standing anything contained in the Companies Act, 1956, or in any other law for the time being in force, grant the permission prayed for."

(8) The object of the provisions of the Regulation Act to which reference has been made by me above is to override the normal Company Law routine in respect of any industrial undertaking which is manufacturing or producing any of the articles referred to in the schedule to the Act by taking over the whole or limited control of its factory if:—

(i) such undertaking unjustifiably reduces its production beyond the requirements of the prevailing economic conditions; or

(ii) there has been an avoidable deterioration to a marked extent in the quality of the articles produced by it; or

(iii) the undertaking has unjustifiably raised the price of its products; or

(iv) it is necessary to do so in order to conserve any specified resources of national importance; or

(v) it is being managed in a manner highly detrimental to the scheduled industry; or

(vi) if the persons in charge of the undertaking have by reckless investment or reckless encumbering its assets or

by diversion of its funds brought about a situation likely to affect its production; or

(vii) if the undertaking has been closed for three months or more and such closure is prejudicial to the industry though there is no lack of machinery or funds to restart the factory in the public interest.

(9) All impediments in the way of achieving the above objects have been removed by the different provisions in the Regulation Act. Care has at the same time been taken to disturb the ordinary law of the land to the minimum possible extent for achieving the above-mentioned objectives. The effort accounts for provision like those for taking over the control of only part of an undertaking, for obtaining permission of the High Court in certain contingencies, for fixing the maximum period for which the control can be taken over and the like. The requirement of the consent of the Central Government requisite under section 18 E(1)(c) has to be read in the same light. This requirement being in the nature of a restriction on the right of a creditor or shareholder conferred on him by section 433 of the Companies Act has to be strictly construed. The result of strict construction of the restriction would be that if it is possible to construe the provision in both ways, that is for section 18-E being attracted only if the whole undertaking is taken over and also if a part of it is taken over then by the process of interpretation, its application would be excluded from a case where only a part of the undertaking is taken over provided such construction of the provision can be harmonious with the various other provisions of the Regulation Act and the Companies Act. Section 18-E(1)(c) has already been quoted by me. It is significant to notice that in the opening part of sub-section (1) of the section, the applicability of the provision is made dependent upon the industrial undertaking having been taken over by the Central Government and not on any part of the industrial undertaking having been so taken over. Wherever the legislature so intended, it has referred to the taking over of the whole or part of the undertaking, for example, in sub-section (1) of section 18-A, sub-section (1) of section 18-AA, etc. If the Legislature intended that no proceeding for winding up of an undertaking shall lie, without the consent of the Central Government even if one factory of the undertaking or a part of the undertaking had been taken over under the control of the Central Government, it would

surely have said so. Mr. Shroff has argued that in the very nature of things, consent would be necessary even if a part of the undertaking has been taken over the Government to avoid duality of management as the authorised person appointed under section 18-AA(1) would have control of one part of the undertaking and the Official Liquidator of the remaining undertaking in the case of the passing of a winding-up order. It was further argued that similarly if the Court were to appoint a receiver of the undertaking, he would not be able to take over the factory which is under the control of the authorised person appointed by the Central Government and the Court would not be able to exclude from the purview of the authority of the receiver or the liquidator that part of the company which is under the control of the authorised person. This argument does not hold any water in view of the express provisions contained in Chapter III-AA. Under section 18-FA(2), the High Court can make an order in the case of a company in liquidation empowering the Central Government to authorise any person to take ver the management of the undertaking or to exercise functions of control in relation to the whole or any part of the undertaking for the relevant period. Under the provision to that sub-section, the High Court can permit such authorised person to continue to manage the undertaking or its part even after the Central Government gives up the control by giving such permission or authority for a period up to two years at a time, but not exceeding twelve years in all. Sub-section (3) of section 18-FA reads as follows:—

> (3) Where an order has been made by the High Court under sub-section (2), the High Court shall direct the Official Liquidator or any other person having, for the time being, charge of the management or control of the industrial undertaking, whether by or under the orders of any court, or any contract or instrument or otherwise, to make over the management of such undertaking or the concerned part, as the case may be, to the authorised person and thereupon the authorised person shall be deemed to be the Official Liquidator in respect of the industrial undertaking or the concerned part, as the case may be."

The above-quoted sub-section clearly provides for an eventuality where the Official Liquidator and the authorised person in charge of the Government managed part of the undertaking can work together in respect of their different spheres of assignment. For purposes of

the Companies Act, the authorised person is deemed to be the Official Liquidator in respect of the concerned part of the undertaking. This completely answers the question raised by Mr. Shroff and dispels the doubt created by his argument.

(10) It has also been pointed out by Mr. Bhagirath Dass that the Legislature has consciously used two different expressions in different provisions of the Regulation Act so as to bring about clearly the distinction between the company which is the body corporate on the one hand, and the industrial undertaking which is an enterprise of the company on the other. In sections 15-A, 18-AA(1)(b), 18-AA(3) and 18-FE the expression used is "a company owning an industrial undertaking." On the other hand the expression used in sections 18-A, 18-B(1)(e) and 18-E(1) is "an industrial undertaking which is a company" or "an industrial undertaking, being a company as defined in the Indian Companies Act." From a mere persual of those provisions it is clear that the Regulation Act has kept in view the fact that what is to be wound up is the company which may own an industrial undertaking, and not the industrial undertaking. That is why the expression used in section 15-A(1) is "where a company, owning an industrial undertaking is being wound up ....." Reference may also be had to clause (b) of sub-section (1) of section 18-AA which refers to "the financial condition of the company owning the industrial undertaking." Similarly in sub-section (3) of section 18-AA application of the provisions of sub-sections (1) and (2) of that section has been excluded in respect of an industrial undertaking "owned by a company which is being wound up." Reference to "the company owning the industrial undertaking" is also made in clause (a) of sub-section (1) of section 18-FD, and in section 18-FE(1). On the other hand the expression "industrial undertaking which is company" is used in the explanation section 18-A, section 18-B(1)(e) and section 18-E(1). Wherever the reference is to an industrial undertaking "being a company", or an industrial undertaking "which is a company", the expressions are intended to refer to the whole of the company unless a part thereof is clearly referred to. Where on the other hand reference is to an undertaking owned by a company, it is intended to cover the undertaking or part thereof in respect of which some order has been passed and not necessarily the entire undertaking of the company.

(11) Last but not the least is the language of the notification itself. In its opening part it clearly says that the Central Government is satisfied from the documentary evidence in its possession that the Amrttsar Oil Works, Amritsar, *"a factory of the industrial undertaking* known as .....". In the operative part of the notification again the Central Government has authorised a body of persons appointed by it to take over the management of the said industrial undertaking "insofar as it relates to the said factory" subject to the conditions specified in the notification. All this clearly indicates that the management of the Industrral undertaking which is the company (being a company as defined in the Indian Companies Act) has not been taken over by the Central Government, and, therefore, sub-section (1) of section 18-E of the Regulation Act has no application the case. It is only a part of the undertaking, that is only one of the factories belonging to tne Company, that has been taken over.

(12) For the foregoing reasons we have no hesitation in holding that the provisions of clause (c) of sub-section (1) of section 18-E are not attracted in this case and the winding-up proceedings can continue without obtaining the consent of the Central Government required under that provision. The winding-up petition will now go back to the learned Company Judge for being dealt with further and decided on merits in accordance with law.

Harbans Lal, J.—I agree.

Surinder Singh, J.—So do I.

N. K. S.

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