

HIGH COURT OF GUJARAT

COMPUTER SKILL LTD

Versus

CHAIRMAN & MD & ORS

Date of Decision: 11 March 2011

Citation: 2011 LawSuit(Guj) 663

Hon'ble Judges: [Rajesh H Shukla](#)

Eq. Citations: 2011 AIR(Guj) 99, 2011 3 GLR 2028, **2011 2 GLH 209**, 2012 6 RCR(Civ) 2433, 2011 4 BankCas 307

Case Type: Special Civil Application

Case No: 7896 of 2010

Subject: Banking, Company, Constitution, SICA

Editor's Note:

(A) Sick Industrial Companies (Special Provisions) Act, 1985 - Secs 15, 22 25 - Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 - Secs 13, 15 35, 37 - Appellate Authority declared reference pending before BIFR abated as secured creditors which represented not less than 3/4th in value of the amount outstanding took measures to recover dues u/s 15(1) of Act of 2002 - Held, in view of the provision of both Act of 1985 & Act of 2003, order of Appellate Authority upheld

(B) Intention of Statutes - Non-obstante clause - When the statutes are special statutes harmonious construction should be made - Proviso to a section to an act, cannot be interpreted in manner that it would control main body of the section

(C) Constitution of India, 1950 - Art 141 - When two judgments of Supreme Court on the same subject are given & has slight variation, judgment which is later in point in time would be applicable - Petition rejected

Acts Referred:

[Constitution Of India Art 141](#), [Art 226](#)

[Sick Industrial Companies \(Special Provisions\) Act, 1985 Sec 22](#), [Sec 32](#), [Sec 15](#), [Sec](#)

[22\(1\)](#), [Sec 15\(1\)](#), [Sec 25](#)

[Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002](#) [Sec 37](#), [Sec 35](#), [Sec 13\(4\)](#), [Sec 3\(4\)](#)

Advocates: [Hemant S Shah](#), [K M Patel](#), [Nalini S Lodha](#), [Niral R Mehta](#), [Paurami B Sheth](#), [R C Jani](#), [R D Dave](#)

[Cases Referred in \(+\): 9](#)

Rajesh H.Shukla, J.

[1] The present petition has been filed by the petitioner under Art. 226 of the Constitution of India as well as as under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'SARFAESI Act') and the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as 'SICA') for the prayer to issue a writ of certiorari or writ, order or direction quashing and setting aside the judgment and order passed passed by the Appellate Authority for the Industrial and Financial Reconstruction, New Delhi (for short 'AAIFR') in Appeal No. 75 of 2010 and also the order passed by the Board for Industrial and Financial Reconstruction (for short 'BIFR') in Case No. 73 of 2006 dated 30.3.2008. Interim relief against taking any coercive steps with regard to the properties of the petitioner Company and its promoters is also prayed.

[2] The above prayers have been made on the grounds set out in detail in the Memo of Petition, inter alia, that the impugned order is passed by AAIFR on erroneous interpretation of the provisions of SICA and SARFAESI Act. It is contended that the view taken by the AAIFR that the provisions of SARFAESI Act will override the provisions of SICA since the SARFAESI Act is a later enactment is erroneous in view of the provisions of Sec. 37 of the SARFAESI Act. It is also contended that the provisions of SICA involves larger dominant public interest and the same will prevail over the provisions of SARFAESI Act. It is also contended that though Sec.35 of the SARFAESI Act gives an overriding effect to the provisions of SICA. Sec. 37 of the SARFAESI Act makes it expressly clear that the provisions of the said Act and the Rules made thereunder are in addition to, and not in derogation of, any other law for the time being in force and therefore it has been contended that the third proviso to Sec. 15 of SICA providing for Reference to the BIFR shall abate if the secured creditors representing not less than 3/4th in value of the amount outstanding against a financial assistance will have the application under Sec. 13(4) of the SARFAESI Act and it cannot be read in isolation overlooking the provisions of Sec. 22(1) of SICA read with Sec. 37 of the SARFAESI Act. It is specifically contended that considering the scheme of both

the Acts, AAIFR has failed to appreciate that once action is taken under Sec. 13(4) of the SARFAESI Act, it will jeopardize the possibility of reviving the Company which has filed a Reference before the BIFR, which in turn has bearing on employment to the employees and the revival of the Company. Therefore, it is contended that if the interpretation which is adopted by AAIFR giving an overriding effect to Sec. 13(4) of the SARFAESI Act is accepted, it will frustrate the provisions of SICA. It is also contended that the impugned order passed by AAIFR holding that the Reference before the BIFR has been abated solely on the basis of the application of the Union Bank of India which has taken possession of the office premises belonging to the petitioner Company has failed to appreciate that it would frustrate the rights of the petitioner Company available to it under SICA.

[3] Learned Sr. Counsel Mr. K.M. Patel appearing with learned Advocate Ms. Paurami Sheth for the petitioner Company referred to the impugned order passed by the AAIFR and submitted that an erroneous interpretation of the provisions of two different statutes, which are also special statutes, is required to be considered. Learned Sr. Counsel Mr. Patel submitted that the moot question which is required to be considered is whether the Reference can stand abated in view of the provisions of the SARFAESI Act, when the possession of the entire assets of the petitioner Company are not taken over and the chances or rival of the Company have not been considered. He submitted that for the purpose of considering the Reference made under Sec. 15 of SICA, it has to be specifically considered as provided in the third proviso which has been pointedly referred to by learned Sr. Counsel Mr. Patel.

[4] He has also referred to the provisions of SARFAESI Act and submitted that Chapter III of this Act provides for "Enforcement of Security Interest" and submitted that Sec. 13(2) of the said Act provides that where a borrower, who is under a liability to secured creditor, makes any default, then, the consequence may take place and the powers under this Act may be exercised by the secured creditor as provided under sub-Sec. (4). He pointedly referred to sub-Sec. (4) of Sec. 13 of the SARFAESI Act and submitted that if there are more than one secured creditors, then, the powers under sub-Sec. (4) can be exercised as provided in sub-Sec. (9) by such secured creditors representing not less than 3/4th in value of the outstanding dues.

[5] Learned Sr. Counsel Mr. Patel submitted that IDBI cannot be said to have given its approval for which he referred to the communication from IDBI dated 2.4.2008 and submitted that IDBI had addressed a letter to Union Bank of India as to the course to be adopted. He therefore submitted that consent has not been given by IDBI as required under the SARFAESI Act and therefore the impugned order by which the Reference is abated is erroneous.

[6] Learned Sr. Counsel Mr. Patel has pointedly referred to the Memo of the Appeal made under Sec. 25 of SICA and submitted- that it has clearly contended that as more than 50 workers have been engaged, rejection of the Reference is not proper and maintainable. The Company had also sent the returns of the provided fund and other details which has not been considered. He also submitted that the possession of all the units have not been taken over and therefore also the requirement of the law has not been fulfilled. Learned Sr. Counsel Mr. Patel therefore strenuously submitted that the order of AAIFR treating abatement of the Reference under SICA is erroneous.

[7] He referred to the provisions of Sec. 22 r/w Sec. 25 of SICA and submitted that when such inquiry is pending, the legal proceedings are suspended and the SARFAESI Act cannot be resorted to as it would otherwise frustrate the provisions of SICA. He submitted that where the Reference is registered and is pending, the provisions of Sec. 22 would be attracted which would suspend all the proceedings for execution or the like against the Company and it could not be taken without the consent of BIFR. He submitted that Sec. 32 of SICA, which is also a special statute, provides that 'the provisions this Act shall have the effect notwithstanding anything inconsistent therewith contained in any other law.....'

[8] Learned Sr. Counsel Mr. Patel also referred to the provisions of Sec. 35 of the SARFAESI Act and submitted that it also provides that 'the provisions of this Act shall have the effect notwithstanding anything inconsistent therewith contained in any other for the time being in force.....'

However, he submitted that as both are special statues, there is a further provision in Sec. 37 of SARFAESI Act where the application of the other laws are not barred and which provide,

"37. Application of other laws not barred.- The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) or any other law for the time being in force."

Learned Sr. Counsel Mr. Patel, therefore, submitted that even if SARFAESI Act is applicable, it is not in derogation to the other statute like SICA ad it has been clarified in Sec. 37 of the SARFAESI Act.

[9] In support of this submission, he has referred to and relied upon the judgment of the Orissa High Court in the case of [Noble Aqua Pvt. Ltd. and ors. v. State Bank of](#)

India & Ors., 2008 AIR(Ori) 103 and submitted that the provisions of both the Acts have been considered and there is a specific observation made as under:-

"A perusal of the said Section makes it clear that the same will not be in derogation of any other law for the time being in force. Therefore, the protection which has been given to a sick industrial Company under a previous special statute, namely, SICA OF 1985 has not been taken away by Section 37 of the Securitisation Act. The aforesaid amendment which has been made in Section 41 of the Securitisation Act has been discussed above and this Court has also held that as a result of such amendment the present proceeding under SICA cannot abate. Since the proceeding under SICA cannot abate and the petitioner has been declared a sick industrial Company, the Bank cannot proceed against the petitioner in respect of its notice under Section 13(4) of the Securitisation Act in view of the statutory bar crated under Section 22 of SICA."

[10] Learned Sr. Counsel Mr. Patel, therefore, submitted that even if both the statues are made applicable, it has to be construed in a harmonious manner and the provisions of the SARFAESI Act cannot be interpreted in such a manner which frustrates the very object and purpose of SICA.

[11] He has also referred to the judgment in the case of Paschim Petrochem Ltd. v. Authorised Officer-Kotak Mahindra Bank Ltd., 2010 2 GLH 63 wherein it has been observed,

"...When a reference is made under Section 15 of the Act, it is the act of sending a case about sickness of sick industrial Company as defined under Section 3(1)(o) of the Act to the Board for finding out sickness of such sick Company and to adopt any of the measures for revival or rehabilitation of such Company..."

[12] Ms. Nalini Lodha, the learned Advocate appearing for respondent No. 1-bank, referred to the papers and submitted that in view of the clear-cut provisions of the SARFAESI Act, and particularly Sec. 35-37, the Reference would stand abated as rightly observed by AAIFR. It was submitted by her that when the appellate authority under SICA has abated the Reference, there is no impediment in proceeding in exercise of the statutory powers under the SARFAESI Act. She further submitted that the SARFAESI Act is also a special statute and has observed that it is later in point of time and therefore it will hold the field.

[13] Learned Advocate Ms. Lodha has also pointedly referred to the provisions of SICA, particularly the proviso, and submitted that in view of the SARFAESI Act, this proviso has been added in SICA and strenuously submitted that as provided by the proviso, the Reference shall abate if the secured creditors representing not less than

3/4th in value of the amount outstanding have taken measures to recover such secured debt under sub-Sec. (4) of Sec. 13 of the SARFAESI Act. Therefore, again referring to the provisions of the SARFAESI Act and particularly Sec. 13(4), she submitted that for enforcement of the security interest, the respondent bank would be entitled to take steps and in fact the consent has been obtained as required under the law from the other secured creditor, namely, IDBI. She has also referred to the Schedule to the SARFAESI Act and submitted that Sec. 41 provides for amendment in certain other enactments and submitted that the amendment in Sec. 15 of SICA has been made in light of the provisions of the SARFAESI Act. Therefore, learned Advocate Ms. Lodha submitted that the impugned order cannot be said to be erroneous in light of the clear provisions of the SARFAESI Act. She emphasised that the provisions of Sec. 35, which reads as under:-

"35. The provisions of this Act to override other laws.- The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

[14] She also submitted that it cannot be said that there is no consent given by IDBI. She has referred to the affidavit-in-reply filed by the respondent Bank. She has also submitted that earlier Special Civil Application No. 2818 of 2009 was preferred by the petitioner Company challenging the action and the notice issued under Sec. 3(4) of the SARFAESI Act and the High Court, vide order dated 11.5.2009, rejected the same. The said order is at Annexure-H. She has also submitted that in Appeal No. 75 of 2008 against the order of the BIFR in Case No. 73 of 2006, this very contention has been raised by the respondent bank and it was made clear that the respondent No. 1 Union Bank of India and IDBI who are the secured creditors are representing not less than 3/4th in value of the amount outstanding and there is a specific consent for which she referred to the correspondence/letter dated 19.3.2009. She has also referred to the order passed by the BIFR dated 10.3.2008 at Annexure-B and submitted that even in the said order it has been clearly observed that the Company has not complied with the directions issued on 8.5.2007 and it had not established that the Company had employed 50 or more workers in each of the three units with documentary evidence. She also referred to the details of the order and submitted that on scrutiny of the reply and other material it has been observed that wrong information was submitted and therefore the statutory bodies and financial institutions have been permitted to file a suit or pursue the remedy for recovery of the dues as per the law. She, therefore, submitted that the submissions of the learned Advocate for the petitioner Company may not be accepted.

[15] She has also referred to the order passed by the Debts Recovery Appellate Tribunal, Mumbai, in Misc. Appeal No. 283/2010 and submitted that the appeal filed by the petitioner Company has been dismissed by order dated 16.2.2011. She also referred to the said order in support of her submission, particularly with regard to the provisions of Sec. 13(4) of the SARFAESI Act.

[16] Learned Counsel Mr. R.D. Dave for respondent No. 4 supported the submissions made by learned Advocate Ms. Lodha for respondent No. 1 and submitted that Sec. 13(4) of the SARFAESI Act will have application and the Reference would stand abated. He submitted that the secured creditors have even consented for the recovery and particularly when the Reference would stand abated in view of the provisions of Sec.13(4) of the SARFAESI Act, SICA will not have any application and the present petition may not be entertained.

[17] In rejoinder, learned Sr. Counsel Mr. Patel submitted referring to the papers that, admittedly, possession of the factory and other units have not been taken over and therefore it cannot be said that the possession has been taken over as there are no chances of revival where other units are functional which will have bearing on the workmen has been lost sight of by the AA1FR. He submitted that 3/4th majority as required under Sec. 13(4) of the SARFAESI Act has not been clearly made out. Learned Sr. Counsel Mr Patel has further submitted that the provisions of SICA has larger public interest and the applicability of SICA for considering the revival of sick units is in light of public interest and also in the interest of the industry and all concerned which cannot be frustrated because some of the secured creditors have agreed or consented for the purpose of recovery of their dues. He submitted that the SARFAESI Act represents the interest or the limited interest of the secured creditors for recovery of their dues, but has no reference to larger public interest including interest of the industrial unit. Public interest is involved in revival of the unit for which SICA has been made and therefore such an interpretation would frustrate the very purpose of SICA.

[18] In view of rival submissions, it is required to be considered whether the present petition can be entertained or not.

[19] For the purpose of appreciating the rival contentions, it is required to be noted that both the SARFAESI Act and SICA are special statutes created with particular object which is sought to be achieved and one must have regard to the legislative intent behind the special provisions which have been made.

[20] The Statement of Objects and Reasons of SICA provides as under:-

"The ill effects of sickness in industrial Companies such as loss of production, loss of employment, loss of revenue to the Central and State Governments and locking

up of investible funds of Banks and Financial Institutions are of serious concern to the Government and the society at large. The concern of the Government is accentuated by the alarming increase in the incidence of sickness in industrial Companies. It has been recognised that in order to fully utilise the productive industrial assets, afford maximum protection of employment and optimise the use of the funds of the Banks and Financial Institutions, it would be imperative to revive and rehabilitate the potentially viable sick industrial Companies as quickly as possible. It would also be equally imperative to salvage the productive assets and realise the amounts due to the Banks and Financial Institutions, to the extent possible, from the non-viable sick industrial Companies through liquidation of those Companies."

The salient features of the Bill refer, inter alia, to various, aspects including the power to inquire into and determine the incidence of sickness of industrial Companies and devise suitable remedial measures through appropriate schemes or proposals and for implementation thereof. This will have to be decided by an experts' body and keeping in mind this very object SICA has been enacted.

[21] Section 22 of SICA refers to suspension of legal proceedings, contracts, etc. with the ultimate object of exploring the possibilities of revival of the unit. Therefore, pending inquiry and the measures envisaged under the Act, proceedings could not be commenced or continued and therefore when a Company is declared sick industrial Company, all proceedings for execution or the like against the Company are suspended and could not be taken or proceeded with without the consent of BIFR. Even the winding up proceedings by the Courts are not to be proceeded with.

[22] At the same time, there is another piece of legislation, that is, the SARFAESI Act, which is enacted for the purpose of expediting the recovery of the funds invested by the Banks and other Financial Institutions. The statement of objects and reasons of this Act enables the Banks and Financial Institutions 'to realise long-term assets, manage problem of liquidity, asset liability mismatches and improve recovery by exercising powers to take possession of securities, sell them and reduce non-performing assets by adopting measures for recovery or reconstruction.'

[23] The Hon'ble Apex Court also, in the case of Mardia Chemicals Ltd. v. Union of India, has upheld the validity of the Act and it is in background of these two Acts, the provisions are required to be considered as emphasised by learned Advocate Ms. Lodha for respondent No. 1.

[24] The provisions of Sec. 35 of the SARFAESI Act provide that "the provisions of this Act shall have the effect notwithstanding anything inconsistent therewith contained in

any other law for the time being in force or any instrument having effect by virtue of any such law." Thus, with the non-obstante clause, an overriding effect is sought to be given. At the same time, the provisions of Sec. 37, which has been referred to by learned Sr. Counsel Mr. Patel, emphasises that the provisions of this Act or Rules are in addition to, and not in derogation of, other Acts suggesting about the fact that other laws also shall hold the field like SICA in the present case.

[25] It is required to be mentioned that both the Acts are special "statutes and even the provisions of Sec. 32 of SICA also provide that "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" meaning thereby, except the provisions of law specified therein, it shall have the effect. In other words, this Section also uses a non-obstante clause for the effect of the other Acts . vis-a-vis this Act.

[26] Therefore, the moot question which is required to be considered is that when there are two special statues, both having non-obstante clauses, what could be the effect of a particular provision of a particular Act vis-a-vis other similar statute? It is a well-accepted proposition of interpretation of statutes that, when there are more than one statutes operating in the same sphere holding the field, as far as possible, the interpretation should be made in a harmonious manner so as not to render any of them redundant. The legislature in its wisdom has, therefore, while enacting the SARFAESI Act has referred to and provided in Sec. 37 that the "application of other laws not barred" and some of the Acts are specifically mentioned, though SICA has not been mentioned. Similarly, in SICA, some of the laws are mentioned, but the SARFAESI Act has not been mentioned. In fact, both these statues will have a close connection and both will operate on the same sphere of activities where the industrial unit is sick and the special body like BIFR is considering a Reference exploring the possibility of the revival of the unit to. achieve the object and the purpose for which the Act has been enacted referring to the statements of objects and reasons. On the other hand, SARFAESI Act is a special statute enacted for the purpose of expediting recovery or improving the liquidity of the funds entangled in such sick units which will have applicability at a later stage, but at times both may have some overlapping.

[27] It is in this context the amendment in the SARFAESI Act as rightly emphasised and referred by learned Advocate Ms. Lodha referring to the Schedule to the said Act is required to be mentioned. The amendments have been made including Sec. 15 of SICA. As recorded hereinabove, proviso has been added to Sec. 15(1) of SICA that

when secured creditors representing not less than 3/4th in value of the amount outstanding against financial assistance have taken measures to recover dues under sub-Sec. (4) of Sec. 13 of the SARFAESI Act where the Reference is pending before the BIFR, such Reference shall stand abated.

[28] A close look at this amendment would clearly suggest that when the majority of not less than 3/4th of the secured creditors have formed an opinion and have taken steps for recovery, then Sec. 15 of SICA will stand diluted in its application for the purpose of deciding the Reference. The legislature in its wisdom has, therefore, provided this with a clear understanding that in spite of Sec. 15 of SICA operating in the field, an exception has been carved out providing for the manner in which recovery could be still proceeded with subject to fulfillment of the conditions laid down under sub-Sec. (4) of Sec. 13 of the SARFAESI Act, that is, not less than 3/4th majority of the secured creditors.

[29] Though there is some force in the submission of learned Sr. Counsel Mr. Patel having regard to the statement of objects and reasons, as discussed above, that SICA has much larger canvas and social interest which is required to be considered than the objects sought to be achieved by the SARFAESI Act which is representing a limited interest of the secured creditors and the financial institutions, the provisions of SICA has much larger purpose sought to be achieved, which represents various Sections and various aspects including public interest, employment, workers, production and sale of the commodity. The tax which is paid to the Government represents not only the productivity, but employment and revenue for the Government. Therefore, this Act has a larger social interest which is sought to be achieved and the submission to that extent made by learned Advocate Ms. Lodha that since the SARFEASI Act is later in point of time it will prevail over SICA in all cases, cannot be accepted.

[30] At the same time, while interpreting the provisions of both the Acts in a harmonious manner, it has to be considered that SICA has a broader social perspective which is sought to be achieved and interpretation cannot be made in a manner which would frustrate the very purpose and object of SICA. The SARFAESI Act, which is enacted for the purpose of protecting the financial institutions giving some kind of measure for expediting recovery of the amount which has been blocked, is again an instrument for enhancing and improving their performance and the NPA and it will have to be considered depending on the facts of the case as to whether a unit has the potentiality of revival or not. If the unit has no potentiality of revival or the cost of revival is much more and it is not feasible and profitable in the general public interest to invest or lock such capital, then resort to sub-Sec. (4) of Sec. 13 is made permissible for expediting the recovery. It is required to be mentioned that the reference made to the Schedule to the Act, particularly focusing on the amendment to

Sec. 15 of SICA by adding a proviso which permits such measure to be adopted under Sec. 13(4) of the SARFAESI Act, can be construed as one of the measures permissible, but such proviso cannot be interpreted in a manner that it controls the main Section or the statute like Sec. 15 of SICA.

[31] It is well-accepted that the proviso to a Section cannot be interpreted in a manner that it controls the main body of the Section. The provisions of Sec. 15 of SICA refer to a Reference to the Board providing as to how a Reference is required to be considered, what could be the measures adopted and the proviso is interpreted to mean that whenever the secured creditors have resorted to this provision, there is no scope left for Sec. 15 of SICA as it would be rendered redundant.

[32] The judgment referred to and relied upon by learned Sr. Counsel Mr. Patel in the case of Noble Aqua Pvt Ltd. (supra) has also considered the same aspects referring to the earlier judgment and by considering the provisions of both the Acts.

[33] A useful reference can be made to the observations which have been quoted in this judgment from the judgment in the case of [Morgan Securities and Credit Pvt. Ltd. v. Modi Rubber Ltd.](#), 2007 AIR(SC) 683, which reads as under:-

"SICA was enacted in order to afford maximum protection of employment, optimize the use of financial resources, salvaging the assets of production, realising the amounts due to the Banks and to replace the existing time consuming and inadequate machinery by efficient machinery for expediting determination and with a view to securing the timely detection of sick and potentially sick Companies owing industrial undertakings....."

In this judgment, Sec. 34 has also been considered vis-a-vis the provisions of SICA and referring to Sec. 37 of the SARFAESI Act it has been specifically observed,

"A perusal of the said Section makes it clear that the same will not be in derogation of any other law for the time being in force. Therefore, the protection which has been given to a sick industrial Company under a previous special statute, namely, SICA OF 1985 has not been taken away by Section 37 of the Securitisation Act....."

[34] However, at the same time, it is also required to be appreciated that observations have been made in the judgment in the case of [Solidaire India Ltd. v. Fairgrowth Financial Services Ltd. And Ors.](#), 2001 3 SCC 71, referring again to two special statutes, namely, Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 and Sick Industrial Companies (Special Provisions) Act, 1985 and the provisions of Sec. 32 of SICA has been considered with reference to the provisions of Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992

particularly Sec. 13 which provides the Act to have an overriding effect and which is pari materia with the provisions of the SARFAESI Act. The Hon'ble Apex Court having considered the fact that both are special statutes has made the observation,

"It is clear that both these Acts are special Acts. This Court has laid down in no uncertain terms that in such an event it is the later Act which must prevail. The decisions cited in the above context are as follows:

[Maharashtra Tubes Ltd. v. State Industrial & Investment Corporation of Maharashtra Ltd.](#), 1993 2 SCC 144; [Sarwan Singh v. Kasturi Lal](#), 1977 1 SCC 750; [Allahabad Bank v. Canara Bank](#), 2000 4 SCC 406 and [Ram Narain v. Simla Banking & Industrial Co. Ltd.](#), 1956 AIR(SC) 614"

[35] In this very judgment, referring to the earlier judgment in the case of [Bhoruka Steel Ltd. v. Fairgrowth Financial Services Ltd.](#), 1997 89 CompCas 547, the Hon'ble Apex Court has quoted the Head Note of the earlier judgment, which reads as under:

"Where there are two special statutes which contain non obstante clauses the later statute must prevail. This is because at the time of enactment of the later statute, the Legislature was aware of the earlier legislation and its non obstante clause. If the Legislature still confers the later enactment with a non obstante clause it means that the Legislature wanted that enactment to prevail. If the Legislature does not want the later enactment to prevail then it could and would provide in the later enactment that the provisions of the earlier enactment continue to apply."

[36] Therefore, on the one hand, the judgment reported in the case of *Solidaire India Ltd.* (supra) observations are made that the later act would prevail, on the other, another later judgment in the case of *Morgan Securities and Credit Pvt. Ltd.* (supra) makes specific observations which are recorded hereinabove interpreting the provisions of SICA that it has a broader and wider object to be achieved (emphasis supplied). This judgment also indicates about the approach to be adopted while interpreting the provisions of SICA keeping in mind the underlying object of SICA. It is in these circumstances, it is required to be considered that under Art. 141 of the Constitution of India, both the judgments would be binding. At the same time, the judgment which is later in point of time will apply. Therefore, considering these aspects about the two judgments, as discussed above, one providing for the later Act to prevail and another later judgment providing for a different approach to be adopted keeping in mind the SICA and also considering the aspect of precedent and the interpretation of SICA and other statutes (both special statutes), the submissions made by learned Advocate Ms. Lodha as well as learned Advocate Mr. Dave that SARFAESI Act will prevail over

SICA in every case cannot be accepted as a general proposition. However, it will depend upon the facts of the case.

[37] On the other hand, the observations made by the Hon'ble Apex Court, as discussed above, refer to the aspect of harmonious construction. In fact, in the judgment in the case of *Solidaire India Ltd. (supra)*, the Hon'ble Apex Court, referring to this aspect, has also observed and stated :-

"it is settled rule of interpretation that if one construction leads to a conflict, whereas on another construction, two Acts can be harmoniously constructed, then the latter must be adopted."

It is also observed that the object of both the acts should be fulfilled. It is in these circumstances, since both the judgments are binding and applicable as discussed above, the judgment referred to and quoted hereinabove in the case of *Morgan Securities and Credit Pvt. Ltd. (supra)* will also have to be considered, meaning thereby, it cannot be laid down as a broad guideline or proposition that SARFEASI Act will prevail over SICA in every case and it depends on the facts of each case.

[38] Therefore, the broad proposition or submission canvassed by learned Advocate Ms. Lodha as well as learned Counsel Mr. Dave appearing for the Financial Institutions cannot be accepted. However, considering the facts of the case as it is revealed from the record, it is evident that even the BIFR itself has granted permission for proceeding with the recovery in light of the failure of the petitioner to comply with the requirements in spite of the opportunity given to it. The BIFR order in Case No. 73 of 2006 dated 10.3.2008 produced on record has made the observations.

[39] Again, as it is evident from the record, the permission has been granted in fact by the BIFR to proceed with the recovery and discussion has been made on this aspect and taking over possession of the unit has also been made.

[40] Similarly, the impugned order passed by AAIFR at Annexure-A has also considered the case of the present petitioner at No. (XVIII). As it transpires from the said order, the appeal was preferred by the petitioner against the order of the BIFR dated 1.03.2008, whereby BIFR dismissed the Reference. The order of AAIFR in the case of the petitioner record,

"This appeal, filed by M/s Computer Skills Limited (hereafter referred to as the appellant Company), is directed against the order of the BIFR dated 10.3.08 whereby the BIFR dismissed the reference of the appellant Company as non-maintainable on the ground that the appellant Company has manipulated the

accounts and has failed to disclose its third Unit in Mumbai in Form "A" and has also failed to produce documentary evidence relating to employee strength."

This order further records about the reference having been filed under Sec. 15(1) of SICA and objection by the secured creditors which has been considered by the Appellate Authority. It further records,

"Briefly, the facts of the case are that the appellant Company had filed a reference under Section 15(1) of SICA on the basis of its audited accounts as on 31.3.06. The secured creditors of the appellant Company opposed the sickness of the Company on various grounds, namely

- (i) the appellant Company has prepared two different sets of annual accounts for the financial year 2005-06, one with positive net-worth and another with negative net-worth;
- (ii) the appellant Company alleged sickness mainly on account of losses booked towards impairment of assets;
- (iii) the appellant Company has failed to establish that it has employed 50 or more workers in each of its three units;
- (iv) the Company has not approached the BIFR with clean hands."

Thereafter, it is also recorded in the impugned order that during the pendency of the appeal, the respondent-Union Bank of India with the consent of 1DB1 who represents 3/4th in value of the amount outstanding of the financial assistance had a recourse under Sec. 13(4) of the SARFAESI Act.

[41] Therefore, even if it is assumed and accepted for the sake of argument that SARFAESI Act may not have overriding effect and both have to be considered harmoniously, still, it depends on the facts of each case. In case of the petitioner, even the Authority like the BIFR and the Appellate Authority have passed the order after considering relevant aspects as discussed hereinabove and therefore the submissions made by learned Sr. Counsel Mr. Patel that the provisions of SICA would be rendered redundant is misconceived. In fact, it will not have any consequences and the controversy which has been posed by the learned Sr. Counsel has not been applicable in the facts of the present case when the authority under the SICA has itself passed the order considering the case of the petitioner on different grounds recorded in detail in the said orders, both by BIFR as well as AAIFR.

Therefore, this is only academic so far as the petitioner is concerned.

[42] In the result, the present petition cannot be entertained and deserves to be rejected and accordingly stands rejected. Notice is discharged.

