
(1993) 09 RAJ CK 0026
In the Rajasthan High Court
Case No : Company Petition No. 6 of 1991

Union of India (UOI)

APPELLANT

Vs

Krishna Mills Ltd.

RESPONDENT

Date of Decision : 09-09-1993

Acts Referred:

Companies Act, 1956 — Section 529A
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 16, 17, 18, 22, 22(1)

Citation : (1994) 81 CompCas 50

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Advocate : Anju Shukla and V.K. Mishra, for the Appellant; Paras Kuhad, for the Respondent

Judgement

G.S. Singhvi, J.—This petition was filed before this court u/s 439(b) of the Companies Act, 1956, on September 15, 1990, with a prayer for winding up the non-petitioner company u/s 433(c) and 433(f) of the 1956 Act and with a further prayer for appointment of the official liquidator as liquidator of the company. Other ancillary prayers have also been made.

2. Notice of the petition was ordered to be issued on April 26, 1991. After service of notice none appeared on behalf of the non-petitioner. Therefore, on September 26, 1991, the court ordered advertisement of the petition. On December 20, 1991, it was recorded by the court that in Company Petition No. 6 of 1982, a stay order has been passed by the court in view of the provisions of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short "the Act of 1985"). The court, therefore, directed that this petition be placed along with Petitions Nos. 6 of 1982 and 8 of 1983. On May 28, 1993, the court recorded that the matter is pending before the Board for Industrial and Financial Reconstruction/the appellate authority and no final order has been passed so far.

3. When the case was taken up for hearing on August 13, 1993, it was given out by learned counsel for the non-petitioner that proceedings under the Act of 1985 have still not been finalised and this continued to be the position even on August 16, 1993.

4. Shri Kuhad, learned counsel for the non-petitioner, has argued that once the company has filed an application under the 1985 Act, further proceedings cannot be taken in the company petition filed by the petitioner. He submitted that once a company is declared to be a sick undertaking in terms of the provisions of the 1985 Act, jurisdiction of this court to proceed with the company petition ceases and, therefore, the company petition is liable to be declared as having abated. He placed reliance on the decision of the Gujarat High Court in *Testeels Ltd. v. Radhaben Ranchhodlal Charitable Trust*, : AIR 1988 Guj 213 ; [1989] 66 Comp Cas 555 , and also on the decision of the Supreme Court in *Maharashtra Tubes Ltd. Vs. State Industrial and Investment Corporation of Maharashtra Ltd. and Another*, Mrs. Shukla, learned counsel for the petitioners, has on the other hand submitted that proceedings in the winding-up petition cannot be stayed or declared to have abated merely because a petition under the Act of 1985 has been filed. She argued that the provisions of Section 529A of the Act of 1956 have overriding effect qua the provisions of the 1985 Act and, therefore, even though the proceedings might be pending under the Act of 1985, the company petition cannot be treated as having abated.

5. In order to appreciate the rival submissions it will be profitable to refer to the provisions of Section 529A of the Companies Act as well as the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985. Section 529A begins with the non obstante clause and it reads thus :

"529A. Overriding preferential payments.--(1) Notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, in the winding up of a company,--

(a) workmen's dues ; and

(b) debts due to secured creditors to the extent such debts rank under Clause (c) of the proviso to Sub-section (1) of Section 529 pari passu with such dues, shall be paid in priority to all other dues.

(2) The debts payable under Clause (a) and Clause (b) of Sub-section (1) shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions."

6. The Act of 1985 has been enacted in order to give effect to the policy of the State enumerated in Article 39(b) and Article 39(c), namely, that the ownership and control of the material resources of the community are so distributed as best to subserve the common good, and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

7. The preamble to the Act of 1985 is in the following words :

"An Act to make in public interest, special provisions with a view to securing the timely detection of sick and potentially sick companies owning industrial undertakings, the speedy determination by a board of experts of the preventive, ameliorative, remedial and other measures which need to be taken with respect to such companies and the expeditious enforcement of the measures so determined and for matters connected therewith or incidental thereto."

8. Section 3 of the 1985 Act contains definitions of various terms. Section 4 provides for establishment of the Board. Section 5 provides for constitution of the appellate authority. Section 6 deals with the term of office, conditions of service, etc., of the chairman and other members. Section 7 contains a provision for removal of members from office in certain circumstances. Section 8 contains a provision for appointment of a secretary to the Board and appellate authority, other officers and employees of the Board and the appellate authority. Section 9 lays down that the salaries, etc., of the members and the administrative expenses shall be defrayed out of the Consolidated Fund of India. Section 10 contains a declaratory provision that the proceedings of the Board and of the appellate authority shall not be questioned on the ground of vacancy or defect in the constitution of the Board or the appellate authority. Section 11 also contains a declaration that the members and staff of the Board and the appellate authority shall be deemed to be public servants. Section 12 provides for constitution of the Board and the appellate authority. Section 13 speaks of the procedure to be adopted by the Board and the appellate authority. Section 14 says that the proceedings before the Board or the appellate authority shall be deemed to be judicial proceedings and these bodies shall be deemed to be a civil court for the limited purposes under the Code of Criminal Procedure and the Indian Penal Code. Section 15 makes provision for reference to the Board as constituted u/s 4 in respect of a sick industrial company by the board of directors of the company for determination of the measures which are required to be taken in respect of the company. Power of such reference has also been given to the Central Government or the Reserve Bank of India, the State Government or a public financial institution or a State level institution or a scheduled bank. Section 16 provides for inquiry into the sick industrial company by the Board. Section 17 confers power on the Board to make suitable orders for the purposes of completion of inquiry as contemplated in Section 16. Section 18 contains detailed provisions for preparation of the scheme with respect to the sick company. Section 19 provides for rehabilitation of the sick industrial company. Section 21 refers to the power of the Board to get prepared details of the assets and liabilities of the sick industrial company through an operating agency. Section 22 deals with the suspension of legal proceedings, contracts, etc. Section 23 contains a provision to deal with potentially sick industrial companies. Section 24 provides for misfeasance proceedings. Section 25 contains provision for appeal to the appellate authority. Section 26 excludes the jurisdiction of other courts. Sections 27 to 31 are not relevant. Section 32 contains a non obstante clause.

Sections 16, 20, 22, 25 and 32 of the 1985 Act deserve to be quoted for useful reference :

"16. Inquiry into working of sick industrial companies.--(1) The Board may make such inquiry as it may deem fit for determining whether any industrial company has become a sick industrial company--

(a) upon receipt of a reference with respect to such company u/s 15 ; or

(b) upon information received with respect to such company or upon its own knowledge as to the financial condition of the company.

(2) The Board may, if it deems necessary or expedient so to do, for the expeditious disposal of an inquiry under Sub-section (1), require by order any operating agency to enquire into and make a report with respect to such matters as may be specified in the order.

(3) The Board or, as the case may be, the operating agency, shall complete its inquiry as expeditiously as possible and endeavour shall be made to complete the inquiry within sixty days from the commencement of the inquiry.

(4) Where the Board deems it fit to make an inquiry or to cause an inquiry to be made into any industrial company under Sub-section (1) or, as the case may be, under Sub-section (2), it shall appoint one or more persons to be a special director or special directors of the company for safeguarding the financial and other interests of the company.

(5) The appointment of a special director referred to in Sub-section (4) shall be valid and effective notwithstanding anything to the contrary contained in the Companies Act, 1956 (1 of 1956), or in any other law for the time being in force or in the memorandum and articles of association or any other instrument relating to the industrial company, and any provision regarding share qualification, age limit, number of directorships, removal from the office of the directors and such like conditions contained in any such law or instrument aforesaid, shall not apply to any director appointed by the Board.

(6) Any special director appointed under Sub-section (4) shall--

(a) hold office during the pleasure of the Board and may be removed or substituted by any person by order in writing by the Board;

(b) not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the discharge of his duties as a director or anything in relation thereto;

(c) not be liable to retirement by rotation and shall not be taken into account for computing the number of directors liable to such retirement.

20. Winding up of sick industrial company.-(1) Where the Board, after making inquiry u/s 16 and after consideration of all the relevant facts and circumstances and after giving an opportunity of being heard to all concerned parties, is of

opinion that it is just and equitable that the sick industrial company should be wound up, it may record and forward its opinion to the concerned High Court.

(2) The High Court shall, on the basis of the opinion of the Board, order winding up of the sick industrial company and may proceed and cause to proceed with the winding up of the sick industrial company in accordance with the provisions of the Companies Act, 1956 (1 of 1956).

(3) For the purpose of winding up of the sick industrial company, the High Court may appoint any officer of the operating agency, if the operating agency gives its consent, as the liquidator of the sick industrial company and the officer so appointed shall for the purpose of the winding up of the sick industrial company be deemed to be, and have all the powers of, the official liquidator under the Companies Act, 1956 (1 of 1956).

(4) Notwithstanding anything contained in Sub-section (2) or Sub-section (3), the Board may cause to be sold the assets of the sick industrial company in such manner as it may deem fit and forward the sale proceeds to the High Court for orders for distribution in accordance with the provisions of Section 529A and other provisions of the Companies Act, 1956 (1 of 1956).

22, Suspension of legal proceedings, contracts, etc.--(1) Where in respect of an industrial company, an inquiry u/s 16 is pending or any scheme referred to u/s 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal u/s 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the appellate authority:

(2) Where the management of the sick industrial company is taken over or changed, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or in the memorandum and articles of association of such company or any instrument having effect under the said Act or other law--

(a) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company ;

(b) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the Board.

(3) During the period of consideration of any scheme u/s 18 or where any such scheme is sanctioned thereunder for due implementation of the scheme, the Board may by order declare with respect to the sick industrial company concerned that the operation of all or any of the contracts, assurances of

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

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

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

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

(b) on the declaration ceasing to have effect--

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

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

25. Appeal.--(1) Any person aggrieved by an order of the Board made under this Act may, within forty-five days from the date on which a copy of the order is issued to him, prefer an appeal to the appellate authority :

Provided that the appellate authority may entertain any appeal after the said period of forty-five days but not after sixty days from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under Sub-section (1), the appellate authority may, after giving an opportunity to the appellant to be heard, if he so desires, and after making such further inquiry as it deems fit, confirm, modify or set aside the order appealed against.

32. Effect of the Act on other laws.--(1) The provisions of this Act and of any rules

or schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law except the provisions of the Foreign Exchange Regulation Act, 1973 (46 of 1973), and the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976), for the time being in force or in the memorandum or articles of association of an industrial company or in any other instrument having effect by virtue of any law other than this Act.

(2) Where there has been under any scheme under this Act an amalgamation of a sick industrial company with another company, the provisions of Section 72A of the Income Tax Act, 1961 (43 of 1961), shall, subject to the modifications that the power of the Central Government under that section may be exercised by the Board without any recommendation by the specified authority referred to in that section, apply in relation to such amalgamation as they apply in relation to the amalgamation of a company owning an industrial undertaking with another company.

(3) Nothing in the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969), shall apply in relation to-

(a) the modernisation or expansion of a sick industrial company, or

(b) the amalgamation or merger of a sick industrial company with another company as a result of a scheme sanctioned in accordance with the provisions of this Act."

9. A conspectus of Section 529A of the Companies Act, 1956, and the various provisions of the 1985 Act show that while Section 529A of the 1956 Act deals with payment of dues after a winding-up order has been made and it gives priority to the claims of the workmen and the creditors, the Act of 1985 provides for revival and rehabilitation of a sick industrial company. For that purpose, the Act of 1985 also provides for grant of financial assistance. Such financial assistance is provided to the sick industrial company as a remedial measure intended to revive the company. Detailed provisions contained in Sections 16, 17, 18 and 19 of the 1985 Act clearly speak of the steps which are required to be taken by the Board for making an enquiry into the working of the sick industrial company for the purpose of determination as to whether it is possible to revive the company. For such purpose the scheme is required to be framed and such scheme may provide for financial assistance by way of loans, advances or guarantees or reliefs or concessions by the Central Government, the State Government, scheduled banks or other banks, public financial institutions, State level institutions or any institution or other authority.

10. Section 20 also speaks of the winding up of the company at the instance of the Board where the Board is of the opinion that it is just and equitable to wind up the sick industrial company. It is, thus, clear that the 1985 Act is designed as a special statute for making efforts to protect the sick industrial companies from death. As far as possible, attempts are to be made for revival of the company and only when the Board comes to the conclusion that revival is not possible,

winding up proceedings can be taken by the High Court on a reference made by the Board. Being a special statute in relation to sick industrial companies, provisions contained in the 1985 Act will prevail qua the general provisions contained in the Companies Act. The maxim *generalia specialibus non derogant* will apply in such cases and the provisions of the 1985 Act will be construed to be having overriding effect on the provisions of the 1956 Act.

11. In so far as the non obstante clause contained in Section 529A is concerned, it is to be noted that Section 22 as well as Section 32 of the 1985 Act also contain non obstante clauses. Sub-section 22(1) uses the following expression :

"Notwithstanding anything contained in the Companies Act, 1956, or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law."

12. Section 32 of the same Act contains the expression,

"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 . . ."

13. Thus, there is a clear exclusion of the provisions of the Companies Act and by virtue of Section 22(1) no proceeding for winding up of an industrial company or for execution, distress or the like against any of the properties of the industrial company shall lie or be proceeded with further in accordance with the provisions of the Companies Act except with the consent of the Board or the appellate authority. The non obstante clause contained in Sections 22 and 32 will prevail as against the non obstante clause contained in Section 529A of the Companies Act for the following reasons:

14. Firstly, as already held hereinabove, the Sick Industrial Companies (Special Provisions) Act, 1985, is a special statute qua the general provisions contained in the Companies Act, 1956, and being a special enactment, it shall prevail over the provisions of the Companies Act. Secondly, the non obstante clauses contained in Sections 22 and 32 of the 1985 Act have been enacted at a subsequent point of time and for that reason also even if there is an assumed inconsistency in the two non obstante clauses, the latter non obstante clause would prevail. The Legislature must be deemed to be aware of the non obstante clause contained in the Companies Act when it incorporated the non obstante clause in Sections 22(1) and 32(1) of the 1985 Act. If, despite this knowledge, Parliament has thought it proper to enact the non obstante clause in the subsequent statute, there is no justification for curtailing the scope of these non obstante clauses by reference to the provisions of Section 529A of the 1956 Act.

15. It is also significant to notice that the chapter relating to the winding up of companies as contained in the Companies Act is intended to destroy the corporate personality of the company. The provisions contained in Sections 16 to 19 read with Section 25 of the 1985 Act are intended to save the corporate

personality. For this reason also the non obstante clauses contained in Sections 22(1) and 32(1) shall prevail.

16. The next question which requires determination is as to whether the proceedings on the winding up petition should be declared to have abated immediately after the Board orders an enquiry u/s 16 of the 1985 Act or on framing of a scheme u/s 17 or consideration or implementation of such scheme or where an appeal is pending. Shri Kuhad's submission is that the words "or be proceeded further" should be construed as meaning that the winding up petition pending under the Companies Act before the High Court has to be dismissed and the High Court has no option but to pass an order to that effect by treating the petition as having abated. Learned counsel for the petitioner however, pleaded that those words cannot have that meaning. The court can at best stay proceedings on the winding up petition,

17. The effect of the provisions contained in Section 22(1) has been considered by the Gujarat High Court in *Testeels Ltd. v. Radhaben Ranchhodlal Charitable Trust* [1989] 66 Comp Cas 555 ; : AIR 1988 Guj 213, *Sponge Iron India Ltd. v. Neelima Steels Ltd.* [1990] 68 Comp Cas 201 (AP), the Karnataka High Court in *K. SP. V. Shanmitgam v. Maharashtra State Cooperative Cotton Growers Marketing Federation Ltd.* [1991] 70 Comp Cas 440 and also by the Bombay High Court in *M/s. Ramniklal and Co. and others Vs. The Wallace Flour Mills Co. Ltd., Company*, The same matter has also been considered by the Supreme Court in *Maharashtra Tubes Ltd. Vs. State Industrial and Investment Corporation of Maharashtra Ltd. and Another*,

18. In *Testeels Ltd.*'s case [1989] 66 Comp Cas 555, a Division Bench of the Gujarat High Court considered the scheme of the 1985 Act and then observed (at page 560) :

"Thus, reading the abovesaid provisions in the background of the Statement of Objects and Reasons for enacting the said law, it is clear that the Legislature in order to revive and rehabilitate the sick industries has come forward with specific provision. The financial assistance envisaged u/s 19 of the said Act, as correctly put forward by Mr. Mehta, learned counsel appearing for the appellant, cannot be forthcoming if the winding up proceeding is alive without the same being dismissed."

19. The Division Bench further observed (at page 560) :

"The underlining supplied by us, reads "shall lie" or "be proceeded with". If it cannot be proceeded with, there is no question of the company court or any other court dealing with this matter, further proceeding and dismissing the petition. Since the Legislature thought it fit to include the words "be proceeded with further", a meaning has to be given to these words also. The words, in our opinion, cannot be interpreted to mean that the winding up proceedings already started should be kept in abeyance without further proceeding in the matter. The various provisions of the Sick Industrial Companies (Special Provisions) Act,

1985, which have been enacted to safeguard the economy of the nation and to protect the viable sick companies definitely puts an end both to the contemplated winding up proceedings and the pending winding up proceedings."

20. The Division Bench then made reference to an earlier order passed by the same court in other company petitions in the context of the provisions of the Industries (Development and Regulation) Act, 1951, and proceeded to observe (at page 563) :

"Especially when a Bench of this High Court, whose decision we have clearly interpreted held the words "no proceedings shall lie" to mean that neither can fresh proceedings be instituted nor can proceedings already instituted be sustained. It is too much to say that the proceedings already instituted can only be stayed, but cannot be dismissed. The words "or be proceeded with" occurring in Section 22, cannot, in any way, restrict the meaning that has to be given to the words "no proceedings shall lie"."

21. In *Sponge Iron India Ltd.*'s case [1990] 68 Comp Cas 201, the Andhra Pradesh High Court expressed the view that once proceedings u/s 16 have started, the winding up petition is to be closed with liberty to the petitioners to make an application for reviving it in the event it becomes permissible by virtue of a subsequent decision of the Board.

22. The Bombay High Court considered the decisions both of the Gujarat, Andhra Pradesh and the Karnataka High Courts and observed (at page 554 of 78 Comp Cas) :

"It is clear from the provisions of the Act that a winding-up petition is required to be kept merely in abeyance pending the enquiry u/s 16 or framing of the scheme under the Act or pending the implementation of the scheme framed thereunder. The marginal note to Section 22 of the Act provides an indication that the proceedings in question are merely required to be suspended. The operative part of Section 22(1) of the Act provides that the winding up proceedings may continue with the consent of the Board or the consent of the appellate authority. If the proceedings can continue with the consent of the Board or consent of the appellate authority or in the event of the conditions precedent prescribed u/s 22(1) of the Act ceasing to exist, there is no reason as to why the pending winding-up petitions must necessarily abate or must necessarily be dismissed. Section 31 of the Act provides that certain pending proceedings shall not abate where the receiver or the official liquidator was already appointed before the commencement of the Act. This section cannot be reasonably pressed into service for the purpose of making a submission to the effect that in all other cases the proceedings abate when the operative part of Section 22 of the Act can be reasonably interpreted to mean that the winding up proceedings are merely required to be suspended and kept in abeyance and are not required to be dismissed and they do not abate."

23. Before their Lordships of the Supreme Court in the case of *Maharashtra*

Tubes Ltd. [1993] 78 Comp Cas 803, the question that arose for consideration related to continuance of proceedings under the State Financial Corporations Act, 1951. After making a reference to the State Financial Corporations Act, 1951, as well as the Act of 1985 their Lordships observed (at page 813) :

"On the other hand the 1985 Act was enacted, as its preamble manifests, with a view to timely detection of sick or potentially sick companies owning industrial undertakings, the identification of the nature of sickness through experts in relevant fields with a view to devising suitable remedial measures through appropriate schemes and their expeditious implementation. Here the emphasis is to prevent sickness and in cases of sick undertakings to prepare schemes for their rehabilitation by providing financial assistance by way of loans, advances or guarantees or by providing reliefs, concessions or sacrifices from Central or State Governments, scheduled banks, etc. The basic idea is to revive the sick units, if necessary, by extending further financial assistance after a thorough examination of the units by experts and it is only when the unit is found to be no more capable of rehabilitation, that the option of winding up may be resorted to. It is for that reason that Section 22(1) provides that during the pendency of (i) an inquiry u/s 16, or (ii) preparation or consideration of a scheme u/s 17, or (iii) an appeal u/s 25, no proceedings for winding up of the concerned industrial company or for execution, distress or the like shall lie or be proceeded with in relation to the properties of that concern unless the Board for Industrial and Financial Reconstruction/appellate authority has consented thereto. The underlying idea is that every such action should be frozen unless expressly permitted by the specified authority until the investigation for the revival of the industrial undertaking is finally determined: It is thus crystal clear that the main thrust of this special legislation is on revival or rehabilitation of the sick industrial undertaking and it is only when it is realised that the same is not feasible that the option of winding up of the unit can be resorted to."

24. A close reading of the judgment of the Gujarat High Court shows that the Division Bench of the said court has equated the expression "be proceeded further" with the expression "no proceedings shall lie". With great respect I find myself unable to agree with the opinion of the Gujarat High Court equating the two expressions. There is a clear distinction between the two expressions. The expression "no proceedings shall lie" puts an embargo on the maintainability of the proceedings of the winding up of the industrial company or for execution or distress or the like against any of the properties of the industrial company or for the appointment of a receiver. Thus, there is a clear and positive prohibition. The same cannot hold true for the proceedings which are already pending. The Legislature intended that the pending proceedings should abate. Nothing prevented it from using the said expression conveying a clear intention to the effect that the pending proceedings should be closed by the court immediately on the happening of the events specified in Section 16, 17 or 25 of 1985 Act. The fact that the Legislature has not employed that language in Section 22(1) and has only provided for a restraint that the proceedings for winding up, etc., shall

not be proceeded with further, clearly gives an indication that the court is to stay its hands in the proceedings and nothing more. That means that the court should not take further steps or make any order in the pending proceedings. The observations made by the Supreme Court in its decision which I have underlined, also supports the view that the proceedings are to be frozen till the final determination of the investigation for revival of the company. The observations of the Supreme Court also do not convey that the pending proceedings must be declared as dead.

25. Shri Kuhad's argument that the decision of the Gujarat High Court in Testeels Ltd.'s case [1989] 66 Comp Cas 555 has been approved by the Supreme Court in the case of Maharashtra Tubes Ltd. [1993] 78 Comp Cas 803 and, therefore, it must be held that the Supreme Court has also approved the principle that the proceedings for winding up should be treated as abated, once action u/s 16, 17 or 18 of the 1985 Act has been initiated, overlooks the fact that the Supreme Court has referred to the judgment of the Gujarat High Court in Testeels Ltd.'s case [1989] 66 Comp Cas 555 only for the limited purpose, namely, the interpretation of the word "proceedings". The Supreme Court has approved the judgment of Testeels Ltd.'s case [1989] 66 Comp Cas 555 only in so far as it gives a broad construction to the word "proceedings". Moreover, the question as to whether the proceedings on a winding up petition should be treated as abated or merely stayed, had not arisen for consideration before the Supreme Court. Therefore, the decision of the Supreme Court cannot be treated as laying down a proposition of law that Section 22(1) results in abatement of the proceedings under the Companies Act when proceedings under Sections 16, 17 or 18 of the 1985 Act have been taken.

26. The theory of abatement of the proceedings pending under the Companies Act, 1956, is negated even by the proviso to Section 22(1) itself which permits continuance of proceedings with the consent of the Board or the appellate authority. Even the Legislature had intended that with the commencement of inquiry u/s 16 or framing of a scheme referred to u/s 17 or where an appeal is pending u/s 25 of the 1985 Act, proceedings pending under the Companies Act or any other law shall abate or shall die, there could not have been any justification for permitting continuance of such proceedings with the consent of the Board or the appellate authority. It has also to be remembered that Section 20 of the 1985 Act also contemplates winding up of the company on the basis of the opinion of the Board, namely, that it is just and equitable that the sick industrial company should be wound up, even otherwise, it will amount to placing a petitioner in a company petition to undue hardship if proceedings were to abate on the happening of any of the events specified in Section 22(1). The Legislature may have intended that when efforts are under process for revival of the company, no obstacle in the form of winding up petitions, etc., should come in the way of the efforts for revival of the sick industrial company. At the same time, it could not have intended that a petitioner who has made application for winding up of the company or may have started proceedings for his/its recovery

of dues must suffer adversely for all time to come. It has to be kept in mind that by virtue of Section 22(1) not only the proceedings for winding up of an industrial company but other proceedings for execution, distress, or the like against the property of the industrial company shall not proceed further. The wide sweep of the non obstante clause contained in Section 22(1) would result in temporary freezing of such proceedings during the pendency of inquiry, etc., under the 1985 Act. It will be wholly unreasonable if a claimant who has started execution proceedings or some other proceedings is forced to file such proceedings a second time on the basis of automatic abatement of earlier proceedings by virtue of Section 22(1).

27. On the basis of the above analysis, I am of the view that the proceedings for winding up, execution, distress or the like cannot be treated as having abated and such petition/application cannot be dismissed as having abated only on the ground of pendency of inquiry, etc., u/s 16 or 17 or during the pendency of appeal u/s 25 of the 1985 Act. The only proper course open to be adopted in such an eventuality is to order that the petition/application be consigned to record subject to its revival on the basis of permission by the Board or on an application made by the petitioner after conclusion of proceedings under the 1985 Act.

28. On the basis of the above discussion, it is held :

(1) That the provisions of the 1985 Act are special provisions qua the Companies Act, 1956, and, therefore, the former shall prevail over the latter in case of inconsistency.

(2) Non obstante clauses contained in Sections 22(1) and 32(1) of the 1985 Act shall prevail over non obstante clauses contained in Section 529A of the Companies Act, 1956.

(3) A petition for winding up filed against a company shall not be treated as having abated on the ground of initiation of action under Sections 16, 17 and 18 or on account of pendency of an appeal u/s 25 of the 1985 Act. Such proceedings shall however, be consigned to record and shall not be proceeded with further till the conclusion of the proceedings under the 1985 Act. However, it shall be open to the applicant to continue/revive the proceedings with the permission of the Board. Likewise, it shall be open to the applicant to seek revival after the proceedings under the 1985 Act have concluded.

29. In the result, it is ordered that the proceedings on Company Petition No. 6 of 1991, Union of India v. Krishna Mills Ltd., Beawar, shall remain stayed and shall not proceed further. This petition shall be consigned to record. It shall be taken up for consideration on the basis of any application made by a party in accordance with the observations made herein-above.