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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgement reserved on: 12.01.2026***
Judgement delivered on: 28.01.2026

\+ OMP (ENF.) (COMM.) 146/2016 & I.A. 3174/2017 (Objections on behalf of the judgment debtors under Section 47)

ELECON ENGINEERING CO. LTD. .....Decree Holder

Through: Mr. Sanjeev K. Sharma, Mr. Rajiv Dalal and Ms. Dipti Singh Arya, Advocates

versus

CEMENT CORPORATION OF INDIA THROUGH MANAGING DIRECTOR .....Judgement Debtor

Through: Mr. Jainendra Maldahiyar, Advocate

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G E M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Execution petition has been filed by the Decree Holder under Section 36 of the **Arbitration and Conciliation Act, 1996**[1] read with Order XXI Rule 11 and Section 151 of the **Code of Civil Procedure, 1908**[2], seeking enforcement of the **Arbitral award dated 15.11.1993**[3], which was made rule of the Court *vide* Judgment dated 08.10.2002, passed in Suit No. 2730/1993, and subsequently

[1] Act
[2] CPC
[3] Award

modified by Order dated 11.02.2004 insofar as grant of post-decretal interest is concerned.

2. The said decree has attained finality, the challenge laid thereto having been dismissed, and the execution is resisted by the Judgment Debtor through I.A. No. 3174/2017, filed under Section 47 of the CPC, by which the Judgment Debtor has raised objections to the Execution Petition. In these circumstances, the fate of the Execution Petition is contingent upon the outcome of the ***I.A. No. 3174/2017***.

3. By way of the Execution Petition, the Decree Holder seeks satisfaction of the decree by recovery of the decretal amount aggregating to a sum of ₹1,31,75,495/-, computed in terms of the award and the decree, together with further interest at the rate of 6% per annum from 01.10.2016 till realization. In aid of execution, the Decree Holder has prayed for attachment of the movable and immovable assets of the Judgment Debtor, including the funds lying in its bank accounts, and for consequential directions to the concerned bank to issue a pay order in favour of the Decree Holder through this Court, besides seeking costs of the execution proceedings.

BRIEF FACTS:

4. The disputes between the parties were referred to arbitration, culminating in an arbitral award dated 15.11.1993 passed in favour of the Decree Holder, whereby the Judgment Debtor was directed to pay a sum of ₹47,00,484/- along with interest at the rate of 6% per annum, as stipulated therein. The said award was made rule of the Court by this Court *vide* judgment and decree dated 08.10.2002 passed in Suit No. 2730/1993. Aggrieved by the said judgment, the Judgment Debtor preferred an appeal being FAO(OS) No. 47/2003, which came to be

dismissed by this Court *vide* Order dated 31.01.2003, thereby affirming the decree.

5. Subsequently, an application was moved by the Decree Holder seeking clarification and modification of the decree insofar as post-decretal interest was concerned. The said application was allowed by this Court *vide* Order dated 11.02.2004, whereby interest at the rate of 6% per annum was awarded on the decretal amount from the date of decree till realization. The decree, as modified, thus attained finality.

6. Thereafter, the Decree Holder instituted execution proceedings being Execution Petition No. 157/2005 before this Court seeking enforcement of the decree.

7. During the pendency of the said execution petition, the Judgment Debtor was declared a sick industrial company and a rehabilitation scheme was sanctioned by the **Board for Industrial and Financial Reconstruction**[4] on 03.05.2006. In view thereof, the Judgment Debtor invoked the bar contained under Section 22 of the **Sick Industrial Companies (Special Provisions) Act, 1985** [5] . Accepting the said objection, this Court dismissed Execution Petition No. 157/2005 *vide* Order dated 25.09.2009 on the ground that the execution proceedings were barred during the subsistence of the sanctioned scheme.

8. The Decree Holder thereafter approached the BIFR by filing Application No. 412/BC/10 dated 28.06.2010, seeking, *inter alia*, payment of the decretal dues or, in the alternative, permission to pursue execution proceedings. The said application was rejected by the BIFR *vide* order dated 25.01.2011. Against the said order, an

[4] BIFR
[5] SICA

appeal was preferred before the **Appellate Authority for Industrial and Financial Reconstruction**[6] which was also dismissed *vide* Order dated 14.10.2015 holding that the sanctioned scheme was binding under the provisions of the SICA.

9. Upon expiry of the period during which the statutory protection under Section 22 of the said Act was available to the Judgment Debtor, the Decree Holder instituted the present execution petition on 16.11.2016, seeking enforcement of the decree dated 08.10.2002 as modified by Order dated 11.02.2004.

10. The Judgment Debtor has filed objections to the execution under Section 47 of the CPC, which are contested by the Decree Holder. The execution petition and the objections raised thereto are thus placed before this Court for adjudication.

CONTENTIONS ON BEHALF OF THE DECREE HOLDER:

11. Learned counsel for the Decree Holder would contend that the arbitral award dated 15.11.1993, made rule of the Court *vide* Judgment and decree dated 08.10.2002 in Suit No. 2730/1993 and affirmed upon dismissal of FAO (OS) No. 47/2003 on 31.01.2003, attained finality, and the subsequent Order dated 11.02.2004 merely clarified the grant of post-decretal interest at the rate of 6% per annum till realization.

12. It would be contended that the Judgment Debtor is barred from reopening either the principal liability or the entitlement to interest at the stage of execution, as the executing court cannot go behind the decree and the objections raised under Section 47 of the CPC are hit by the principles of finality and *res judicata*.

[6] AAIFR

13. Learned counsel would further contend that the earlier Execution Petition, being Ex. No. 157/2005, was dismissed on 25.09.2009 solely on account of the statutory bar under Section 22 of the SICA, and not on merits, and that upon expiry of the maximum protection period prescribed under Section 22(3) of the SICA, the Decree Holder's right to execute the decree stood revived by operation of law.

14. It would be urged that the sanctioned rehabilitation scheme dated 03.05.2006 neither expressly subsumed the Decree Holder's claim nor resulted in payment of the decretal principal, and that a defaulting judgment debtor cannot seek perpetual immunity under a scheme which has not been implemented in accordance with its terms.

15. Learned counsel would contend that the observations made by the BIFR or the AAIFR regarding interest do not and cannot override or modify a judicial decree passed by this Court, particularly when the decree itself has neither been set aside nor lawfully modified by a competent court.

16. Reliance would be placed on the decision of the Hon'ble Supreme Court in ***Fertilizer Corporation of India Ltd. & Ors. v. Coromandal Sacks Pvt. Ltd.***[7], to submit that the protection under SICA does not operate as a blanket bar to execution or interest where the decree or claim has not been settled under the scheme or where the scheme has failed or not been complied with, thereby entitling the Decree Holder to proceed with execution.

CONTENTIONS ON BEHALF OF THE JUDGEMENT DEBTOR:

17. Learned counsel for the Judgment Debtor would contend that

[7] (2024) 8 SCC 172

the present execution petition is not maintainable in law, as the issues sought to be agitated stand concluded by the orders passed by the BIFR and the AAIFR, which are binding on all parties by virtue of Section 18(8) of the SICA.

18. It would be contended that the rehabilitation scheme sanctioned by the BIFR on 03.05.2006 governs the rights and liabilities of all stakeholders, and once such a scheme has attained finality, the Decree Holder cannot seek recovery of interest or any amount *dehors* or contrary to the terms of the sanctioned scheme.

19. Learned counsel would further contend that the Decree Holder, having voluntarily approached the BIFR by filing Application No. 412/BC/10 and having accepted the adjudication therein, is estopped from re-agitating the issue of interest before this Court, particularly when the said issue was considered and rejected by the Board *vide* Order dated 25.01.2011 and the said order was affirmed by the AAIFR *vide* Order dated 14.10.2015.

20. It would be urged that during the subsistence and implementation of the sanctioned rehabilitation scheme, the protective umbrella under Section 22 of the SICA operated to suspend enforcement proceedings as well as accrual and recovery of interest, and the Decree Holder is not entitled to revive or recover interest for the period covered by the scheme.

21. Learned counsel for the Judgment Debtor would contend that the present execution petition suffers from suppression and concealment of material facts, inasmuch as the Decree Holder has not fairly disclosed the binding effect of the proceedings before the BIFR and the AAIFR, and has sought execution in disregard of the statutory framework under the SICA.

22. It would lastly be contended that grant of the interest component in the present execution proceedings would defeat the object and purpose of the SICA and the rehabilitation scheme sanctioned thereunder, and would result in conferring an undue and impermissible preference upon the Decree Holder over other unsecured creditors.

ANALYSIS:

23. This Court has heard learned counsel for the parties at length and has carefully examined the pleadings, the Arbitral award dated 15.11.1993, the decree dated 08.10.2002 as modified *vide* Order dated 11.02.2004, the earlier execution proceedings, and the orders passed by the BIFR and the AAIFR.

24. At the outset, it is apposite to notice the Order dated 24.02.2023 passed by the learned predecessor Bench in the present proceedings, whereby the principal amount of ₹47,00,484/- was directed to be released in favour of the Decree Holder, subject to the outcome of the present execution petition. The said order proceeded on the premise that there was no dispute with regard to the principal amount awarded under the arbitral award and crystallised by the decree, and that the surviving controversy was confined to the claim for interest. The relevant portions of the said order are reproduced herinbelow for reference:

> "**1.** The objection of the judgment debtor to execution of the award is confined to the question of recovery of interest by the award holder. It is the contention of Mr. Jainendra Maldahiyar, learned counsel for the judgment debtor, that, under a scheme dated 03.05.2006, sanctioned by the Board for Industrial and Financial Reeonstruetion ["BIFR"], the decree holder was treated as an unsecured creditor, and it is entitled to recover only the principal amount , of its debt, and not the amount of interest. In this

connection, Mr. Maldahiyar relies upon an order of BIFR dated 25.01.2011, passed on an application filed by the decree holder herein, wherein the BIFR also came to such a conclusion. This order was affirmed by Appellate Authority for Industrial and Financial Reconstruction, which dismissed the appeal of the decree holder on 14.10.2015.

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4. Mr. Dalal further states that, pursuant to an order dated 01.02.2019, the principal amount of Rs. 47 lakhs has been deposited in Court, and, as there is no dispute with regard to the said amount, he seeks release thereof. It is now contended on behalf of the judgment debtor that the amount due to the decree holder is, in fact, in the region of Rs. 4 lakhs. Mr. Maldahiyar, however, concedes that no such contention has been taken in the objections filed by the judgment debtor.

5. The award, which was passed as far back as on 15.11.1993, also clearly recorded as follows

> "In full and final settlement of the claims of M/s. Elecon Engg. Co. Ltd. against M/s. Cement Corpn. of India Ltd. a sum of Rs.47,00,484.00 (Forty seven lacs four hundred eighty four only) has to be paid by M/s. Cement Corporation of India Ltd. to the Elecon Engg. Co. Ltd. with a simple interest at the rate of 6% (six percent) per annum from two months after the date of award till the date of decree or payment whichever is earlier."

6. By orders dated 01.02.2019 and 03.05.2019, the judgment debtor was directed to deposit the amount of Rs 47 lakhs in Court, which was kept in an interest bearing fixed deposit.

7. The Registry is directed to release the aforesaid amount, alongwith the accrued interest thereupon, to the decree holder upon the decree holder filing an undertaking signed by any two of its directors, to the effect that the release of the amount will be subject to the result of these proceedings. The Registry is directed to take step in this regard as expeditiously as possible."

25. In view of the Order dated 24.02.2023, the scope of the present proceedings is limited. The principal issue which survives for consideration is whether the Decree Holder is entitled to execute the decree in respect of the interest component, notwithstanding the statutory regime governing the Judgment Debtor under the SICA and the binding effect of the rehabilitation scheme sanctioned thereunder.

26. For the sake of convenience and clarity, this court finds it apposite to summarise the material events and the remedies

successively invoked by the parties in a tabulated form hereinbelow:

Sl. No.	Date	Forum / Proceedings	Remedy Invoked by DH/JD	Outcome
1.	15.11.1993	Sole Arbitrator	Arbitration proceedings	Award of ₹47,00,484/- with interest @ 6% p.a.
2.	08.10.2002	High Court of Delhi (Suit No. 2730/1993)	Making the award rule of the Court	Award made the rule of Court
3.	31.01.2003	High Court of Delhi (FAO (OS) No. 47/2003)	Appeal by JD against Judgment dated 08.10.2002	Appeal dismissed; decree affirmed
4.	11.02.2004	High Court of Delhi	Modification application by DH	Post-decretal interest @ 6% p.a. clarified
5.	26.09.2005	High Court of Delhi (Ex. No. 157/2005)	First execution petition by DH	Dismissed on 25.09.2009 due to SICA bar
6.	28.06.2010	BIFR (MA No. 412/BC/10)	Recovery of principal + interest / permission to execute by DH	Interest claim rejected *vide* Order dated 25.01.2011
7.	14.10.2015	Appellate Authority for Industrial and Financial Reconstruction	Appeal against BIFR order by DH	Dismissed; BIFR order affirmed
8.	16.11.2016	High Court of Delhi (the present execution)	Present execution petition by DH	Principal released; interest under consideration

27. It is an admitted position that the Judgment Debtor was

declared a sick industrial company on 08.08.1996. Consequent thereto, the statutory consequences under Section 22 of the SICA came into operation. Section 22 expressly provides for suspension of proceedings for execution, distress or recovery against a sick industrial company during the pendency of inquiry, preparation or implementation of a rehabilitation scheme, except with the consent of the Board or the Appellate Authority. Section 22 of the SICA is reproduced hereinunder for reference:

> "**22. Suspension of legal proceedings, contracts, etc**.—(1) Where in respect of an industrial company, an inquiry under section 16 is pending or any scheme referred to under section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof 3 [and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company] shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority.
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> (2) Where the management of the sick industrial company is taken over or changed 3 [in pursuance of any scheme sanctioned under section 18], notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or any other law or in the memorandum and articles of association of such company or any instrument having effect under the said Act or other law—
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> (a) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;
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> (b) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the Board.
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> (3) 1 [Where an inquiry under section 16 is pending or any scheme referred to in section 17 is under preparation or during the period] of consideration of any scheme under section 18 or where any such scheme is sanctioned thereunder, for due implementation of the

scheme, the Board may by order declare with respect to the sick industrial company concerned that the operation of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force, to which such sick industrial company is a party or which may be applicable to such sick industrial company immediately before the date of such order, shall remain suspended or that all or any of the rights, privileges, obligations and liabilities accruing or arising thereunder before the said date, shall remain suspended or shall be enforceable with such adaptations and in such manner as may be specified by the Board:

Provided that such declaration shall not be made for a period exceeding two years which may be extended by one year at a time so, however, that the total period shall not exceed seven years in the aggregate.

(4) Any declaration made under sub-section (3) with respect to a sick industrial company shall have effect notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or any other law, the memorandum and articles of association of the company or any instrument having effect under the said Act or other law or any agreement or any decree or order of a court, tribunal, officer or other authority or of any submission, settlement or standing order and accordingly,—

(a) any remedy for the enforcement of any right, privilege, obligation and liability suspended or modified by such declaration, and all proceedings relating thereto pending before any court, tribunal, officer or other authority shall remain stayed or be continued subject to such declaration; and

(b) on the declaration ceasing to have effect—

(i) any right, privilege, obligation or liability so remaining suspended or modified, shall become revived and enforceable as if the declaration had never been made; and

(ii) any proceeding so remaining stayed shall be proceeded with, subject to the provisions of any law which may then be in force, from the stage which had been reached when the proceedings became stayed.

(5) In computing the period of limitation for the enforcement of any right, privilege, obligation or liability, the period during which it or the remedy for the enforcement thereof remains suspended under this section shall be excluded."

28. This Court notes that the *lis* between the parties must be appreciated in the backdrop of the distinct statutory milestones that unfolded over time and progressively re-defined the rights and

obligations of the stakeholders. This Court is of the view that the arbitral award, though having culminated in a decree of this Court, did not operate in a legal vacuum. In the *interregnum*, the Judgment Debtor was brought within the fold of the SICA and a rehabilitation scheme was sanctioned by the BIFR on 03.05.2006. With the sanction of the scheme, the statutory regime governing sick industrial companies assumed primacy and the scheme, by legislative mandate, acquired binding force over the sick industrial company as well as all its creditors, including unsecured creditors.

29. The coming into operation of the sanctioned scheme marked a decisive legal watershed. The rights of the parties, hitherto traceable to the decree passed by this Court, stood subsumed within the statutory architecture of revival envisaged under the Act. The scheme was not a mere administrative arrangement but a statutory instrument imbued with overriding efficacy, intended to balance competing claims in furtherance of the larger public interest of industrial revival. It is in this setting that the earlier Execution Petition bearing No. 157/2005, was dismissed by this Court *vide* Order dated 25.09.2009, not as a reflection on the merits of the Decree Holder's claim, but in obedience to the moratorium imposed under Section 22 of the SICA and the legislative imperative that individual enforcement must yield to collective rehabilitation.

30. The binding nature of the sanctioned scheme flows directly from the statuatory regime, which unequivocally mandates that a sanctioned scheme shall be binding on the sick industrial company as well as on all its creditors, including unsecured creditors. In similar circumstances, where claims founded upon decrees were sought to be enforced *dehors* the rehabilitation framework, courts have consistently

upheld the primacy of the sanctioned scheme, confining recovery strictly to what the scheme permits. The statutory force of a scheme sanctioned by the Board has been recognised by the Allahabad High Court in ***J.K. Cotton Spg. And Wvg. Mills Co.Ltd. v. State of U.P. & Ors.***[8], wherein it was held that a rehabilitation scheme overrides contractual obligations and ordinary civil decrees to the extent of any inconsistency. The relevant portion of the said judgment reads as follows:

> "Insofar as the question of principal dues are concerned, there is no dispute before this Court. Sri Upadhyay has stated that the principal dues have already been paid. That only leaves the Court to consider whether the impugned demand insofar as it levies interest and damages is sustainable.
> Undisputedly, the Sanctioned Scheme restricts the liability of the petitioner in respect of ESI dues to the principal amount only with interest and penal levies being specifically and unambiguously excluded. The provision of the Scheme as sanctioned in terms of Section 32 of SICA would clearly bind and override all other statutes and instruments mandating to the contrary. This is manifest from the plain language employed in that provision which reads thus: -
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> > "S. 32. Effect of the Act on other laws.- (1) The provisions of this Act and of any rules or schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law except the provisions of the Foreign Exchange Regulation Act, 1973 (46 of 1973), and the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976) for the time being in force or in the Memorandum or Articles of Association of an industrial company or in any other instrument having effect by virtue of any law other than this Act….."
> >
> > (emphasis supplied)
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> Section 32, in unambiguous terms statutorily confers overriding authority to schemes sanctioned under SICA notwithstanding anything inconsistent in any other law. The only statutes which stand saved from the position of preeminence conferred to schemes sanctioned under SICA are the Foreign Exchange Regulation Act, 1973 and the Urban Land (Ceiling and Regulation) Act, 1976.
> While the law on this issue is well settled, the Court deems it apposite to only notice two decisions referred to hereinafter. In

[8] WRIT - C No. - 18094 of 2004

Raheja Universal Vs. NRC, the Supreme Court enunciated the legal position as follows: -

> "[37] This Court has taken the view in Tata Motors Ltd., (2008) 7 SCC 619 that the Act of 1985 has been enacted to secure the principles specified in Article 359 of the Constitution of India. It seeks to give effect to the larger public interest. It should be given primacy because of its higher public purpose. As the Act of 1985 is a special law and on the principle that a special law will prevail over a general law, it is permissible to contend that even if the provisions contained in Section 22(1) read with Section 32 of the Act, giving overriding effect vis-à-vis the other laws, other than the Foreign Exchange Regulation Act, 1973 and the Urban Land Ceiling and Regulation Act, 1976 had not been there, the provisions of the general law like the Companies Act, for regulation, incorporation, winding-up etc. of the companies would have still been overridden to the extent of inconsistency. We have already seen that this Court had, in the case of Jay Engineering, taken the view that the Interest on Delayed Payments to Small Scale and Ancillary Industries Undertaking Act, 1993 shall have to give way for enforcement of the provisions of the Act of 1985. In the case of Tata Davy also, the Court took the view that the State Sales Tax Act would have to be read and construed in comity to the provisions of the Act of 1985 which shall have the overriding effect. In the case of Tata Motors Ltd. v. Pharmaceuticals Product of India Ltd., this Court was concerned with the provisions of mismanagement and oppression contained in Sections 391 and 394 of the Companies Act and whether the Company Court will have the jurisdiction to pass orders in preference to the proceedings pending before the Court under the Act of 1985. The Court while holding the primacy of the Act of 1985 held as under:-
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> > "SICA furthermore was enacted to secure the principles specified in Article 39 of the Constitution of India. It seeks to give effect to the larger public interest. It should be given primacy because of its higher public purpose. Section 26 of SICA bars the jurisdiction of the civil Courts.
> >
> > What scheme should be prepared by the operating agency for revival and rehabilitation of the sick industrial company is within the domain of BIFR. Section 26 not only covers orders passed under SICA but also any matter which BIFR is empowered to determine.

> 23. The jurisdiction of civil court is, thus, barred in respect of any matter for which the appellate authority or the Board is empowered. The High Court may not be a civil court but its jurisdiction in a case of this nature is limited."

A Division Bench of the Court in ***J.K. Cotton Weaving & Spinning Mills Vs. Union of India*** was called upon to consider the validity of a demand raised by Excise authorities inconsistent with the provisions made in a Sanctioned Scheme. Dealing with that question the Court held: -

> "6. A perusal of the said Scheme would show that as per the terms and conditions of the Rehabilitation Scheme it was provided that the respondent-department would grant exemption to the petitioner-company from payment of interest, penalty etc. and accept payment of excise duty finally payable in pending cases over a period of 2 years from the year in which such amount becomes payable.
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> 7. It was contended that in view of the Scheme and the specific provisions contained in Clause 8.04(d), the impugned demand for Rs.6,89,000/- was absolutely illegal and in violation of the specific terms and conditions of the Rehabilitation Scheme.
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> ...
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> 27. The question that now remains for consideration of this Court is that whether the petitioner is liable for payment of interest and penalty as demanded by the impugned notice dated 17-6-2005.
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> 28. As already noticed in Clause 8.04 (d) of the Rehabilitation Scheme dated 12-11-2002 framed by the BIFR, the petitioner is not liable for payment of interest and penalty. Section 22 of the Act clearly provides that once proceedings have been initiated under the Act and an inquiry under Section 16 is pending or any Scheme referred to under Section 17 is under preparation or consideration or a sanctioned Scheme is under implementation then, notwithstanding anything contained in any other law for the time being in force no proceeding for the winding up or execution or distress or the like against any of the properties of the industrial undertaking company and no proceedings for recovery of money or for enforcement of any security against the company etc. shall be maintainable.
>
> 29. Section 32 of the act further provides that the Schemes made under the Act shall have effect notwithstanding anything inconsistent therewith contained any other law except two Acts namely FERA and Urban Land Ceiling Act for the time being in force and Memorandum or Articles of Association of an Industrial Company or in any

> other instrument having effect by virtue of any other law other than this Act. The Excise Act has not been exempted from the applicability of section 32 of the Act.
> ...
> 35. In our opinion, the judgment referred to in the case of Voltas Ltd.(supra) was on its own facts and does not help the respondents inasmuch as in the Scheme under consideration before the Apex Court, there was no express waiver from the statutory liability of payment of interest at the rate of 18%. However, in the case before us the provisions of Clause 8.04(d) of the Rehabilitation Scheme contains an express waiver from payment of interest, penalty etc. and to accept payment of excise duty finally payable in pending cases over a period of 2 years, from the year in which such amount becomes payable.
> 36. The petitioner having already deposited a sum of Rs.6,89,000/- as 50% part payment for 2004-2005 and having given an undertaking for payment of remaining 50% amount of Rs.689000/- which also was paid on 6-3-2006 (Annexure-SA1 to the supplementary affidavit) the liability towards payment of excise duty had been duly discharged as per the demand notice and the company was not liable for payment of penalty or interest in terms of the specific provisions of the Rehabilitation Scheme."
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> The necessary corollary to the enunciation of the statutory position noticed above would be that the liability of the petitioner insofar as ESI dues are concerned would be governed exclusively by the provisions made in the Sanctioned Scheme in that respect. That Scheme admittedly absolves the petitioner from the liability towards interest and penalties under the Act……
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> *****
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> In light of the legal position noticed above, the Court is of the considered view that the impugned demand insofar as it places a burden of interest and damages upon the petitioners cannot be sustained."

31. It is also of significance that the Decree Holder availed the statutory remedies available under the SICA by approaching the BIFR during the subsistence of the sanctioned rehabilitation scheme. The claim of the Decree Holder, including its prayer for recovery of interest on the decretal amount, was specifically examined by the Board and came to be rejected *vide* Order dated 25.01.2011. The Board held that the sanctioned scheme contemplated payment only of

the principal amounts and that the Decree Holder was required to be treated at par with other unsecured creditors, without any entitlement to interest. The relevant finding of the BIFR reads as under:

> "It is evident that secured creditors and unsecured creditors are not eligible for any interest... The company (Elecon Engineering Co. Ltd.) is not eligible for payment of any interest and their dues have to be treated at par as per other unsecured creditors covered under the scheme."

32. The said determination was also tested in appeal before the AAIFR. The Appellate Authority, *vide* its Order dated 14.10.2015, affirmed the findings of the BIFR and reiterated that the rehabilitation scheme sanctioned in 2006 was binding on all parties in terms of Statuatory mandate. The AAIFR explicitly noted that the Decree Holder, having not challenged the Sanctioned Scheme at the relevant time, could not seek a dispensation different from other unsecured creditors. With the dismissal of the Appeal, the claim of the Decree Holder stood conclusively adjudicated by the competent statutory fora, and the remedies available under the special statute were thus fully exhausted. The relevant finding of the AAIFR reads as under:

> "The sanctioned scheme, as it exists, does not provide for any payment of interest on account of delay. As such, any dispensation for payment of interest to the appellant would amount to modification in the sanctioned scheme which cannot be done at this belated stage."

33. It is a trite law that after the commencement of the revival scheme as per the provision of SICA, all the claims, including execution proceedings, will proceed only with the consent of BIFR and AAIFR. In the present case, both BIFR and AAIFR have only allowed for recovery of the principal amount. Therefore, this Court is of the view that the Decree Holder cannot be permitted to recover the interest amount not approved in the scheme of rehabilitation in the

present execution proceedings.

34. At this juncture, this Court finds it apposite to refer to the judgement of the Hon'ble Supreme Court in ***Modi Rubber Ltd. v. Continental Carbon (India) Ltd.***[9]**,** wherein a closely analogous issue arose for consideration. The question before the Apex Court was whether, upon approval of a rehabilitation scheme by the BIFR under the SICA, an unsecured creditor could decline to accept the scaled-down value of its dues under the scheme and instead await the financial revival of the sick company with a view to recovering the debt along with interest after the scheme had run its course. The Hon'ble Supreme Court answered the said question in the negative, holding that a sanctioned scheme binds all creditors and that no unsecured creditor can be permitted to stand outside the scheme or revive claims not provided for therein once the scheme attains finality. The relevant portions of the said judgement are extracted below:

> **"49.** 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 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.
>
> **50.** If the submission on behalf of the unsecured creditors, which has been accepted by the High Court in ***Continental Carbon*** 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

[9] 2023 SCC OnLine SC 296

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 the SICA, 1985.

51. At the cost of repetition, it is observed that the primary object and purpose of the 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 optimise 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.

52. 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.

53. 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 creditor, 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.

54. 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.

55. 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 300-A 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 SICA, which has a binding effect on all the creditors. Therefore, the same cannot be said to be violative of Article 300-A 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 300-A of the Constitution of India as submitted on behalf of the unsecured creditors.

56. In view of the above and for the reasons stated above, the view taken by the High Court of Delhi in *Continental Carbon* that on approval of a scheme by the BIFR under the Sick Industrial Companies (Special Provisions) Act, 1985, the unsecured creditors have 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 the SICA, 1985 and the same deserves to be quashed and set aside and is accordingly quashed and set aside.

57. It is observed and held that the rehabilitation scheme under Section 18 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."

(emphasis added)

35. Keeping in view the aforesaid, the claim of the Decree Holder for interest is wholly untenable in view of the law laid down by the Supreme Court in ***Modi Rubber*** (*supra*). The Hon'ble Supreme Court has categorically held that a rehabilitation scheme sanctioned under the SICA is binding on all creditors, including unsecured creditors,

and that no creditor can be permitted to stand outside the scheme or defer enforcement of its claim with a view to resurrecting liabilities not provided for therein. Any interpretation enabling an unsecured creditor to claim amounts beyond the sanctioned scheme was expressly rejected as being destructive of the statutory objective of rehabilitation. Applying the said principle, this Court has no hesitation in holding that the interest component, having been expressly excluded and finally adjudicated under the sanctioned scheme, stands extinguished and cannot be claimed or enforced by the Decree Holder in execution proceedings.

36. The contention advanced on behalf of the Decree Holder that the repeal of the SICA or the alleged closure of the rehabilitation scheme upon lapse of seven years renders the findings recorded by the BIFR and the AAIFR otiose cannot be accepted. Such a submission overlooks the express saving provisions governing the repeal as provided in Sick Industrial Companies (Special Provisions) Repeal Act, 2003. The repeal does not efface or invalidate rehabilitation schemes already sanctioned thereunder. On the contrary, the saving framework, read with Section 252 of the Insolvency and Bankruptcy Code, 2016, expressly preserves the continuity and binding effect of sanctioned schemes.

37. The statutory intent is thus unambiguous that schemes sanctioned under the repealed enactment continue to operate and remain enforceable notwithstanding the repeal, and are accorded legal efficacy under the successor insolvency regime. Consequently, the determinations rendered by the BIFR and affirmed by the Appellate Authority, having attained finality within the governing statutory framework, cannot be reopened or diluted on the specious plea of

repeal of the Act or efflux of time.

38. This position stands further reinforced by the judgement of the Hon'ble Supreme Court in ***Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors.***[10], wherein the Court emphatically affirmed the "*fresh slate*" doctrine. The Hon'ble Supreme Court held that once a resolution plan attains approval, no fresh claims can be entertained and no past claims, which do not find place in the plan, can be permitted to be revived. The Apex Court emphasized that the sanctity and finality of an approved resolution plan must be preserved in order to enable the corporate debtor to function as a going concern, unencumbered by legacy liabilities not contemplated therein. When read in conjunction with the saving and continuation provisions applicable to rehabilitation schemes sanctioned under the SICA, the said principle lends further support to the conclusion that claims not recognised under the sanctioned scheme cannot be reagitated or enforced through execution proceedings.

39. This Court also finds it necessary to observe that, during the course of the proceedings, the Decree Holder neither pointed out nor disclosed the material and germane fact that its specific claim for interest had already been considered and rejected by the statutory authorities, namely the BIFR and the AAIFR. The existence and outcome of these proceedings were brought to the notice of this Court only at the instance of the Judgment Debtor. It is well settled that a party invoking the equitable jurisdiction of the Court, particularly in execution proceedings, is required to approach the Court with complete candour and clean hands. The non-disclosure of the adverse

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determinations rendered by the competent statutory fora, which had a direct bearing on the relief now sought, does not comport with the standard of fairness and transparency expected of a litigant before this Court.

40. In view of the foregoing analysis, this Court has no hesitation in holding that the execution of the decree insofar as it pertains to the interest component cannot be sustained in law. The Decree Holder remains bound by the terms of the sanctioned rehabilitation scheme and the final determinations rendered thereunder, and no relief contrary thereto can be granted in the present execution proceedings.

CONCLUSION:

41. In view of the foregoing, the objections filed through ***I.A. No. 3174/2017*** by the Judgment Debtor are allowed.

42. Accordingly, the Execution Petition, being ***OMP (ENF.) (COMM.) No. 146/2016***, filed by the Decree Holder, to the extent, seeking recovery of interest in terms of the decree passed by this Court confirming the Arbitral Award dated 15.11.1993, is dismissed.

43. The present application, along with pending applications, if any, stands disposed of in the above terms.

44. No order as to costs.

HARISH VAIDYANATHAN SHANKAR, J.

JANUARY 28, 2026/sm/kr