NEUTRAL CITATION
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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/LETTERS PATENT APPEAL NO. 225 of 2020
In R/SPECIAL CIVIL APPLICATION NO. 20542 of 2019
With
CIVIL APPLICATION (FOR DIRECTION) NO. 2 of 2022
In R/LETTERS PATENT APPEAL NO. 225 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL
and
HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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STATE OF GUJARAT & ANR.
Versus
TENSILE STEEL LTD.

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Appearance:
MR. KAMAL TRIVEDI, AG WITH MR. VINAY BAIRAGRA, MR. VINAY VISHEN, ASSISTANT GOVERNMENT PLEADERS for the Appellant(s) No. 1,2
MR. MIHIR THAKORE, SR. ADV. WITH MR. ANSHIN DESAI, SR. ADV. WITH MR MANAV A MEHTA(3246) for the Respondent(s) No. 1

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CORAM:**HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL**
and
HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE

Date : 09/05/2024

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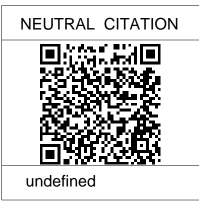

CAV JUDGMENT
(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL)

The instant Appeal is directed against the judgment and order dated 4.12.2019 passed by the learned single Jude in allowing the writ petition seeking for quashing of the order dated 18.09.2019 passed by the Collector, Vadodara and further directing the respondent to grant non-agricultural use permission for the land-in-question, bearing Survey No. 428/1, included in the Town Planning Scheme No. 19, Final Plot No. 150 of Vadodara Kasba, Vadodara.

2. The brief facts, relevant to decide the controversy at hands, are that the land-in-question bearing Survey No. 428/1 admeasuring 98901 sq.mtrs. was granted on lease to the original petitioner/respondent herein vide order dated 14.11.1960 passed by the Collector, Vadodara. The possession was handed over to the respondent/original petitioner on 23.3.1961 and on 30.11.1961, an agreement came to be executed between the parties on certain terms and conditions enumerated therein. The relevant clauses 'f', 'g' and 'h' of the said agreement, which are the bone of contentions between the parties, are to be noted herein:-

"*(f) That the land and factory plant etc. constructed thereon go*

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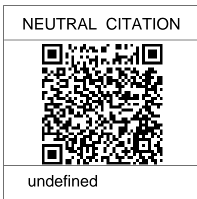

together and can be disposed of only together.

(g) That the lands cannot be sub-divided and such sub-divisions cannot be disposed of without the permission of the Government.

(h) That the Government will be entitled to half the unearned increment in the event of sale or transfer whether outright or as a result of unredeemed mortgage and that the land so sold or transferred should be used for a purpose approved by Government if it is to be used for a purpose other than the approved industrial and commercial purpose."

3. As per the terms and conditions of the agreement, the company was bound to use the land-in-question only for the purposes of the nature specified in the specific conditions of Schedule-II. One of the conditions for grant was that the land is an unalienable tenure, which was, however, subsequently modified by office order dated 08.02.1962 issued by the Commissioner, Vadodara Division, Vadodara that the word 'unalienable' be substituted and replaced as 'alienable'. The result is that the respondent/original petitioner allottee got alienable right in the land-in-question subject to the conditions in Clauses 'f', 'g' and 'h', noted hereinabove.

4. The dispute in the instant case is about the demand of the appellant/State for half of the unearned increment in the event of the sale or transfer and that the land-in-question can be sold or transferred for a use approved by the Government, if it is to be used for the purposes other

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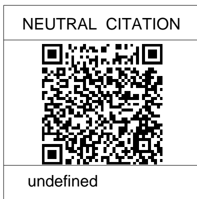

than the approved industrial and commercial purposes. It may be noted that the grant has not been revoked by the appellant/State. An application filed by the respondent/original petitioner on 2.5.2014 for revised non-agricultural use permission was rejected. Special Civil Application No. 2359 of 2013 was filed by the respondent/original petitioner, wherein the matter was remitted back for fresh consideration. Again rejection order dated 11.11.2014 was passed by the Collector, Vadodara.

5. The respondent/original petitioner again filed a fresh representation on 06.12.2016, which remained pending for long. Hence Writ Petition No. 12585 of 2019 came to be filed, wherein on the assurance given by the respondent that the Collector, Vadodara shall do the needful as per the communication dated 27.9.2018 issued by the Revenue Department, Gandhinagar, the Writ Petition was disposed of. The Collector again vide order dated 18.09.2019 rejected the application for revised non-agricultural use permission, which was the subject matter of challenge in the original writ petition, out of which the instant appeal has arisen.

6. The main contention of the learned senior counsel appearing for the respondent/original petitioner is that the proceedings under the Sick Industrial Companies (Special Provisions) Act, 1995 came to be initiated

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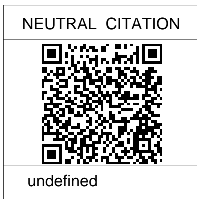

against the original petitioner, as it was facing financial difficulties. In those proceedings, on 12.12.1996, the Board for Industrial and Financial Reconstruction (BIFR) sanctioned the scheme for rehabilitation for the petitioner company. In the said scheme, vide clause No. 8(F)(vii), it was specifically directed by the BIFR that the State Government shall grant necessary permission for sale/disposal of the lands and it shall not charge any amount except those payable for change of users and usual Municipal Tax and charges for development and ultimate disposal of the property. It is contended that after sanctioning of the scheme by the BIFR, the State Government did not comply with the same and hence the petitioner was constrained to file Special Civil Application No. 3105 of 1998 wherein vide judgment and order dated 8.5.1998, this Court directed the State to comply with Para 8(F)(vii) of the scheme sanctioned by the BIFR. The submission was that the judgment and order dated 8.5.1998, passed by this Court had attained finality and the BIFR Scheme being law after the sanction, the State was bound to discharge its statutory obligation to grant all the requisite permission for development, for sale of the land-in-question without charging any amount whatsoever. The action of the Collector, Vadodara in rejecting the application seeking for revised NA permission could not be sustained.

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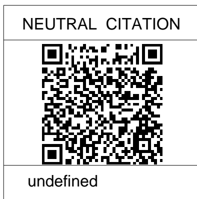

7. The attention of the Court was invited to the judgment and order dated 8.5.1998 to submit that the entire success of the rehabilitation scheme, as sanctioned by the BIFR, was dependent on the grant of permission to the petitioner company for sale and develop the land-in-question, as noted in the order of the BIFR. The categorical direction in the judgment and order dated 8.5.1998, has not been complied with till date. The learned senior counsel for the respondent/original petitioner has relied upon the judgment of the Apex Court in **Diamond Plastic Industries Etc. vs. Govt. of A.P. (AIR 1997 SC 2775)** and also on the decision of the Delhi High Court in **Director General of Income Tax (Admn) and Ors. vs. Board for Industrial and Financial Reconstruction, New Delhi (WP (Civil) Nos. 1940 of 2011 and other allied writ petitions)** to vehemently argue that the concession made by any of the parties at the time of formulation of the Scheme would bind such parties after the scheme has been sanctioned even after the BIFR has discharged the reference. It was urged that whether or not the BIFR implements the sanctioned scheme, it continues to bind the State Government. Once the scheme is sanctioned, it has the force of law, making its enforcement amenable as a matter of law, even in foras other than the BIFR. The submission thus, is that the State Government has no option but to comply with the concession given by it before the BIFR and

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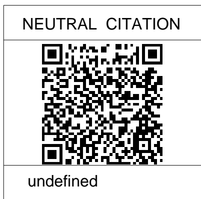

recorded in the scheme about the applicability of the conditions therein. This submission of the learned senior counsel for the respondent/original petitioner weighed with the learned single Judge in allowing the writ petition with the direction that once the scheme framed by the BIFR is not set aside and the judgment and order dated 8.5.1998 passed by this Court has attained finality, it is not open for the respondent Collector to recover any amount from the petitioner.

8. Learned senior counsel Mr. Kamal Trivedi appearing for the appellant/State would argue that the land-in-question was given on lease with the specific condition that in case of sale, the Government will be entitled to half of the unearned income, whether outright or as a result of un-redeemed mortgage. This condition of grant of lease has not been relaxed, altered or varied with the concession given by the State Government as recorded in Clause (F)(vii) of para 8 of the BIFR. The attention of the Court is invited to the page 180 of the paper book, which is a letter dated 16th December, 1992 of the Secretary, Revenue Department, Government of Gujarat addressed to the Chairman, BIFR to submit that the concession given therein was to the effect that the State Government shall release the land of the unit under the Urban Land Ceiling Act as per its policy so that the unit may sell the land and pay

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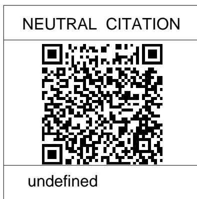

dues of the Central and State Government and other financial creditors. The concession given in the said letter that the unit will be entitled to utilise the land by sale or development in any manner, which is more beneficial to the unit, in no way relaxed the terms and conditions of the grant extracted hereinabove.

9. The contention is that the letter dated 16th December, 1992, which is the basis of recording concession of the State Government in the BIFR scheme under para 8(F)(vii) in no way modify the terms and conditions of the policy. Even otherwise, the BIFR scheme has failed and an order dated 19.2.1998 was passed by the BIFR directing the operating agency to issue advertisement inviting offers for revival of the company by change of management. The order was challenged before the Appellate Authority (AAIFR) and vide order dated 23.4.1998, the appellate authority allowed the appeal preferred by the company holding that it is open for the respondent company to sell/dispose of the land in accordance with para 8(F) of the sanctioned scheme read with the State Government's letter dated 16.12.1992. It is directed therein that in the event, the BIFR approves the rehabilitation package of the company, the State Government shall release the land of the company under the ULC Act so as to sell or dispose it of to pay its dues to the creditors. It was

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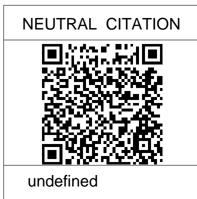

further contended that the BIFR scheme sanctioned vide order dated 12.12.1996 had already expired long back and can not be implemented as on date. Further the net-worth of the respondent company had become positive much earlier and, as such, there is no question of taking any step in accordance with the scheme which was originally sanctioned on 12.12.1996. It is submitted that on the basis of the information available to the appellant State, the respondent company had made a profit of Rs. 2.08 crores in the financial year 2013-2014 and Rs. 71.14 lakhs for Financial Year 2014-2015, as is reflected from the balancesheet for the Financial Year 2014-2015 available at the website of the Ministry of Corporate Affairs. The submission is that the respondent company is no longer a sick company as per the provisions of Section 3 (1)(a) of the Sick Industrial Companies Act, 1985. It was contented that the order dated 8.5.1998 was passed at the relevant point of time keeping in mind the sickness of the respondent company which is obliterated as on date and, as such, there is no question of implementation of either the judgment and order dated 8.5.1998, the order dated 23.4.1998 passed by the AAIFR and the BIFR Scheme dated 12.12.1996 passed by this Court.

10. It was further argued that violation of condition No.6 noted hereinabove of the agreement for grant of the land in question, the

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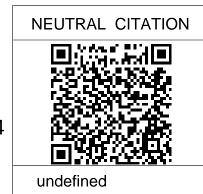

respondent company has already disposed of its whole of the plant and machinery, which was on the land-in-question in the year 2017. On account of violation of the conditions of the lease, as per the condition No.13 of the allotment agreement, the grant of land in question should be revoked and the land-in-question should be resumed in favour of the State Government without payment of any compensation. It was, thus, vehemently argued that the language of the letter dated 16.12.1992 was clear that the State has agreed and given undertaking to release the land-in-question under the Urban Land Ceiling Act, however, the words ‘prevalent policy’ in the said communication, is a clear indication of the State Government that the permission shall be subject to the policy of the State. The prevalent policy at the relevant point of time was the one contained in the Government Resolution dated 7.8.1956 pursuant to which the grant was given to the petitioner. The conditions of the grant incorporated in the agreement as per the policy of the State Government laid down in the government resolution dated 7.8.1956, cannot be said to have been relaxed for concession of the State Government, even if the contention of the learned senior advocate for the petitioner that the BIFR Scheme is binding, is accepted for a moment.

11. It was vehemently argued that as per the policy dated 7.5.1956, the

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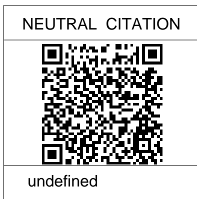

respondent company was to be benefited to the extent of 50% of the unearned income while sharing the remainder 50% to the State Government. This has been the understanding and interpretation of the State in reference to the letter dated 16.12.1992 right from the inception. The submission is that the respondent company is trying to take undue advantage of the situation for enriching its pocket by unjust means misinterpreting the contents of the letter dated 16.12.1992, the basis and conditions recorded in para 8(F)(vii) of the BIFR Scheme. The land-in-question is a valuable land and in case the original petitioner/respondent company is permitted to use the land-in-question without adhering to the conditions of grant of share of 50% of unearned income with the State Government, it would be against the public interest. It is, thus, contended that the respondent company is not entitled legally to get any permission for converting the purpose of use of the land-in-question from industrial purpose to commercial and now residential, without sharing 50% of the unearned income with the State and enriching its pocket at the cost of the public interest.

12. Heard the learned senior advocates for the parties and perused the record. To deal with the arguments of the learned counsels for the parties, we may first go through the legislative scheme of Sick Industrial

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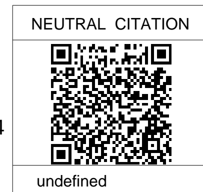

Companies Act, 1985. The long title of the Act, 1985 reads that it was enacted in the public interest, with a view to securing the timely detection of sick and potentially sick companies, for speedy determination by a body of experts of the preventive, ameliorative, remedial and other measures that would be needed to be adopted with respect to such companies and for expeditious enforcement of the measures so determined. The Statement of objects and reasons of bringing the Bill, as discussed by the Apex Court in paragraph Nos. 11.2, 11.3, 11.4, 11.5 and 11.6 of **Modi Rubber Limited vs. Continental Carbon India Ltd. and other allied appeals [2023 LawSuit(SC) 247]** be taken note of.

> *"11.2 The ill effects of sickness in industrial companies, such as cessation of production, loss of employment, loss of revenue to the Central and State Governments and blocking up of investible funds of the banks and financial institutions, were of serious concern to the Government as well as the society at large. It had repercussions on the industrial growth of the country. With the passage of time the number of sick industrial units increased rapidly. Therefore, it was imperative to salvage the productive assets and release, to the extent possible, the amounts due to the banks and financial institutions from non-viable sick industrial debtor companies by liquidation of those companies or through formulation of rehabilitation schemes.*
>
> *11.3 With these objects, the Bill was introduced with the salient features inter alia of identification of sickness in the industrial companies, on the basis of symptomatic indices of cash losses for the specified periods. Wherever the Government or Reserve Bank were satisfied that an industrial company has become sick, they were required to make a reference to BIFR. BIFR consists of experts, in various relevant fields, with powers to inquire into and determine the incidences of sickness in the industrial companies and devise suitable measures through appropriate schemes to revive them. An appeal lies from the order of*

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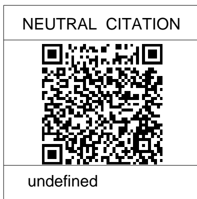

BIFR to an appellate authority (Aaifr) consisting of members selected from amongst Supreme Court or High Court Judges or Secretaries to the Government of India.

11.4 With this background, objects and reasons, this Bill was passed by the Indian Parliament and it received the assent of the President of India on 8-1-1986. Thus, it became an Act of Parliament intended to revolutionise the mechanism of revival or liquidation of sick industrial units and channelisation of the complete administrative-cum-quasi-judicial process within the framework of SICA 1985.

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

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

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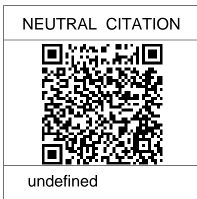

11.6 Thus, the SICA, 1985 basically and predominantly is a remedial and ameliorative enactment, insofar as it empowers a quasi-judicial Body - BIFR to take appropriate measures for revival and rehabilitation of the potentially viable sick industrial companies as quickly as possible and also to salvage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

13. Coming to the legislative scheme, we may note that Section 15 provides a mandate that a industrial company which has become sick in terms of the said provisions, the Board of Directors of the company were required to make a reference to the Board of Industrial and Financial Reconstruction established under Section 4 of the Act, 1985 (BIFR), within the limitation prescribed there. Sub-section (1) to Section 15 further provides that the Central Government or the Reserve Bank or the State Government or a Public Financial Institution, if has sufficient reasons to believe that any industrial company has become sick industrial unit, for the purposes of SICA 1985, it would also make a reference in respect of such company to the Board (BIFR) for determination of the measures which may be adopted with regard to the company. Section 16 provides the manner in which the inquiry was to be made by the Board about the fitness of the company to become a sick industrial company, upon receipt of reference with respect to such company under Section 15. On completion of inquiry, as per Section 17, if the Board is satisfied that

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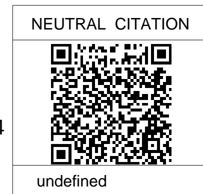

a company has become sick industrial company, it shall pass an order in writing whether it is practicable for the company to make its networth exceed the accumulated loss within a reasonable time.

14. However, where the Board decides that it is not practicable for a sick industrial company to make its networth exceed the accumulated loss within the reasonable time, it is necessary or expedient in the public interest to adopt all any other measures specified under Section 18 in relation to the said company. The Board may by an order in writing direct the operating agency specified in the order to prepare a scheme providing for such measures in relation to such company, so as to rehabilitate. Section 18 provides for preparation and sanction of the Scheme. Sub-Section (4) of Section 18 states that the Scheme once sanctioned by the Board, shall come into force on such date as the Board may specify in that behalf. Sub-section(5) of Section 18 empowered the Board on the recommendation of the operating agency or otherwise to review or make modification in the sanctioned scheme, as it may deem fit by an order in writing and a fresh scheme shall accordingly be prepared by the operating agency having regard to such guidelines, as may be specified in the order. In preparation of the fresh scheme, the provisions of Sub-sections (3) and (4) shall apply. Sub-section (7) of Section 18

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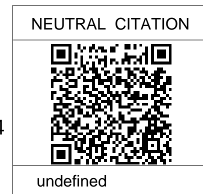

further states that Section 18 is an important provision which states that the sanction accorded by the Board under Sub-section (4) shall be conclusive evidence that all the requirements of the scheme relating to the reconstruction or amalgamation or any other measures specified therein having been complied with. It further states that a copy of the sanctioned scheme certified in writing by an officer of the Board, shall be as true copy thereof and be admitted as evidence in all legal proceedings. Sub-section (8) of Section 18 states that on and after the date of coming into operation of the sanctioned scheme or any provision thereof, the scheme or such provisions shall be binding on the sick industrial company and the transfree company as the case may be.

15. It may be noted that the sanction of the scheme by the Board, though it is binding, but the role of the BIFR (Board) did not end at that stage. Every scheme which related to preventive, ameliorative and other measures with respect to any industrial company, where the scheme may provide for financial assistance by way of loans, advances or guarantees from the government or financial institutions, the procedure contemplated under Section 19 of SICA 1985 had to be followed before any such government or financial institution is called upon to proceed to release the financial assistance to the sick industrial company. Section 22

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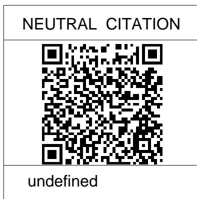

provides for suspension of legal proceedings, contracts etc. till the inquiry under Section 16 is pending or any scheme referred to under Section 17 is under preparation or considered or a sanctioned scheme is under implementation, or wherein the appeal under Section 25 relating to such company is pending. Section 22 gives overriding effect to the stages of preparation of the scheme and implementation of the sanctioned scheme, over any other law or memorandum and Articles of Association of the industrial company or any other instrument having effect under the said Act or other law. Section 22A confers power on the Board to give any direction, if necessary, in the interest of sick industrial company or creditors or share holders or in the public interest, by an order in writing, directing the sick industrial company not to dispose of any of its assets, except with the consent of the Board :-

> *(i) During the period of preparation and consideration of the Scheme under Section 18.*

16. Section 25 is the remedy of appeal to the appellate authority against the order of the Board (BIFR). Section 32 of SICA, 1985 gives it over-riding effect to the provisions of the Act, any rules or schemes made thereunder, to any other law except the provisions of Foreign Exchange

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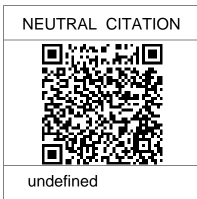

Regulation Act, 1973 (FERA) and Urban Land (Ceiling & Regulation) Act, 1976 (ULC) for the time being in force, or in the Memorandum or Articles of Association of the company, in-consistent with the provisions of the SICA, 1985 and the Rules made thereunder.

17. Sub-sections (9) to (11) of Section 18 of the Act, 1985 are couched in a manner that a reading thereof indicates active involvement of the Board in the implementation of the sanctioned scheme with such terms and conditions as specified in the order. The Board has been empowered to distribute the sale proceeds to the parties entitled under the scheme in accordance with the provisions of Section 529A and other provisions of the Companies Act, 1956 where the whole of the undertaking of the sick industrial company is sold under a sanctioned scheme. Sub-section (12) of Section 18 empowered the Board to monitor periodical implementation of the Scheme.

18. In light of the statutory provisions pertaining to the preparation and implementation of the rehabilitation of scheme under SICA, 1985, when we consider the submissions of the learned senior counsel for the respondent/original petitioner that a sanctioned scheme is binding on the parties to the scheme and none of the parties can be discharged impacting

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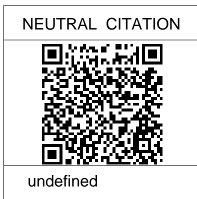

sanctity to sanction scheme, suffice it to note that the decisions relied on by the learned senior counsel for the respondent/original petitioner in **Diamond Plastic Industries Etc. (supra)** and in **Director General of Income Tax (Admn)** were given in a situation where the scheme was surviving and was under implementation. There cannot be any quarrel about the impact or the effect of a sanctioned scheme under the order of the BIFR. There cannot be a doubt that a sanctioned scheme is a scheme in its entirety. The implementation is also therefore, to be in entirety. It is impermissible to the parties to the scheme to resile from the concessions made at the stage when the scheme was formulated and sanctioned, for any subsequent development. Any part of the sanctioned scheme which remains to be un-implemented, will have to be implemented. The creditors, employees, share holders, guarantors amongst others, cannot be permitted to pull in different directions, thus, to defeat the very purpose for which the scheme was formulated in the first instance [Reference **Director General of Income Tax (Admn) and Ors. (supra)**]

19. However, in the instant case, we are not at the stage of implementation of the scheme. It is an admitted fact of the matter that BIFR scheme sanctioned on 12.12.1996 has never been implemented. By

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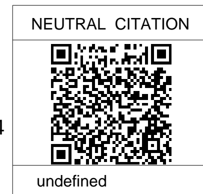

an order dated 19.02.1998, the BIFR has held that the scheme sanctioned for the petitioner company had failed, directing the operating agency to issue advertisement inviting offers for revival of the company by change of management. In a challenge to the said order, the appellate authority had set aside the same. Much emphasis has been laid to the order passed by the appellate authority (AAIFR) to submit that while remanding the matter to the BIFR in Appeal No. 56 of 1996 on 7.5.1996, which has been taken note of by this Court in the judgment and order dated 08.05.1998 and further order dated 23rd April, 1998 of the AAIFR (Appellate Authority), which allowed the appeal preferred by the respondent company, it was kept open for the respondent company to sell/dispose of the land-in-question in accordance with para 8 (F)(vii) of the sanctioned scheme read with letter of the State Government dated 16.12.1992.

20. It was vehemently submitted by the learned senior counsel appearing for the respondent company that in view of the order dated 23.4.1998 passed by the appellate authority and the judgment and order dated 8.5.1998 of this Court, the scheme framed by the BIFR dated 12.12.1996 has been revived and the State Government cannot put any condition in the sale of land-in-question in view of the concession granted by it in the sanctioned scheme that the State Government shall grant

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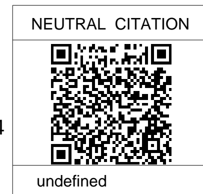

necessary permission for sale/disposal of the lands and will not charge any amount except those payable for the change of users and municipal taxes etc.. The vehement contention is that the revised non-agricultural permission cannot be refused by the Collector. Moreover, the stand of the State Government in asking the respondent company to share 50% of un-earned income is in violation of the directions contained in the judgment and order dated 8.5.1998 passed by the Court in Special Civil Application No. 3105 of 1998 and the tenor of the order of the appellant authority (AAIFR) dated 23.4.1998. It was submitted that the State Government once given an undertaking that it will not charge any amount except those payable for change of users and usual municipal taxes etc., it cannot insist on the terms and conditions of the agreement for grant of lease of the land-in-question. The lease land is alienable land as per the conditions of grant itself. No impediment, therefore, can be laid by insisting on the conditions for sharing 50% of the unearned income with the State Government, in case of disposal or sale of the land-in-question. The submission is that the conditions of the agreement, as noted hereinabove, cannot be insisted by the State Government in view of the concession given by it before the BIFR recorded in the sanctioned scheme dated 12.12.1996, which is binding on the State Government, having effect of law.

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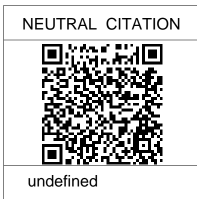

21. Dealing with these submissions, it is pertinent to note, at the outset, that the rehabilitation scheme sanctioned by the BIFR on 12.12.1996 has never been implemented. The BIFR vide order dated 19.2.1998 had held that the sanctioned scheme had failed. However, in an appeal preferred by the respondent company, while allowing the appeal, it was held that it was open for the respondent company to sell or dispose of the land in accordance with the para 8(F) of the sanctioned scheme read with letter of the State Government dated 16.12.1992. There is an order of this Court dated 8.5.1998 on the same line. However, the fact remains that the rehabilitation package framed by the BIFR in the year 1996 has not been given effect to. The record indicates that as per the concession given by the State Government before the BIFR in its letter dated 16.12.1992, the Revenue Department passed an order dated 17.10.1998 granting exemption under Section 20 of the Urban Land Ceiling Act in respect of the subject land, i.e. the land bearing Survey No. 428/1 admeasuring 98901 sq.mtrs. clarifying that the said order has been passed in compliance of the scheme sanctioned by the BIFR and that the order pertains only to the provisions under the ULC Act. It shall not affect any other proceedings under any other law or would not render such proceedings meaningless and the parties shall have to comply with the

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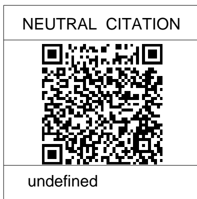

procedure as may be prescribed under any other law.

22. A perusal of the order passed by the AAIFR dated 23.4.1998, in an appeal filed against the order passed by the BIFR dated 19.2.1998, wherein it was held that the scheme has failed, would indicate that it was noted therein that the Government of Gujarat vide letter dated 16.12.1992 had informed the BIFR that in the event of BIFR approving the rehabilitation scheme of the respondent company, the State Government shall release the land-in-question under the ULC Act, 1976 so as to enable the company to pay the dues of the Central Government and State Governments. It seems that some dispute arose with regard to the release of the land-in-question by granting the exemption under Section 20 of the ULC Act in view of the decision of the Apex Court, which was later interpreted. Resultantly, it was held by the Apex Court that financial hardship can be a valid ground for exemption of vacant urban land under Chapter III of the said Act and such exemption would automatically free the land from any restriction on its transfer.

23. Noticing the above, it was held by the appellate authority that the permission granted by the Government of Gujarat under its letter dated 16.12.1992 continues to be legally valid and no objection can be raised by

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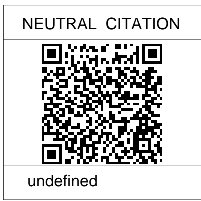

the State Government on the scheme and further it is open for the respondent company to sell/dispose of the land in accordance with para 8(F) of the sanctioned scheme read with letter of the State Government dated 16.12.1992.

24. Taking note of the above, we may go through the statement in the letter dated 16.12.1992 (at page 180 of the paper book), which reads as under,

> *"In the event of BIFR approving the rehabilitation package of Tensil Steel Limited, the State Government shall release the land of the Unit under the Urban Land Ceiling Act per its policy, so as to enable the unit to pay dues of the Central and State Governments, and release payments to the pressing creditors, Banks, Financial Institutions etc. as per the approval of Board of Industrial Finance & Reconstruction.*
>
> *The unit will be entitled to utilise the land by sale or development in any manner, which is more beneficial to this unit.*
>
> *Yours faithfully,*
>
> *(H.V.Patel)*
> *By Secretary to Govt. of Gujarat*
> *Revenue Dept."*

25. We may also extract clause 8(F)(vii), which is the bone of contentions of the parties :-

> *"To grant necessary permission for sale/disposal of the land and not to charge any amounts except those payable for change of users and usual Municipal Taxes and charges for development and ultimate disposal of*

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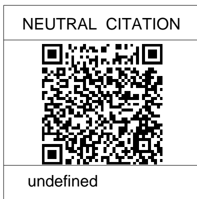

the property. Further, to permit."

26. A careful reading of the order passed by the appellate authority dated 23.4.1998, the letter dated 16.12.1992 of the State Government and the Clause 8(F)(vii) of the sanctioned scheme, it is evident that the only concession by the State Government before the BIFR was to release the land of the unit under the Urban Land Ceiling Act as per its policy. The concession given by the State Government cannot be interpreted to mean that it has given away its right to release 50% of the un-earned income as per the letter of grant. There was no issue before the appellant authority or before this Court in Special Civil Application No. 3105 of 1998 with regard to the conditions of the policy of grant. The policy of grant has not been altered, varied or modified by the State Government or under the rehabilitation scheme framed by the BIFR or under the order of the appellate authority dated 23.4.1998 or the judgment and order dated 8.5.1998 in Special Civil Application No. 3105 of 1998. At no point of time, any issue was raised by the respondent company about the said condition of the policy coming in the way or causing any prejudice during the course of preparation of the rehabilitation scheme.

27. The assertion of the learned senior counsel appearing for the

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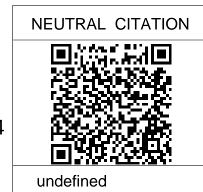

original petitioner based on the language of the clause 8(F)(vii) that the State Government had given a concession "not to charge any amounts except those payable for change of user and municipal taxes etc.." would amount to relaxing, varying or modifying the terms of the letter of grant, is untenable. The condition of the agreement dated 30.11.1961 in clause 8F(vii) binds the parties as on date.

28. Proceeding further, we may record that though there is an order in favour of the respondent company passed by the AAIFR and this Court dated 8.5.1998, however, the fact remains that the rehabilitation scheme framed by the BIFR by its order dated 12.12.1996, has yet not been implemented. Moreover, it is undisputed that the BIFR has de-listed the respondent company from the BIFR, against which an appeal was filed by the respondent company before the AAIFR, which is stated to be pending. The Sick Industrial Companies Act, 1985 has been repealed by the Sick Industrial Company (Special Provisions) Repeal Act, 2003 which has been enforced on 1.12.2010 after enforcement of the Insolvency and Bankruptcy Code, 2016 ('IBC Code 2016' in short) with effect from 28th May, 2016. The IBC Code 2016 has been enacted to consolidate and arrange the loss relating to reorganisation and insolvency resolution of corporate persons, partnership firm etc and to provide an

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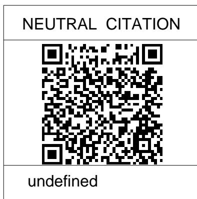

effective legal framework for timely resolution of insolvency and bankruptcy . With the enforcement of Insolvency and Bankruptcy Code, 2016, the corresponding provisions have been incorporated by the Act, 31 of 2016.

29. Section 4(a) of the Repealed Act, 2003 substituted by the Act No. 31 of 2016 with effect from 1.11.2016, contains clause (b), which reads as under:-

> *"4. **Consequential provisions-On the dissolution of the Appellate Authority and Board -***
>
> *(a) …..*
>
> *(b) On such date as may be notified by the Central Government in this behalf, any appeal preferred to the Appellate Authority or any reference made or inquiry pending to or before the Board or any proceeding of whatever nature pending before the Appellate Authority or the Board under the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) shall stand abated:*
>
> *Provided that a company in respect of which such appeal or reference or inquiry stands abated under this clause may make reference to the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016 within one hundred and eighty days from the commencement of the Insolvency and Bankruptcy Code, 2016 in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016:*
>
> *Provided further that no fees shall be payable for making such reference under Insolvency and Bankruptcy Code, 2016 by a company whose appeal or reference or inquiry stands abated under this clause.*

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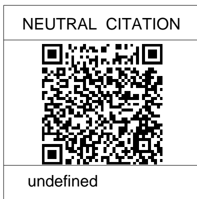

Provided also that any scheme sanctioned under sub-section (4) or any scheme under implementation under sub-section (12) of section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall be deemed to be an approved resolution plan under sub-section (1) of section 31 of the Insolvency and Bankruptcy Code, 2016 and the same shall be dealt with, in accordance with the provisions of Part II of the said Code:

Provided also that in case, the statutory period within which an appeal was allowed under the Sick Industrial Companies (Special Provisions) Act, 1985 against an order of the Board had not expired as on the date of notification of this Act, an appeal against any such deemed approved resolution plan may be preferred by any person before National Company Law Appellate Tribunal within ninety days from the date of publication of this order."

30. The third proviso, as noted hereinabove, has been inserted by the Insolvency and Bankruptcy Code (Removal of Difficulties) Order, 2017 dated 24th May, 2017.

31. A reading of the above noted provisions clearly indicate that with the Repealed Act being given effect on 1.12.2016, the appeal pending before the appellate authority stood abated and in view of the first proviso to clause (b) of Section 4, it was open for the respondent company to make a reference to National Company Law Tribunal (NCLT) under the Insolvency and Bankruptcy Code, 2016 within a period of 180 days from the commencement of the Insolvency and Bankruptcy Code, 2016, in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016. A further reading of the third proviso to clause (b) of Section 4

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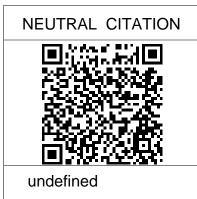

indicates that any scheme sanctioned by the BIFR, sub-section (12) of Section 18 of the SICA, 1985, which is under implementation, shall be deemed to be an approved resolution plan under sub-section(1) of Section 31 of the Insolvency and Bankruptcy Code, 2016 and the same has to be dealt with in accordance with the provisions of Part-II of the said Code.

32. It has been brought on record with the affidavit of the under Secretary, Revenue Department that on the basis of the information available with the department, the respondent company had made profits of Rs. 2.08 crores in the financial year 2013-2014 and Rs. 71.14 lakhs in the Financial Year 2014-2015, which is also reflected in its balancesheet for the Financial Year 2014-2015 available at the website of the Ministry of Corporate Affairs. It, thus, seems to us that the respondent company no longer remains a sick industrial company within the meaning of the 'sick industrial company' ad defined under the SICA, 1985 and the Act has seized to apply to the company.

33. Having noted the above provisions, it is difficult for us to accept the contention of the learned senior counsel appearing for the respondent company that the rehabilitation scheme framed by the BIFR by an order dated 12.12.1996, is in operation. Nothing has been brought on record by the respondent company before the learned Single Judge in the writ

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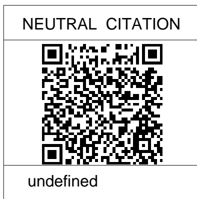

petition filed in the year 2019 that it has approached the NCLT for revival under the rehabilitation scheme, which is stated to be in operation, to implement the same in accordance with the provisions of Part-II of Insolvency and Bankruptcy Code, 2016. According to us, the question of implementation of the rehabilitation package framed by the BIFR, has now become academic and redundant. However, we do not find any reason to further delve on that issue as the consequence of the enforcement of the Insolvency and Bankruptcy Code, 2016 can be determined in an appropriate case as and when the occasion would arise.

34. Further, upon examining the relevant clauses of the perpetual lease deed executed as per the policy of grant vide resolution dated 7.8.1956, we are of the considered view that the condition to share half of the unearned income in the event of sale or transfer of the lease land with the Government still binds the parties. At the cost of repetition, it is reiterated that the said condition has not been altered, varied or modified by the concession given by the State Government recorded in para 8(F)(vii) of the rehabilitation scheme framed by the BIFR by order dated 12.12.1996. All the subsequent orders of the AAIFR dated 23.4.1998 and of this Court dated 8.5.1998 in Special Civil Application No. 3105 of 1998, have to be read and understood in the same manner.

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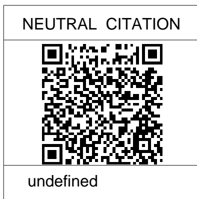

35. It may further be pertinent to note here that the record indicates that by the end of the year 2017, the respondent company had disposed of the whole of its plant and machinery, which was commissioned on the land-in-question in disregard to the conditions of the letter of grant of allotment dated 14.11.1960 as per the policy contained in the Government Resolution dated 7.8.1956.

36. As per the conditions of grant, namely the condition No. ‘13’ of the allotment order, the grant of land-in-question could be revoked and the land in question could be resumed in favour of the State Government without payment of any compensation. However, no such action has been taken as yet. In his argument, the learned Advocate General appearing for the State has clearly stated that the State has no objection for the sale or disposal of the land-in-question, provided the condition of sharing of half of the unearned income in the event of sale or transfer is adhered to by the respondent company.

37. It may be noted that the land-in-question has been valued to Rs. 1165,86,42,682/- (having area of 98,901 sq. mtrs., X market value @ Rs. 1,17,882/- per sq.mtrs.) The respondent company is seeking N.A. Permission (Non-Agricultural Use Permission) for converting the purpose

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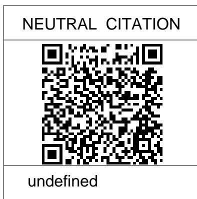

of usage for the land-in-question from ‘industrial’ / ‘commercial’ to ‘residential’, without sharing 50% of the unearned income with the State . Any indulgence granted to the respondent company by this Court, would result in enriching of its pocket at the cost of the public interest. The respondent company cannot be permitted to take any advantage of the concession given by the State Government during the course of preparation of the rehabilitation package by the BIFR, which was to the extent only that the State Government shall release the land of the unit under the Urban Land Ceiling Act as per its policy, so as to enable the unit to utilise the land by sale or development in any manner, which is more beneficial to this unit.

38. At the cost of repetition, it may be reiterated that this concession in no way takes away the rights of the State Government to press the terms and conditions of the letter of grant or an allotment as per its policy dated 7.8.1956. The condition of sharing of the unearned income in the event of sale or transfer, as contained in the order of allotment dated 14.11.1960, the agreement of indemnity dated 30.11.1961 executed in favour of the respondent company, consistent with the policy of the State under Government Resolution dated 7.8.1956, and, thus, is binding on the respondent company, which is a signatory of the agreement.

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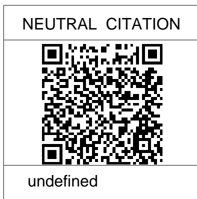

39. For the above discussion, we find that the judgment and order dated 4.12.2019 passed by the learned Single Judge is in complete ignorance of the above aspects of the matter. The reasonings given by the learned single Judge in its judgment and order dated 4.12.2019 to quash or set aside the order passed by the Collector, are based on the judgment and order dated 8.5.1998 passed by this Court in the Special Civil Application No. 3105 of 1998, the effect of which has been discussed in detail hereinabove.

40. Consequentially, while allowing the present Letters Patent Appeal, the judgment and order dated 4.12.2019 passed by the learned Single Judge is hereby set aside. It is, however, kept open for the respondent company to take appropriate steps in compliance of the letter of grant dated 14.11.1960 and the Government Resolution dated 7.8.1956.

41. The Civil Application stands disposed of.

(SUNITA AGARWAL, CJ)

(ANIRUDDHA P. MAYEE, J.)

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