Dayanand Medical College and Hospital at Ludhiana, which though has been recognized later on, cannot be denied reimbursement of expenses incurred as an outdoor patient only for the reason that the same institution was not recognized at the relevant time.

(15) As a consequence of our above discussion, this petition is allowed and the impugned letters. Annexures P-4 and P-5 are quashed being illegal, and unreasonable.

(16) The respondents are directed to pay to the petitioner the amount of medical reimbursement as claimed by the petitioner which remained unpaid, within a period of two months from the date of receipt of a copy of this order alongwith interest @ 9% p.a. from the date of accural of the amount due till the date of payment. There shall, however, be no order as to costs.

R.N.R.

Before M.M. Kumar & Ajay Kumar Mittal, JJ

M/S PML INDUSTRIES LIMITED,—*Petitioner*

versus

IDBI AND OTHERS,—*Respondents*

C.W.P. No. 19406 of 2006
4th April, 2008

Constitution of India, 1950—Art. 226—Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002—Ss. 13(4) & 14—Sick Industrial Companies (Special Provisions) Act, 1985—BIFR declaring petitioner Company as a sick industrial company and ordering for initiating of measures in terms of S. 18 of 1985 Act—BIFR appointing IDBI as Operating Agency u/s 17(3) and directing IDBI to prepare a draft rehabilitation scheme—Appeal against order of BIFR rejected by AAIFR—High Court also dismissing petition against BIFR order—Supreme Court accepting statement made on behalf of petitioner—Petitioner withdrawing SLP with liberty to approach BIFR by disclosing name of investor—Petitioner delaying matter defeating right of secured creditors to get back their dues— Period granted

by Supreme Court already expired long back—Principles of estoppel against ARCIL—Not applicable—Petitioner failing to clear dues and abide by any of its commitments—Having lost before High Court, AAIFR and BIFR, no interference in order passed by Naib-Tehsildar directing petitioner to hand over its possession to agents of secured creditors—Petition dismissed, however, granting liberty to petitioner to avail remedy of appeal u/s 17 of 2002 Act.

Held that, the petitioner has been given huge time to come forward with reasonable settlement. Even the order passed by Hon'ble the Supreme Court is based on such a time bound assurance given by the petitioner that suitable rehabilitation proposal would be submitted within four weeks from the date of the order i.e. 15th February, 2006 and the petitioner delayed in coming forward with a proper settlement proposal to the secured creditors and did not submit an acceptable settlement proposal. It is, thus, clear that the petitioner has been successfully delaying the matter on one pretext or the other and thereby defeating the right of the secured creditors to get back their dues. Accordingly, we cannot accept the submission that the matter is pending for consideration of BIFR.

(Para 20)

Further held, that despite opportunities granted by Hon'ble the Supreme Court as well as the secured creditors-respondents Nos. 2 to 6, the petitioner has failed to clear the dues. ARCIL hold 33% of the total secured debits in value and in terms of Section 13(9) of the Act it has consent of IDBI (which is holding 32% of the total secured debt) and SBH (which is holding 34% of the total debt). Therefore, ARCIL is entitled to proceed for enforcement of security interest under Section 13(4) of the Act and the principles of estoppel invoked against it by the petitioner on the basis of the orders passed by Hon'ble the Supreme Court on 15th February, 2006 would not come to its rescue.

(Para 22)

Anand Chhibbar, Advocate, and Amandeep Singh, Advocate, *for the petitioner.*

Capt. Arun Sharma, Advocate, *for respondent No. 3.*

Jagdish Marwaha, Advocate, *for respondent No. 4.*

Kanwaljit Singh, Senior Advocate, with Rohit Sapra, Advocate, *for respondent No. 6.*

M.M. KUMAR, J.

(1) The short issue raised in the instant petition is as to whether an order passed under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, 'the Act') and subsequent action initiated by the Naib-Tehsildar, Dera Bassi-respondent No. 10, in accordance with the provisions of Section 14 of the Act, could be challenged by availing the remedy of a petition under Article 226 of the Constitution. The petitioner- PML Industries Ltd. has challenged order dated 23rd November, 2006 (P-16), passed by the Naib-Tehsildar, Dera Bassi-respondent No. 10, exercising powers under Section 14 of the Act, directing the petitioner-PML Industries Ltd. to hand over its possession to the agents of secured creditors. A further direction to the respondents has been sought requiring them to obey and abide by orders dated 15th February, 2006 and 20th November, 2006 (P-12 and P-13), passed by Hon'ble the Supreme Court, whereby the matter has been remanded back to the Board for Industrial and Financial Reconstruction-respondent No. 8 (for brevity, 'BIFR') for fresh rehabilitation of the petitioner-PML Industries Ltd.

FACTS :

(2) The case of the petitioner is that it is a 100% export oriented Limited Company and engaged in the business of processing and producing boneless buffalo (Male) meats. The unit of the petitioner at Dera Bassi, Punjab, was set up with the help of Research and Development Institution of New Zealand and the same is equipped with ultra modern processing plants. It has also entered into a turn-key agreement with M/s Fietchers Projects Pvt. Ltd., Australia, for supply, erection and commissioning of the plant. Initially financial assistance to the tune of Rs. 35.4 crores was provided to the petitioner by the ICICI Bank-respondent No. 2, which was later on extended to Rs. 39.68 crores. Other than this, the Asian Finance and Investment Corporation Ltd. (for brevity, 'the AFIC'), one of the financial arm of the Asian Development Bank, Manila, also gave financial assistance/loan to the tune of US $ 1.1. million (Rs. 34 crores), which was duly approved by the Reserve Bank of India. The petitioner also secured a Bridge loan from the AFIC to the tune of Rs. 3.13 crores and another Bridge loan from the ICICI Bank-respondent No. 2 to the tune of Rs. 2.88

crores. The plant and machinery of the petitioner is spread over in about 20 acres and the unit started commercial production on 1st March, 1996.

(3) It is claimed that troubles for the petitioner started even before commencement of commercial production, when a news item was published in the local newspapers on 22nd March, 1995 that the State Cabinet of Punjab had decided on 21st March, 1995 to shut down the petitioner's unit in the wake of demonstrations by various fundamentalist groups. The petitioner then filed C.W.P. No. 4712 of 1995 in this Court and a Division Bench of this Court dismissed the said petition,—*vide* order dated 5th April, 1995, by observing as under :—

> "As of date, the petitioners have not filed any order passed by the State of Punjab or its functionaries, which could be subject matter of scrutiny. The Petition is, therefore, dismissed as premature with a liberty to the petitioners to adopt appropriate proceedings and when occasion arises.
>
> In view of the order in the main petition, no order on the Civil Misc. No. 3860 of 1995 is called for."

(4) On 15th May, 1995, the Deputy Commissioner, Patiala, passed an order directing the petitioner to close down its unit because the Punjab Government had decided not to allow operation of its factory situated ag village Behra, Dera Bassi (P-2). On 10th June, 10995, the Deputy Commissioner, Patiala, passed yet another order for stopping any production in the unit (P-3). The petitioner challenged the aforementioned orders in this Court by filing C.W.P. No. 8924 of 1995. Orders dated 15th May, 1995 and 10th June, 1995 (P-2 & P-3) were stayed by this Court at the time of issuance of notice of motion. Subsequently a Division Bench of this Court admitted C.W.P. No. 8924 of 1995,—*vide* order dated 30th August, 1995 and also ordered continuance of interim stay, which is still pending adjudication before this Court.

(5) The resultant effect of the decision of the State Cabinet of Punjab to shut down the unit of the petitioner was that some of orders for supply of meat were cancelled and the financial institutions refused to give loans to the petitioner due to which a financial crisis is claimed to have arisen. Faced with this situation, the petitioner approached the BIFR by filing

Reference No. 346/1998, under Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (for brevity, 'the SICA Act') on 18th December, 1998 (P-4). On 14th May, 1999, BIFR declared the petitioner as a sick industrial company in terms of Section 3(1)(O) of the SICA Act. BIFR further formed an opinion that the petitioner could revive on its own and keeping in view the public interest, ordered for initiating of measures in terms of Sector 18 of the SICA Act. BIFR also ordered appointment of Industrial Development Bank of India-respondent No. 1 (for brevity, 'the IDBI') as the Operating Agency (OA) under Section 17(3) of the SICA Act to examine the viability of the petitioner and for formulation of rehabilitation scheme for its revival. Certain guidelines were set out for the purpose of examining the viability and preparation of rehabilitation scheme for the petitioner (P-5). Subsequently, proceedings before BIFR continued from time to time and the rehabilitation process was undertaken. All the secured creditors were also represented before BIFR.

(6) On 30th April, 2001, BIFR passed an order, which was served on the petitioner on 2nd May, 2001, directing the IDBI to prepare a draft rehabilitation scheme within a period of two weeks and make available the same to the intending bidders including the petitioner. The IDBI was also directed to issue an advertisement for the change of Management of the Company within a period of 15 days from the receipt of order inviting offers for takeover/leasing/amalgamation/merger for rehabilitation with or without One Time Settlement (OTS) of the dues of the financial institutions/ Banks giving four weeks' time for submission of offers. It was further ordered that in case no concrete rehabilitation proposal was received, BIFR would consider passing further appropriate orders including issuance of show cause notice for winding up of the petitioner (P-6).

(7) Feeling aggrieved against the order dated 30th April, 2001, passed by the BIFR, the petitioner preferred a statutory appeal under Section 25 of the SICA Act before the Appellate Authority for Industrial and Financial Reconstruction, New Delhi (for brevity, 'the AAIFR'), on 8th May, 2001. The appeal was accompanied by an application for interim stay. On 9th May, 2001, the AAIFR rejected the appeal in limine (P-7). Thereafter, the petitioner filed C.W.P. No. 7157 of 2001 in this Court impugning orders dated 30th April, 2001 and 9th May, 2001, passed by the BIFR and AAIFR respectively. The writ petition was also dismissed by a Division

Bench of this Court,—*vide* order dated 17th May, 2001 (P-8). The petitioner still further filed S.L.P. (Civil) No. 10197 of 2001. On 9th July, 2001, Hon'ble the Supreme Court issued notice and stayed order dated 30th April, 2001, passed by BIFR (P-9). The S.L.P. was granted and in Civil Appeal No. 6397 of 2002 on 6th December, 2005 (P-10), their Lordships' of Hon'ble the Supreme Court, passed the following order :—

> "Pursuant to the previous order of this Court dated 22nd of November, 2005 counsel for the appellants has produced the balance-sheet, income-tax returns, assessment orders and One Time Settlement Scheme (OTS) along with other documents. He has placed on record letter No. ARG-IV MK/FY 06/3601, dated 28th November, 2005 addressed by Shri S.V. Venkatakrishnan, Vice President and Group Head of Asset Reconstruction Company (India) Limited (Areil) to the Managing Director of the appellant-company wherein it has been stated that the final settlement can be arrived at if the appellant agrees to pay the sum of Rs. 12.50 crores in three instalments within six months, as stated therein, towards the full and final settlement in respect of the secured creditors. Out of the secured creditors, the Indusind Bank has not accepted the proposal so far. This offer of OTS has to be accepted by the 31st of December, 2005.
>
> Adjourned to 12th January, 2006 as Ist item subject to over night part heard, if any. This adjournment is being granted subject to the appellants' depositing a sum of Rs. one crore with the Registrar General of this Court on or before the 2nd of January, 2006. In case the aforestated sum of Rs. one crore is not deposited, as directed above, the stay granted by this Court shall stand vacated. In the event the OTS does not come through, then the sum of Rs. one crore, if deposited, shall be returned to the appellants."

(8) In terms of the aforementioned order, the petitioner deposited a sum of Rs. one crore to show its *bona fides*. Civil Appeal finally came up for consideration before Hon'ble the Supreme Court on 15th February, 2006 and on the basis of the statement of the counsel appearing for the

petitioner, the appeal was dismissed as withdrawn with liberty to approach the BIFR by disclosing the name of the investor along with details of funds to be deployed by him and the orders for supply of products of the company received so far (P-12).

(9) The petitioner claims to have furnished the requisite information in terms of the order dated 15th February, 2006. The directions were obviously time bound and BIFR was to take decision within eight weeks of submissions of proposals and the proposal was required to be submitted within four weeks from the date of the order dated 15th February, 2006. The period came to an end on 15th May, 2006. The BIFR moved an application for modification of the order dated 15th February, 2006, praying that name of the strategic investor be revealed to the IDBI-respondent No. 1, which was allowed,—*vide* order dated 20th November, 2006 (P-13). Hon'ble the Supreme Court ordered that the IDBI could know name of the investor but it was not to reveal the same to any other third party so that they could examine credit-worthiness of the strategic investor brought by the petitioner. There was no extension either sought or extended in respect of the time granted by Supreme Court,—*vide* its order dated 15th February, 2006. The proceedings by BIFR could not be concluded by 15th May, 2006.

(10) The ICICI Bank-respondent No. 2 served a notice to the petitioner, under Section 13(2) of the Act that the dues of the bank may be paid immediately otherwise proceedings under the Act would be initiated (P-14). On 1st December, 2003, a reply to the notice was sent by the petitioner intimating the ICICI Bank-respondent No. 2 about pendency of Special Leave Petition before Hon'ble the Supreme Court (P-15). The petitioner has conceded that an opportunity of hearing by the ICICI Bank-respondent No. 2 was affored to it, however, neither any decision of the objections raised by the petitioner was conveyed nor any notice under Section 13(4) of the Act was ever sent.

(11) On 23rd November, 2006, a communication was sent by the Naib Tehsildar, Dera Bassi-respondent No. 10, which was received by the petitioner on 1st December, 2006, asking the petitioner to deliver its possession to the Chief Consultant, North Indian Technical Consultancy, S.C.O. No. 131-132, First Floor, Chandigarh, on 6th December, 2006.

The aforementioned communication has been issued under Section 14 of the Act. Alongwith the said communication, a copy of the application filed by the Asset Reconstruction Company (India) Limited-(ARCIL) respondent No. 6, in the Court of Chief Metropolitan District Magistrate, S.A.S. Nagar, Mohali, under Section 14 of the Act, for taking possession of secured assets and various other documents were also sent to the petitioner (P-16). The petitioner sent its reply on 4th December, 2006 (P-17). The stand taken in the reply is that no order under Section 13(3A) of the Act has been passed and Hon'ble the Supreme Court has issued various directions in its order dated 15th February, 2006. Communication/order dated 23rd November, 2006, is subject matter of challenge in the instant petition.

(12) In the written statement filed on behalf of ARCIL-respondent No. 6 various preliminary objections have been raised. The main stand taken is that this Court has no jurisdiction to entertain the instant petition in view of Sections 17(1) read with Sections 34 and 35 of the Act, inasmuch as, the petitioner is seeking quashing of order dated 23rd November, 2006 (wrongly mentioned as 16th November, 2006 in the written statement), and if such relief is granted then it would amount to grant of injunction against respondent No. 6 to exercise its right to take action as contemplated under Section 13(4) of the Act. It has further been asserted that jurisdiction and authority to adjudicate upon the controversy, especially impugned order dated 23rd November, 2006, lies elsewhere i.e. with the Debts Recovery Tribunal (DRT), under Section 17 of the Act. It has further been pleaded that mere pendency of reference before the BIFR does not debar a secured creditor to exercise its right to enforce its security interest/secured assets in terms of Section 13(4) of the Act. In that regard provisions of Section 15(1) of the SICA Act, which have been inserted by the Act, have been referred to. Furthermore, the petitioner has been afforded full opportunity of hearing before iniating proceedings against it under the provisions of the Act. More than 1½ years time has been allowed to the petitioner to come forward with reasonable settlement proposal. The instant petition has been filed only with a view to delay and frustrate the recovery of lawful dues of the secured lenders. It has been pointed out that,—*vide* letter dated 6th October, 2006, the petitioner was intimated that the proposal submitted by it in pursuance to the order dated 15th February, 2006, passed by Hon'ble the Supreme Court, was not acceptable (R-6/1). As on 31st March, 2006,

a sum of Rs. 96.24 crores is due to respondent No. 6 and payable by the petitioner. Even other secured creditors also rejected the proposal submitted by the petitioner, as is evident from letters dated 11th October, 2006, 25th October, 2006, 2nd November, 2006, 6th November, 2006, 2nd December, 2006 (R-6/2 to R-6/6 respectively). Respondent No. 6 also placed on record order dated 16th/23rd November, 2006, passed by the District Magistrate, issuing insructions to the Tehsildar to take possession of the secured assets of the petitioner and hand over to it (R-6/10). However, on the appointed day, the Tehsildar refused to take possession on the ground that reference before BIFR was pending and in terms of Section 22 of the SICA Act, action could not be initiated by respondent No. 6. In this regard, copy of communication dated 6th December, 2006, sent by the Naib Tehsildar, Dera Bassi, to the District Magistrate, S.A.S. Nagar, has been placed on record (R-6/11). Respondent No. 6 also referred to the provisions of Section 14 of the Act to contend that only the District Magistrate has jurisdiction to provide assistance. On merits admitting the factual position similar averments, as have been noticed above, have been reiterated by respondent No. 6.

(13) A separate written statement on behalf of State Bank of Hyderabad-respondent No. 3 has been filed wherein similar objections have been raised as are raised by respondent No. 6. Therefore, we do not propose to discuss the written statement in detail and it is suffice to observe that respondent No. 3 has assigned his share to respondent No. 6.

(14) A counter affidavit on behalf of Indusind Bank Ltd. respondent No. 4 has been filed highlighting the fact that the petitioner has not approached this Court with clean hands and suppressed material facts. It has been submitted that before filing the instant petition, the petitioner has also filed C.W.P. No. 19042 of 2003 seeking to restrain the respondent therein from taking any action under Section 13(2) of the Act. The aforementioned writ petition stands disposed of in terms of the order dated 25th May, 2004, passed by this Court in C.W.P. No. 19657 of 2003 [M/s Gill Knitwears *versus* UCO Bank and another, Annexure R-1 (Colly)]. It has been held that as per the judgment of Hon'ble the Supreme Court in the case of **Mardia Chemicals Ltd.** *versus* **Union of India, (1)** it was obligatory upon the parties to take recourse to specific statutory alternative remedy

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by filing an appeal under Section 17 of the Act against an order passed under Section 13(4) of the Act. Liberty, however, was granted to the parties to file appeal within a period of one month from the date of the order. Accordingly, it has been asserted by respondent No. 4 that writ petition may be dismissed with exemplary costs for concealing material facts.

(15) Mr. Anand Chhibbar has argued that the petitioner had filed C.W.P. No. 7157 of 2001 against the order dated 30th April, 2001, passed by the BIFR and order dated 9th May, 2001, passed by the AAIFR. This Court dismissed the writ petition,—*vide* order dated 17th May, 2001 (P-8). Against the aforementioned order, the petitioner has filed Special Leave Petition before the Supreme Court and various orders were passed. He has referred to orders dated 9th July, 2001 (P-9), 6th December, 2005 (P-10), 12th January, 2006 (P-11), 15th February, 2006 (P-12) and 20th November, 2006 (P-13). According to the learned counsel, all these orders reveal that the Supreme Court has sent the parties to BIFR, as is evident from order dated 15th February, 2006 (P-12). The petitioner was permitted to withdraw the appeal with liberty to approach BIFR.

(16) Another submission made by the learned counsel is that ARCIL-respondent No. 6 to whom the debt has been assigned by the secured creditor was present before Hon'ble the Supreme Court and is, therefore, bound by all the aforementioned orders (Annexures P-10 to P-13) passed by the Supreme Court. He has further submitted that before resorting to action under Section 13(4) of the Act, no order in terms of Section 13(3A) of the Act by giving reasons, have been passed. Therefore, learned counsel has submitted that no order could have been passed under Section 14 of the Act. Therefore, the order dated 23rd November, 2006 (P-16) is liable to be set aside.

(17) Mr Kanwaljit Singh, learned Senior counsel for ARCIL-respondent No. 6 has, however, submitted that the petitioner is merely whiling away time, which was fixed by Hon'ble the Supreme Court as is explicit from order dated 15th February, 2006 (P-12). According to the learned counsel, the BIFR was required to dispose of the entire matter within a period of 8 weeks from the date of submission of the proposal, which was to be done within a period of four weeks from 15th February, 2006. In other words, the total period of three months was granted by

Hon'ble the Supreme Court,—*vide* its order dated 15th February, 2006 (P-12). Learned counsel has further submitted that at best the period must be considered to have come to an end in December, 2006 when the application filed by the BIFR, in which IDBI was appointed as operating agency and the BIFR was to disclose the name of the investor with a view to enable the operating agency-IDBI to ascertain the genuineness and viability of the proposal by studying the financial statements of the investor and verify their credit worthiness from their Bankers. Learned counsel has pointed out that the period fixed by Hon'ble the Supreme Court has expired and the petitioner has lost the right to make any submission. Learned counsel has further submitted that proceedings under Section 13(2) of the Act were initiated on 21st November, 2003 and it is an admitted position that the petitioner was given personal hearing, as is evident from the averments made by the petitioner itself in para 20 of the writ petition and the letter dated 18th December, 2003, which has been attached by the petitioner at page 145 of the petition. Learned counsel has submitted that Section 13(3A) of the Act was added by way of an amendment only on 11th November, 2004 and, therefore, the respondents could not have any opportunity to comply with the aforementioned provision.

(18) Learned counsel has further pointed out that in para 3 of the affidavit dated 23rd April, 2007, Dr. A.S. Bindra, Chairman-cum-Managing Director of the petitioner company, has undertaken on behalf of the petitioner that in the event of non-payment of Rs. 3,75,00,000 by 29th June, 2007, the ARCIL-respondent No. 6 would have a right to recover further amounts calculated at ICICI Bank prevailing PLR on the amount overdue in the next 90 days. In paras 4 and 5 of the said affidavit, Dr. A.S. Bindra had further undertook that in the event of non-payment of amount of Rs. 1,325 lacs, the ARCIL respondent No. 6, Stressed Assets Stabilization Fund (SASF)-respondent No.7 and State Bank of Hyderabad (SBH) respondent No. 3 would be entitled to terminate the settlement and adjust payments made towards the dues of the petitioner and that they would be entitled to continue with the exercise of their rights for recovery of dues as per the provisions of law. Learned counsel has maintained that the period has expired long back and the respondents are within their rights to proceed under Sections 13(4) and 14 of the Act.

(19) We have thoughtfully considered the submissions made by the learned counsel for the parties and perused the paper book with their able assistance. The petitioner has engaged the secured creditors or their assignee-respondent No. 6 in litigation for number of years. A perusal of the order dated 17th May, 2001, passed by this Court in C.W.P. No. 7157 of 2001 (P-8), shows that BIFR had rejected the prayer made by the petitioner on 30th April, 2001 and AAIFR has upheld that order on 9th May, 2001. Against the aforementioned orders, C.W.P. No. 7157 of 2001 was filed in this Court, which was dismissed on 17th May, 2001 (P-8). Hon'ble the Supreme Court disposed of the Special Leave Petition by accepting the statement made on behalf of the petitioner,—*vide* its order dated 15th February, 2006 (P-12). The petitioner had withdrawn the appeal with liberty to approach the BIFR by disclosing the name of the investor alongwith the details of funds to be deployed by it and the orders for supply of product of the Company received by that time. The proposal was required to be made in a sealed cover within four weeks from 15th February, 2006 and the same was required to be considered by the BIFR by taking into account the genuineness of the investor, funds to be deployed by the petitioner and orders for supply received by it. On the satisfication of the BIFR that the petitioner compay could turn around by the present management, the BIFR was to permit the petitioner to submit a scheme for revival in accordance with law. A period of 8 weeks from the date of submission of proposal was fixed. It was made clear that in case the BIFR was not satisfied about the genuineness and viability of the proposal then the order passed by the Division Bench of this Court dismissing the writ petition was to revive and operate. The operative part of the order passed by Hon'ble the Supreme Court on 15th February, 2006 (P-12) reads as under :—

> "In view of the statement of the counsel appearing for the appellant, the appeal is dismissed as withdrawn reserving liberty with the appellant to approach the BIFR disclosing the name of the investor along with the details of funds to be deployed by him and the orders for supply of products of the company received so far. This may be done in a sealed cover within four weeks from today. On the submission of such proposal, the BIFR shall consider the genuineness of the investor, funds to be deployed by him and orders received for supplying the products produced by the appellants on consideration whereof, if the BIFR is *prima facie* satisfied that the company can be turned

around by the existing management, it may permit the appellant to submit a scheme for revival in accordance with law. The proposal put forth by the appellant regarding the investor, orders for supply, etc. shall be examined by the BIFR in accordance with law and dispose it of within eight weeks from the date of submission of the proposal. If the BIFR is satisfied about the genuineness thereof, then it may permit the appellant to submit a scheme for revival.

In this case, the appellants have expressed their apprehension about disclosing the name of the investor and, therefore, we have permitted the appellants to furnish details in a sealed cover to BIFR. It appeares in a sealed cover. The name of the investor in particular is not being disclosed by the appellants saying that their competitor might sabotage their proposal to revive the company. We may clarify that in order to ascertain the genuineness and viability of the proposal, BIFR may call for requisite particulars from the appellants regarding funds to be deployed, orders received and receivable from the customers without disclosing the name of the investor.

In case the BIFR is not satisfied about the genuineness and viability of the above proposal, the impugned order shall stand revived.

Since the appeal is being dismissed as withdrawn at the instance of Mr. M.L. Verma, learned senior counsel, we are not going into the correctness of the submissions or otherwise of the impugned judgment.

The application for impleadment stands allowed. The sum of Rupees one crore deposited by the applicant/intervener (Abhinav Futuristic Ltd.) with the Registrar General of this Court in pursuance of our order dated 6th of December, 2005 be returned to the applicant within a week from today." (emphasis added)

(20) The stand of respondent No. 6 and the argument of its counsel are meritorious because after the dismissal of the writ petition by the Division Bench of this Court on 17th May, 2001 (P-8), action was initiated by the ICICI Bank-respondent No. 2, under Section 13(2) of the Act. The petitioner successfully persuaded respondent No. 2 to defer any further action under Section 13(4) of the Act by giving assurances regarding rehabilitation of the company and settlement with the secured creditors.

The petitioner has been given huge time to come forward with reasonable settlement. Even the order passed by Hon'ble the Supreme Court is based on such a time bound assurance given by the petitioner that suitable rehabilitation proposal would be submitted within four weeks from the date of the order i.e. 15th February, 2006 and the petitioner delayed in coming forward with a proper settlement proposal to the secured creditors and did not submit an acceptable settlement proposal. The petitioner was informed,— *vide* letter dated 6th October, 2006 (R-6/1) by respondent No. 6 that the proposal put forward was not acceptable. As on 31st March, 2006, the dues of respondent No. 6 were to the tune of Rs. 96.24 crores. Even other secured creditors, namely, SASF-respondent No. 7 had also rejected the proposal, which is clear from letter dated 11th October, 2006 (R-6/2), which was followed by further letters dated 25th October, 2006 (R-6/3), 2nd November, 2006 (R-6/4), 6th November, 2006 (R-6/5) and 2nd December, 2006 (R-6/6). It is, thus, clear that the petitioner has been successfully delaying the matter on one pretext or the other and thereby defeating the right of the secured creditors to get back their dues. Accordingly, we cannot accept the submission made by the learned cousnel for the petitioner that the matter is still pending for consideration of BIFR.

(21) It is also pertinent to mention that the petitioner had similar submissions on 14th December, 2006, which in fact are not borne out from the record. We have already noticed in detail the affidavit dated 23rd April, 2007 of Dr. A.S. Bindra, Chairman-cum-Managing Director of the petitioner company. In para 3 Dr. Bindra has undertaken on behalf of the petitioner that in the event of non-payment of Rs. 375 lacs by 29th June, 2007, the ARCIL-respondent No. 6 would have a right to recover further amounts calculated by the ICICI Bank. Even that period has expired. In paras 4 and 5 of the affidavit he has further undertook that in the event of non-payment of amount of Rs. 1,325 lacs, the ARCIL-respondent No. 6, SASF-respondent No. 7 and SHB-respondent No. 3 were to be entitled to terminate the settlement and adjust payments made towards the dues of the petitioner and that they would be entitled to continue with the exercise of their rights for recovery of dues as per the provisions of law. The period has expired long back but the petitioner has failed to abide by any of the aforementioned commitments. The petitioner had only deposited Rs. 2 crores, which is far less than the amount which was promised to be paid by it. Therefore, the argument of Mr. Chhibbar is without any substance as the *bona fide* of the petitioner is doubtful.

(22) It is also worthwhile to notice that despite opportunities granted by Hon'ble the Supreme Court as well as the secured creditors-respondent Nos. 2 and 6, the petitioner has failed to clear the dues. It is pertinent to mention that respondent No. 6 hold 33% of the total secured debts in value and in terms of Section 13(9) of the Act it has consent of respondent No. 1-IDBI (which is holding 32% of the total secured debt) and SBH-respondent No. 3 (which is holding 34% of the total debt). Therefore, ARCIL-respondent No. 6 is entitled to proceed for enforcement of security interest under Section 13(4) of the Act and the principles of estoppel invoked against it by the petitioner on the basis of the orders passed by Hon'ble the Supreme Court on 15th February, 2006 would not come to its rescue.

(23) The delaying tactics adopted by the petitioner engaging the secured creditors in litigation cannot be approved by this Court because in the case of **S.R.F. Limited** *versus* **Garware Plastics and Polyesters Ltd., (2)** their Lordships' of Hon'ble the Supreme Court were pleased to hold that such like proceedings either before BIFR or AAIFR should not be used as dilatory tactics to prevent rehabilitation of the sick company or potentially sick company. The filing of the present petition, in fact, is a complete misuse of the process of court as would be evident from the perusal of para 11 of the judgment, which reads thus :—

> "11. Under Section 17(1), the Board, after making inquiry, has to decide, *as soon as may be* by order in writing, whether it is practicable for the company to make its net worth exceed the accumulated losses within a reasonable time. Similarly, Section 18(1) envisages for preparations of sanction of schemes. The Board while making the order under Section 17, the operating agency shall prepare, *expeditiously as posssible and ordinarily within a period of ninety days from the date of such order,* a scheme as per the particulars enumerated thereunder. Section 26 of the Act has expressly divested the civil Court of its jurisdiction over the orders passed by the Board or the Appellate Authority or the proposals made under the Act. The legislative intent which, therefore, becomes clear is that sick or potentially sick industry should be detected timely. Proceedings for revival and rehabilitation of the sick or potentially sick company should expeditiously be completed

(2) (1995) 3 S.C.C. 465

within the time frame and if unavoidable, it should be done within a reasonable time thereafter, say six months. The proceedings are not to be allowed to be used as dilatory tactics to prevent rehabilitation of the sick comapnay or potential sick company, in particular by rival companies. The Board and the Appellate Authority and the High Court should give effect to the provisions, comply with procedural format, should finalise the proceedings expeditiously within the time frame so that not only the starving workmen who are kept in agonising wait for revival of sick company without wages, be rescued, but also needless accumulation of losses by the company and the loss of revenue to the State is avoided."

(24) The petitioner has gone upto Hon'ble the Supreme Court after having lost before this Court, AAIFR and BIFR. Therefore, there is no room to interfere in the impugned order dated 23rd November, 2006 (P-16), passsed by respondent No. 10, exercising the power under Section 14 of the Act or any other action of the respodnents.

(25) We are further of the view that at best the remedy of the petitioner may be to challenge the impugned order dated 23rd November, 2006(P-16), passed under Section 13(4) of the Act by availing statutory remedy under Section 17 of the Act, as has been held by their Lordships' in the case of **Mardia Chemicals (supra)**. The view of their Lordship's in Mardia Chemical's case reads thus :—

"80. Under the Act in consideration, we find that before taking action a notice of 60 days is required to be given and after the measures under Section 13(4) of the Act have been taken, a mechanism has been provided under Section 17 of the Act to approach the Debt Recovery Tribunal. The above noted provisions are for the purposes of giving some reasonable protection to the borrower. Viewing the matter in the above perspective, we find what emerges from different provisions of the Act, is as follows :—

1. Under sub-section (2) of Section 13 it is incumbent upon the secured creditor to serve 60 days notice before proceeding to take any of the measures as provided under sub-section (4) of Section 13 of the Act. After service of notice, if the borrower raises any objection or places facts

for consideration of the secured creditor, such reply to the notice must be considered with due application of mind and the reasons for not accepting the objections, howsoever brief they may be, must be communicated to the borrower. In connection with this conclusion we have already held a discussion in the earlier part of the judgment. The reasons so communicated shall only be for the purposes of the information/knowledge of the borrower without giving rise to any right to approach the Debt Recovery Tribunal under Section 17 of the Act, at that stage.

2. As already discussed earlier, on measures having been taken under sub-section (4) of Section 13 and before the date of sale/ auction of the property it would be open for the borrower to file an appeal (petition) under Section 17 of the Act before the Debt Recovery Tribunal.

3. That the Tribunal in exercise of its ancillary powers shall have jurisdiction to pass any stay/interim order subject to the condition at it may deem fit and proper to impose.

4. In view of the discussion already held on this behalf, we find that the requirement of deposit of 75% of amount claimed before entertaining an appeal (petition) under Section 17 of the Act is an oppressive, onerous and arbitrary condition against all the canons of reasonableness. Such a condition is invalid and it is liable to be struck down.

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(26) In fact the petitioner is fully aware of this legal position because it has earlier approached this Court by filing C.W.P. No. 19042 of 2003 in which prayer was made that respondents therein be restrained from taking any action under Section 13(2) of the Act. That petition was disposed of in terms of Division Bench judgment rendered in C.W.P. No. 19657 of 2003, decided on 25th May, 2004. The Division Bench has also followed the view taken by Hon'ble the Supreme Court in the case of **Mardia**

Chemicals case (supra).

(27) The argument of the learned cousnel for the petitioner that an express order under Section 13(3A) of the Act was required to be passed, has been effectively met by the respondents, inasmuch as, order under Section 13(2) of the Act was passed by the secured creditors on 21st November, 2003 (P-14), which was almost a year before the provisions of Section 13(3A) were incorporated in the Act by way of amendment dated 11th November, 2004. In any case, the petitioner has been granted personal hearing as is the admitted fact by it, which is evident from a perusal of para 21 of the petition alongwith a perusal of document attached with the petition at page 145.

(28) The other argument that the pricniples of estoppel would apply against the ARCIL-respondent No. 6, would also be of no avail because the period granted by their Lordships' of Hon'ble the Supreme Court in order dated 15th February, 2006 has worked itself out and it has already expired long back. The situation would be the same if order dated 20th November, 2006, passed by their Lordships' is perused. Moreover, the period fixed by Dr. A.S. Bhinder in his affidavit dated 23rd April, 2007, undertaking to make payment, as already noticed in the preceding para, has expired long back. Dr. A.S. Bhinder has given an undertaking in para 3 of his affidavit (at page 248 of the paper book) that in the event of non-payment by the petitioner of Rs. 375 lacs by 29th June, 2007, ARCIL-respondent No. 6 would have a right to recover fruther amount as calculated by the ICICI bank at prevailing PLR on overdue amount in the next 90 days and that if the payment of Rs. 1,325 lacs is not made then ARCIL-respondent No. 6, SASF-respondent No. 7 and SBH-respondent No. 3 were entitled to continue with the exercise of their rights for recovery of dues in accordance with law. The argument of learned counsel for the respondent trully gains credibility that the petitioner are merely whiling away time. Accordingly, we have no hesitation to reject the arguments raised by the learned counsel for the petitioner.

(29) As a sequel to the above discussion this petition fails and the same is dismissed. However, the petitioner shall be at liberty to avail remedy under Section 17 of the Act as observed above. The respondents are entitled to their cost which we assessed at Rs. 10,000 for each one of the respondent Nos. 1 to 9.

R.N.R.