A MAHARASHTRA TUBES LTD.

v.

STATE INDUSTRIAL AND INVESTMENT CORPORATION OF MAHARASHTRA LTD. AND ANR.

B JANUARY 29, 1993

[L.M. SHARMA, C.J. AND A.M. AHMADI, J.]

State Finance Corporation Act, 1951—Object and scope of—Finance Corporation—Constitution—Purpose of.

C

Sick Industrial Companies (Special Provisions) Act, 1985—Object and scope of.

State Finance Corporation Act, 1951—Section 46B and read with Sec-
D *tions 22, of the Sick Industrial Companies (Special Provisions) Act, 1985—Both Special statutes—Distinction—Non-obstante clause of latter Act whether prevails over the non-obstante clause of former Act.*

Sick Industrial Companies (Special Provisions) Act, 1985—Section 22—
E *Object of—"Or the like", "the like" "Proceedings"—Construction of.*

State Finance Corporation Act, 1951—Sections 29, 31 read with sections 22, 25 of the Sick Industrial Companies (Special Provisions) Act, 1985—Default in repayment of loan/advance—Question whether company a 'sick industry' pending in appeal u/s 25 of 1985 Act—Taking recourse u/s 29/31 of
F *1951 Act for recovery of loan/advance—Legality of.*

In July, 1982, the appellant-Company, incorporated under the Companies Act, 1956 commenced manufacture of steel pipes/tubes etc. of various sizes and dimensions for export.

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By July, 1986, labour unrest, strikes, financial constraints, etc. necessitated the cessation of manufacturing activities.

On 28th August, 1988 the Company by its letter informed the Board for Industrial and Financial Reconstruction (BIFR) of its accumulated
H **losses and sought financial assistance for revival of the unit.**

The Director (Finance) of the BIFR desired the company to report the sickness in Form A and to take appropriate action under section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985. The Company submitted the proposal in Form A.

The BIFR held a preliminary hearing on 12th September, 1991, at which the company confirmed the information given in Form A. The Bench of the BIFR sought further information to enable it to form an opinion on the question whether or not the company was a sick industrial company under section 3(1)(o) of the 1985 Act. The Bench directed the company to submit the authenticated documents regarding the number of workers, audited/finalised accounts for the years 1989-90 and 1990-91 with detailed explanation in regard to the delay in making the reference and other discrepancies pointed out in the course of hearing. The Bench also directed the bank and other financial institutions to submit the reports regarding the conduct of the company and their role in providing necessary funds.

On 20th July, 1992, considering the facts on record and submissions made, the BIFR dismissing the reference held that the company could not be held to be a sick industrial company under section 3(1)(o) of the 1985 Act.

The respondent No. 1 thereafter initiated proceedings under section 29 of the State Financial Corporation Act, 1951 for taking possession of the factory premises of the company.

On 20th August, 1992, the company filed an appeal under section 25 of the 1985 Act against the order of the BIFR Bench and requested the respondent No. 1 not to proceed under section 29 of the 1951 Act, in view of the provision in section 22(1) of 1985 Act.

The respondent No. 1 sought the permission of the Appellate Authority under the 1985 Act, to take possession of the assets of the company.

The action of the respondent No. 1 was challenged in a writ before the High Court.

The High Court dismissed the writ petition holding that the bar of section 22(1) of the 1985 Act did not apply to proceedings initiated under

A section 29/31 of the 1951 Act.

The view of the High Court was assailed in this appeal by special leave.

The respondent No. 1 contended that the 1985 Act was a general statute covering a larger number of industrial concerns than the 1951 Act
B and therefore the latter would prevail over the former in the event of conflict; that as the right conferred on the Financial Corporation by section 29 of the 1951 Act was not a legal proceeding but merely an action permitted by statute, section 22(1) of the 1985 Act would not apply because it only bars legal proceedings for the winding up of any industrial company
C or for execution, distress or the like against any of its properties or for the appointment of a Receiver in respect thereof.

Allowing the appeal of the company, this Court,

HELD : 1.01. The primary object of the State Finance Corporations
D Act, 1951 is to extend financial assistance to industrial concerns with a view to hasten the pace of industrialisation and with that in view the Financial Corporations have been statutorily enjoined or charged with duty to provide credit facilities to industrial concerns. [355D]

E 1.02. The purpose of constituting State Level Financial Corporations was to augment industrialization by extending financial assistance to certain industrial concerns. The Corporation is authorised to grant loans to industrial concerns and/or to guarantee loans raised by such concerns, even to underwrite the issue of stocks, shares, debentures, etc. floated by such concerns. Such loans etc. are repayable within a stated period. [354G]

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1.03. Incidental power to take over is given and summary procedures have been laid down by sections 29 and 31 for the realisation of its dues from defaulting industrial concerns. The power conferred by section 29 and the remedy provided in section 31(1) is not the underlying object and
G purpose of the statute, the real objective of the law is to create an instrumentality through which financial assistance can be extended to deserving entrepreneurs. This is the main purpose, scope and object of this special law. [355G]

2.01. The Sick Industrial Companies (Special Provisions) Act, 1985
H was enacted, 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. 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 sacrifies from Central or State Governments, Scheduled banks, etc. [355H, 356A-B]

2.02 The basic idea is to revive sick units, if necessary, by extending further financial assistance after a thorough examination of the units by experts and only when the units is found to be 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 under section 16 or (ii) preparation or consideration of a scheme under section 17 or (iii) an appeal under section 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 BIFR/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. [356C-D]

2.03. The main thrust of this special legislation is at 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. [356E]

3.01. The 1951 Act and the 1985 Act are special statutes, each having a different objective, the emphasis in the case of the former being on giving of financial assistance to entrepreneur for setting up industries while in the case of latter it being to revive or rehabilitate industries which have on account of economic or other related reasons gone sick. The latter Act also contemplates giving of financial assistance for revival or rehabilitation of a sick industrial undertaking but that is by way of a remedy or as a measure at revival of the sick unit. [356F-G]

3.02 Both the statutes have competing *non-obstante* provisions. Section 46B of the 1951 Act provides that the provision of that statute and of any rule or order made thereunder shall have effect notwithstanding

A anything inconsistent therewith contained in any other law for the time being in force; whereas section 22(1) of the 1985 Act also provides that the provisions of the said Act and of any rules or schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law. Section 22(1) also carries a *non-obstante* clause
B and says that the said provision shall apply notwithstanding anything contained in Companies Act, 1956 or any other law. [360D]

3.03. The 1985 Act being a subsequent enactment, the *non-obstante* clause therein would ordinarily prevail over the *non-obstante* clause found in section 46B of the 1951 Act unless it is found that the 1985 Act is a
C general statute and the 1951 Act is a special one. In that event the *maxim generalia specialibus non-derogant* would apply. [360E]

3.04. In the present case on a consideration of the relevant provisions of the two statutes it is clear that the 1951 Act deals with pre-sickness situation while the 1985 Act deals with post-sickness situa-
D tion. It is, therefore, not possible to agree that the 1951 Act is a special statute vis-a-vis the 1985 Act. Both are special statutes dealing with different situations notwithstanding a slight overlap here and there, for example, both of them provide for grant of financial assistance though in different situations. [360F-G]

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4.01. Section 22(1) provides that where an appeal under section 25 relating to an industrial company is pending, then, notwithstanding anything contained in any 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 appointment of a Receiver in
F respect thereof shall lie or be proceeded with further, except with the consent of the BIFR or, as the case may be, the Appellate Authority. The purpose and object of this provision is clearly to await the outcome of the reference made to the BIFR for the revival and rehabilitation of the sick industrial company. [361F-G]

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4.02. The words 'or the like' which follow the words 'execution' and 'distress' are clearly intended to convey that the properties of the sick industrial company shall not be made the subject-matter of coercive action of similar quality and characteristic till the BIFR finally disposes of the reference made under section 15 of the enactment. The legislature has
H advisedly used an omnibus expression 'the like' as it could not have

conceived of all possible coercive measures that may be taken against a sick undertaking. [361H, 362A]

4.03. The word 'proceedings' in section 22(1) cannot be given a narrow or restricted meaning to limit the same to legal proceedings. Such a narrow meaning would run counter to the scheme of the law and frustrate the very object and purpose of section 22(1) of the 1985 Act. [362G]

4.04. The expression 'proceedings' in section 22(1) cannot be confined to legal proceedings understood in the narrow sense of proceedings in a court of law or a legal tribunal for attachment and sale of the debtor's property. [365C]

The Bengal Immunity Company Ltd. v. *The State of Bihar & Ors.*, [1955] 2 SCR 603 at 636 and *Board of Muslim Wakfs, Rajasthan* v. *Radha Kishan & Ors.*, [1979] 2 SCC 468, referred to.

Black's Law Dictionary (Fourth Edition), referred to.

5.01. On a plain reading of section 29 of the 1951 Act, it is obvious that it permits coercive action against the defaulting industrial concern of the type which would be taken in execution or distress proceedings; the only difference being that in the latter case the concerned party would have to use the forum prescribed by law for the purpose of securing attachment and sale of property of the defaulting industrial concern whereas in the case of a Financial Corporation that right is conferred on the creditor corporation itself which is permitted to takeover the management and possession of the properties and deal with them if it were the owner of the properties. [362D-E]

5.02. The action contemplated by section 29 of the 1951 Act is undoubtedly a coercive measure directed at the take over of the management and property of the industrial concern and confers a further right on the Financial Corporation to transfer by way of lease or sale the properties of the said concern and any such transfer effected by the Financial Corporation would vest in the transferee all rights in or to the transferred property as if the transfer was made by the owner of the property. So also under the said provision the Financial Corporation will have the same rights and powers with respect to goods manufactured or produced wholly or partly from goods forming part of the security held by

A it as it had with respect to the original goods. [362B-C]

5.03. In the first place action under section 29 of the 1951 Act is to seize the property of the defaulting industrial concern and to appropriate it for satisfying the debt. It gets diverted from the general body of creditors. The Corporation is fully empowered to dispose it of to a third party and B pass a clear marketable title. All this can be done by the Corporation without the need to go to a court or tribunal or any other recovery agency. The Corporation is itself permitted to play that role. From the point of view of quality and character the remedy is the same as in execution or distress proceedings. [363C-D]

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5.04. If the Corporation is permitted to resort to the provision of section 29 of the 1951 Act while proceedings under sections 15 to 19 of the 1985 Act are pending it will render the entire process nugatory. In such a situation the law merely expects the corporation and for that matter any other creditor to obtain the consent of the BIFR or, as the case may be, D the Appellate Authority to proceed against the industrial concern. The law has not left them without a remedy. [362F]

5.05. It must be realised that in the modern industrial environment large industries are generally finalised by banks and statutory corporations created specially for that purpose and if they are permitted to resort E to independent action in total disregard of the pending inquiry under sections 15 to 19 of the 1985 Act the entire exercise under the said provisions would be rendered nugatory by the time the BIFR is able to evolve a scheme of revival or rehabilitation of the sick industrial concern by the simple device of the Financial Corporation resorting to section 29 F of the 1951 Act. [364H, 365A]

5.06. Where an inquiry is pending under section 16/17 or an appeal is pending under section 25 of the 1985 Act there should be cessation of the coercive activities of the type mentioned in section 22(1) to permit the G BIFR to consider what remedial measures it should take with respect to the sick industrial company. [365B]

Gram Panchayat & Anr. v. *Shree Vallabh Glass Works Ltd. & Ors.*, [1990] 2 SCC 400 = AIR 1990 SC 1017; *Texteels Ltd.* v. *Radhaben Ranchhodlal Charitable Trust*, AIR 1988 Gujarat 213; *Industrial Finance* H *Corporation of India & Ors.* v. *Maharashtra Steel Ltd. & Ors.*, AIR 1988

Allahabad 170 and *The Andhra Cement Co. Ltd., Secunderabad* v. *A.P. State Electricity Board & Ors.*, AIR 1991 A.P. 269, referred to. A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 289 of 1993.

From the Judgment and Order dated 6.10.1992 of the Bombay High Court in Writ Petition No. 1999 of 1992. B

G.L. Rawal, Ms. Alpana Poddar and Kailash Vasdev for the Appellant.

P.P. Rao, S.K. Dholkia, Dr. Sumant Bhardwaj, A.M. Khanwilkar and A.S. Bhasme for the Respondents. C

The Judgment of the Court was delivered by

AHMADI, J. Special leave granted.

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The short but interesting question which arises for determination in this appeal is whether in a case where an industrial concern makes any default in repayment of any loan or advance or any instalment thereof or otherwise fails to meet its obligations under the terms of any agreement with the Financial Corporation, such as the respondent herein, can the latter take recourse to sections 29 and/or 31 of the State Financial Corporations Act, 1951 (hereinafter called the '1951 Act') notwithstanding the bar of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter called the '1951 Act')? In order to answer the aforesaid question it is necessary to bear in mind the provisions of the aforesaid two statutes. E F

The 1951 Act was enacted to provide for the establishment of State Financial Corporations. Section 3 empowers the State Government to establish a State Financial Corporation as a body corporate with an authorised capital of such sum as may be fixed by the State Government in this behalf. Section 9 provides that the general superintendence, direction and management of the affairs and business of the Financial Corporation shall vest in a Board of Directors which may exercise all the powers and discharge all the functions which may be exercised and discharged by the Financial Corporation. Under Section 15 one of the Directors may be nominated by the State Government to be the Chairman of the Board of G H

A Directors. Section 25 enumerates the business which the Financial Corporation may transact. These include among others, guaranteeing, on such terms and conditions as may be agreed upon, loans raised by Industrial concerns which are repayable within twenty years and are floated in the public market, loans raised by industrial concerns from scheduled banks
B or State Cooperative banks or other financial institutions and granting loans and advances to an industrial concern repayable within a period not exceeding twenty years from the date on which they are granted. Section 29, insofar as relevant for our purpose, then provides as under :

> "29(1) Where any industrial concern, which is under a
C liability to the Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any instalment thereof or in meeting its obligations in relation to any guarantee given by the Corporation or otherwise fails to comply with the terms of its agreement
D with the Financial Corporation, the Financial Corporation shall have the right to take over the management or possession or both of the industrial concern, as well as the right to transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation."

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Where the Financial Corporation, in exercise of the aforesaid rights, transfers any property, sub-section (2) provides that the same shall vest in the transferee all rights in or to the transferred property as if the transfer had been made by the owner of the property. Section 31 next provides as under:

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> "Where an industrial concern, in breach of any agreement, makes any default in repayment of any loan or advances or any instalment thereof or in meeting its obligations in relation to any guarantee given by the Corporation or
G otherwise fails to comply with the terms of the agreement with the Financial Corporation or where the Financial Corporation requires an industrial concern to make immediate repayment of any loan or advance under section 30 and the industrial concern fails to make such repayment, then, without prejudice to the provisions of section
H 29 of this Act and of section 69 of the Transfer of Property

Act, 1882 any Officer of the Financial Corporation, generally or specially authorised by the Board in this behalf, may apply to the District Judge within the limits of whose jurisdiction the Industrial concern carries on the whole or a substantial part of its business for one or more of the following reliefs :

(a) for an order for the sale of the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation as security for the loan or advance; or

(aa) for enforcing the liability of any surety; or

(b) for transferring the management of the Industrial concern to the Financial Corporation; or

(c) for an ad interim injunction restraining the industrial concern from transferring or removing its machinary or plant or equipment from the premises of the industrial concern without the permission of the Board, where such removal is apprehended."

Section 32 outlines the procedure which the District Judge must follow in respect of an application made under Section 31. Section 32A empowers the Financial Corporation to appoint Directors or Administrators of an industrial concern, the management whereof is taken over by the Financial Corporation. Section 32E lays down that where the management of an industrial concern, being a company as defined in the Companies Act, 1956 is taken over by the Financial Corporation, then, notwithstanding anything contained in the said Act or in the Memorandum or Articles of Association of such concern, it shall not be lawful for the shareholders of such concern or any other person to nominate or appoint any person to be a Director of the said concern nor shall any resolution passed at the meeting of the shareholders of such concern be given effect to unless approved by the Financial Corporation. It also precludes the filing of a winding up proceedings or for the appointment of a Receiver in respect of such concern in any court unless consented to by the Financial Corporation. So also Section 32F places a restriction on the filing of suits for dissolution, etc., of an industrial concern other than a company whose management is taken over. Section 32G provides for recovery of amounts due to the Financial Cor-

poration as an arrear of loan revenue. And Section 46B says that the provisions of the said Act and any rule or order made thereunder shall have effect notwithstanding anything inconsistent therewith in any other law for the time being in force. It further says that the provisions of the Act shall be in addition to, and not in derogation of, any such law applicable to an industrial concern. It will thus be seen that the consequences of a take over of the industrial concern are quite drastic and virtually denudes the management of such industrial concern of its power to administer the properties and assets of such concern.

While on the one hand the 1951 Act provide for grant of financial assistance to industrial concerns, on the other hand the ever increasing problem of industrial sickness and its consequential fall-out on the nation's economy and the problems faced by the Financial Corporations in the matter of recovery of their dues and/or rehabilitation of a sick industrial undertaking led to the appointment of a Committee known as the Tiwari Committee in 1981 which submitted its report in 1983 leading to the enactment of the 1985 Act with a view to securing the timely detection of sick and potentially sick companies owing industrial undertakings, the speedy determination by a body of experts of the preventive, ameliorative, remedial and other measures needed to be taken with respect to such companies and the expeditious enforcement of the measures so determined and for other matters connected therewith or incidental thereto. This Act extends to the whole of India and Section 2 thereof carries a declaration that it is enacted for giving effect to the policy of the State towards securing the principles specified in Clauses (b) and (c) of Article 39 of the Constitution. The dictionary of the Act is to be found in Section 3. Section 3(e) defines an 'industrial company' to mean a company which owns one or more industrial undertakings and Section 3(f) defines an 'industrial undertaking' to mean an undertaking pertaining to a scheduled industry carried on in one or more factories by any company but does not include an ancillary industrial undertaking as defined in clause (aa) of Section 3 of the Industries (Development & Regulation) Act, 1951 and a small scale industrial undertaking as defined in Section 3(j) of the same statute. Since Section 3(2) provides that words and expressions used but not defined under the said Act or the Companies Act, 1956, shall have the meaning assigned to them in the Industries (Development & Regulation) Act, 1951, we must look to the definition of factory in that law. 'Factory' as defined in Section 3(c) of that law, *inter alia,* means any premises including the

precincts thereof in any part of which a manufacturing process is being carried on or is ordinarily so carried on with the aid of power, provided that fifty or more workers are working or were working thereon on any day of the preceding twelve months. Again Section 3(n) defines a 'scheduled industry' to mean any of the industries specified for the time being in the First Schedule of that law. Section 3(o) defines a sick industrial company to mean an industrial company (not being a company registered for not less than seven years) which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth and has also suffered cash losses in such financial year and the financial year immediately preceding such financial year. The expression 'cash loss' means loss as computed without providing for depreciation. Chapter II provides for establishment of a Board and Appellate Authority for Industrial & Financial Reconstruction. Section 4(1) empowers the Central Government to establish a Board to be known as the 'Board for Industrial & Financial Reconstruction' (BIFR) to exercise the jurisdiction and powers and discharge the functions and duties conferred or imposed thereon by or under the provisions of the said Act. Section 5 envisages constitution of an Appellate Authority to be called the 'Appellate Authority for Industrial & Financial Reconstruction' for hearing appeals against the orders of the BIFR. Section 12 posits that the jurisdiction, powers and authority of the BIFR or the Appellate Authority may be exercised by benches to be constituted by their respective Chairmen. Section 14 says that the proceedings before the BIFR or the Appellate Authority shall be deemed to be judicial proceedings. Then comes Chapter III entitled 'References, Inquiries and Schemes'. Section 15(1) provides that where an industrial company has become a sick industrial company, the Board of Directors of the Company, shall within sixty days from the date of 'finalisation' of the duly audited accounts of the company for the financial year as at the end of which the company has become a sick industrial company, make a reference to the BIFR for determination of the measures which shall be adopted with respect to the company. If, however, the Board of Directors of the Company had for sufficient reasons formed an opinion before the finalisation of the duly audited accounts that the company had become a sick industrial company, they could make a reference within sixty days after the formation of such opinion for determination of the measures to be adopted with respect to the company. Upon receipt of such reference with respect of such company or upon information received or upon its own

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A knowledge as to the financial condition of the company a duty is cast by Section 16(1) on the BIFR to make such inquiry as it deems fit for determining whether any industrial company has become a sick industrial company. Where the BIFR deems it fit to make such an inquiry or to cause an inquiry to be made into any industrial company, sub-section (4) requires B it to 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. Section 17 next provides that if after making an inquiry under Section 16 of the BIFR is satisfied that a company has become a sick industrial company, it shall, after considering all the relevant facts and circumstances of the case, decide, whether it is practicable for the company C to make its net worth positive within a reasonable time. If the BIFR decides in the affirmative, it shall, by order in writing give such time to the company as it may deem fit to make its net worth positive but if it decides in the negative and considers it necessary or expedient in the public interest to adopt all or any of the measures specified in Section 18, it may, by written D order direct any operating agency to prepare a scheme providing for such measures in relation to such company. Section 18 provides that where an order is made under the aforesaid provisions in relation to any sick industrial company, the operating agency shall prepare a scheme with respect to such company providing for any one or more of the following measures, namely :

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(a) the reconstruction, revival or rehabilitation of the sick industrial company;

(b) the proper management of the sick industrial company by change in, or take over of, management of the sick F industrial company;

(c) the amalgamation of the sick industrial company with any other industrial company;

G (d) the sale or lease of a part or whole of any industrial undertaking of the sick industrial company;

(e) such other preventive, ameliorative and remedial measures as may be appropriate;

H A copy of the draft scheme prepared by the BIFR is required to be sent

to the sick industrial company as well as the operating agency. After the draft scheme is finalised, it has to be sanctioned by the BIFR and then be brought into force with effect from such date as the BIFR may specify in this behalf. Provision is also made for reviewing a sanctioned scheme and making modifications therein if the exigencies of administration so require. Where the scheme relates to preventive, ameliorative, remedial or other measures with respect to any sick industrial company, the scheme may provide for financial assistance by way of loans, advances, guarantees, reliefs, concessions or sacrifices from the Central Government, a State Government, any scheduled bank or other bank, a public financial institution or State level institution or any institution or other authority to the sick industrial company, vide Section 19(1) of the Act. Section 20, however, provides that where the BIFR after making an inquiry under Section 16 is of opinion that it is just and equitable to wind up the sick industrial company, it may forward its opinion in that behalf to the concerned High Court whereupon the High Court shall, on the basis thereof, order winding up of the sick industrial company. That brings us to Section 22, Sub-section (1) whereof needs to be reproduced :

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

We now come to Chapter IV entitled 'Proceedings in case of potentially sick industrial companies, misfeasance proceedings, appeals and miscellaneous'. Section 25 provides for an appeal and reads as under:

A "25(1) Any person aggrieved by an order of the Board made under th. 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:

B 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.

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

D Section 26, however, states that no order passed or proposal made under this Act shall be appealable except as provided therein and no civil court shall have jurisdiction in respect of any matter which the Appellate Authority or the BIFR is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect E of any action taken or to be taken in pursuance of any power conferred by or under this Act. Section 32 says that the provisions of this Act and of any Rules or Schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law except the provisions of the Foreign Exchange Regulation Act, 1973 and the Urban Land (Ceiling & Regulation) Act, 1976 for the time being in force or in F 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. This, in brief, is the scheme of 1985 Act.

From the relevant provisions of the 1951 Act it is clear that the G purpose of constituting State level Financial Corporations was to augment industrialisation by extending financial assistance to certain industrial concerns. The Corporation is authorised to grant loans to industrial concerns and/or to guarantee loans raised by such concerns, even to underwrite the issue of stocks, shares, debentures, etc., floated by such concerns. Such loans, etc., are repayable within a stated period. The enactment has under- H gone amendments from time to time with a view to enlarging the functions

and powers of the Financial Corporations. The said Act was amended in 1956 (Act 56 of 1956) *inter alia* to extend its benefit to industrial concerns engaged in small scale and cottage industries and to widen the powers of management vested in the Corporation in regard to concerns taken over by the Corporation. Experience gained over a period of time necessitated a further amendment in 1962 (Act 6 of 1962) to provide for extending the benefit of financial assistance to hotel and transport industries and to meet the growing need of the industry occasioned by the rising tempo of industrialisation in the country. The amendments were introduced to enable the Corporations to guarantee loans raised from Scheduled Banks, State Co-operative Banks, etc., and to retain underwritten shares beyond seven years and to convert loans/debentures into share capital. A further amendment was made in 1972 (Act 77 of 1972) as it was felt that technical entrepreneurs and units situate in backward areas should also be granted soft term loans and such other benefits. At the same time certain constraints on the Corporations were removed to ensure their smooth working. It is clear from the foregoing discussion that the primary object of this statute is to extend financial assistance to industrial concerns with a view to hasten the pace of industrialisation and with that in view the Financial Corporations have been statutorily enjoined or charged with the duty to provide credit facilities to industrial concerns. Undoubtedly Financial Corporations have been empowered by section 29 to take over management of defaulting industrial concerns for realisation of its dues. Similarly, section 31(1) also prescribes a special remedy for enforcement of Corporation claims through the judicial machinery by sale etc. of pledged/mortgaged/hypothecated or assigned property of the defaulting industrial concern. It is thus clear from the provisions of this law that its primary objective is to provide an impetus to industrialisation by providing through a statutory corporation financial assistance to industrial concerns and incidental power to take over is given and summary procedures have been laid down by sections 29 and 31 for the realisation of its dues from defaulting industrial concerns. The power conferred by section 29 and the remedy provided in section 31(1) is not the underlying object and purpose of the statute, the real objective of the law is to create an instrumentality through which financial assistance can be extended to deserving entrepreneurs. This is the main purpose, scope and object of this special law.

On the other hand the 1985 Act was enacted, as its preamble

A 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
B 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 sick units. If necessary, by extending further financial assistance after a thorough examination of the units by experts and only when the unit is found to be more capable of
C 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 under section 16 or (ii) preparation or consideration of a scheme under section 17 or (iii) an appeal under section 25, no proceedings for winding up of the concerned industrial company or for execution, distress
D or the like shall lie or be proceeded with in relation to the properties of that concern unless BIFR/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 at revival or rehabilitation
E 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.

It will be seen from the above discussion that both the 1951 Act and
F the 1985 Act are special statutes, each having a different objective, the emphasis in the case of the former being on giving of financial assistance to entrepreneurs for setting up industries while in the case of the latter it being to revive or rehabilitate industries which have on account of economic or other related reasons gone sick. No doubt the latter Act also contemplates giving of financial assistance for revival or rehabilitation of a
G sick industrial undertaking but that is by way of a remedy or as a measure at revival of the sick unit.

Now that we have clarified the respective schemes and objects of the two enactments we may notice a few background facts which have a bearing
H on the question under consideration. The appellant-company was incor-

porated under the Companies Act, 1956 on 15th April, 1980 or thereabouts and it commenced its activities of manufacturing steel pipes/tubes etc. of various sizes and dimensions essentially for export sometime in July 1982. Unfortunately within a couple of years of its commencing manufacturing activities it ran into difficulties on account of labour unrest, strikes, financial constraints, etc. which necessitated the cessation of manufacturing activities by about July, 1986. The disputes with the workman lingered on for a couple of years and were settled by about August 1988. Since the company had run into serious financial problems on account of accumulated losses and paucity of cash flow, it wrote a letter to the BIFR on 28th August, 1988 enclosing therewith a provisional balance-sheet for the year ended 30th June, 1988 showing the accumulated losses and sought financial assistance for revival of the unit. The Director (Finance) of the BIFR replied by pointing out certain deficiencies in the statements of accounts forwarded to it and desired the company to report the sickness in Form A and to take appropriate action under section 15(1) of the 1985 Act. The company submitted the proposal in Form A showing accumulated losses as on 31st March, 1990 at Rs. 369 lakhs with a paid up capital as on that date of Rs. 1.11 crores and free reserves at Rs. 29.20 lakhs. It was also pointed out that the company suffered a cash loss of Rs. 50.40 lakhs in the financial year ended 31st March, 1989 and a further cash loss of Rs. 149.79 lakhs in the financial year ended 31st March, 1990. The gross value of the plant and machinery of the company as on 31st March, 1990 was estimated at Rs. 160 lakhs. On that date the company had 34 workers on its rolls. It appears that after the receipt of Form A the BIFR held a preliminary hearing on 12th September, 1991, at which Shri Rajesh Dalmia, Managing Director of the company, confirmed the information given in Form A and stated that during 1st July, 1987 to 30th June, 1988, the company employed more than 50 workers. Considering the facts on record and the oral submissions made by the Managing Director of the company, the Bench of the BIFR sought information to unable it to form an opinion on the question whether or not the company was a sick industrial company within the meaning of section 3(1)(o) of the 1985 Act since the information in regard to the total number of workers employed by the company at the relevant date was not clear and the company had also not submitted the audited accounts for the financial year ended 31st March, 1991. Several other discrepancies were also pointed out to the Managing Director of the company and the Bench directed him to submit the authenticated docu-

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ments regarding the number of workers, audited/finalised accounts for the years 1989-90 and 1990-91 with a detailed explanation in regard to the delay in making the reference and other discrepancies pointed out in the course of hearing. The bank and other financial institutions were also directed to submit the reports regarding the conduct of the company and their role in providing necessary funds. The Chief Manager of the Bank of Baroda addressed a letter to the company on 4th October, 1991 reminding it to furnish by return of post the information in regard to the number of workers employed during the period from 1st July, 1987 to 30th August, 1987 duly authenticated by the Registrar/Commissioner of Labour, reasons for not reporting to BIFR in time, inventory of fixed and current assets of the company along with a copy of the audited balance-sheet as on 31st March, 1991, reasons for not reporting the details of sister-concerns in Form A and the position in regard to accumulated losses/cash losses for the last three years. At the next hearing held on 20th July, 1992, Bench III of BIFR took note of the statement of the Managing Director that "he had no documentary evidence in support of his contention that the unit employed more than 50 workers during one year preceding the date of reference" and after noticing certain discrepancies in regard to sundry debtors, expenditure on security staff, removal of certain movables, etc., the Bench concluded as under :

> "Considering the facts on record and submissions made at today's hearing, the Bench observed that despite sufficient opportunity given to the company, it had not submitted the authenticated documents regarding the number of workers employed during the year preceding the date of reference and Shri Dalmia also could not substantiate during the hearing today his statement that company had more than 50 workers at any one time during the year preceding the date of reference to BIFR. The company as such could not be held a sick industrial company under section 3(1)(o) of the SIC (SP) Act, 1985. The reference is, therefore, non-maintainable and is dismissed. "

After the above order was made the first respondent initiated proceedings under section 29 of the 1951 Act for taking over possession of the factory premises of the company. In the meantime on 20th August, 1992, the company filed an appeal under section 25 of the 1985 Act against the

impugned order of the BIFR Bench dated 20th July, 1992, extracted hereinabove. On the same day the company also sent a letter to the first respondent requesting it to stay his hands in view of the provisions of section 22(1) of the 1985 Act. Thereupon, the first respondent wrote a letter to the Appellate Authority for permission to take possession of the assets of the company. The company challenged this action before the High Court of Bombay by a Writ Petition which came to be dismissed on 6th October, 1992. The controversy before High Court was whether the bar of section 22(1) of the 1985 Act applied to proceedings initiated under section 29/31 of the 1951 Act. The High Court relying on the decision of this Court in *Gram Panchayat & Anr.* v. *Shree Vallabh Glass Works Ltd. & Ors.*, [1990] 2 SCC 440 = AIR [1990] SC 1017 held as under :

> ".....we are of the view that when 1st respondent seeks to enforce its special rights under sub-section (1) of Section 29 of the State Financial Corporations Act, 1951, such an action would not attract the bar of sub-section (1) of Section 22 of the 1985 enactment. In our view, some distinction has to be made between the rights of the 1st respondent Corporation to proceed under sub-section (1) of section 31 of the said Act which amounts to initiation of proceedings. Preventing the financial institution like the 1st respondent Corporation from even resorting to its rights under section 29 of the 1951 Act would, in our view render the said provisions totally nugatory. While appreciating the public interest contemplated behind the enactment of section 22(1) of the 1985 enactment, it must be observed that it is not everybody who may have a special or a higher right of the kind provided under sub-section (1) of section 29 of the 1951 Act. For example, in this very case, we are told at the bar that the petitioner owes crores of rupees to some banks and so far as such creditors are concerned, different considerations may come into play. As far as the States Financial Corporation, respondent No. 1 is concerned, we are in this case concerned with its action under the letter, Exh.F, which falls squarely under sub-section (1) of section 29 of the 1951 Act. The 1st respondent has not initiated any proceedings, which could be done only under sub-section (1) of section

A 31 of the said Act."

It is this view of the High Court which is assailed before us in this appeal.

Having reached the conclusion that both the 1951 Act and the 1985 Act are special statutes dealing with different situations the former providing for the grant of financial assistance to industrial concerns with a view to boost up industrialization and the latter providing for revival and rehabilitation of sick industrial undertakings, if necessary, by grant of financial assistance, we cannot uphold the contention urged on behalf of the respondent that the 1985 Act is a general statute covering a larger number of industrial concerns than the 1951 Act and, therefore, the latter would prevail over the former in the event of conflict. Both the statutes have competing *non-obstante* provisions. Section 46B of the 1951 Act provides that the provision of that statute and of any rule or order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force whereas section 32(1) of the 1985 Act also provides that the provisions of the said Act and of any rules or schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law. Section 22(1) also carries a *non-obstante* clause and says that the said provision shall apply notwithstanding anything contained in Companies Act, 1956 or any other law. The 1985 Act being a subsequent enactment, the *non-obstante* clause therein would ordinarily prevail over the *non-obstante* clause found in section 46B of the 1951 Act unless it is found that the 1985 Act is a general statute and the 1951 Act is a special one. In that event the maxim *generalia specialibus non derogant* would apply. But in the present case on a consideration the relevant provisions of the two statutes we have come to the conclusion that the 1951 Act deals with pre-sickness situation whereas the 1985 Act deals with the post-sickness situation. It is, therefore, not possible to agree that the 1951 act is a special statute vis-a-vis the 1985 Act which is at general statute. Both are special statutes dealing with different situations notwithstanding a slight overlap here and there, for example, both of them provide for grant of financial assistance though in different situations. We must, therefore, hold that in cases of sick industrial undertakings the provisions contained in the 1985 Act would ordinarily prevail and govern.

H It was next contended that the right conferred on the Financial

Corporation by Section 29 of the 1951 Act is not a 'legal proceeding' but merely an action permitted by statute and, therefore, section 22(1) will have no application as it only bars legal proceedings for the winding up of any industrial company or for execution, distress or the like against any of its properties or for the appointment of a Receiver in respect thereof. Now section 22(1) uses the expression 'proceedings' and not 'legal proceedings' which expression is albeit used in the marginal note to the said provision. Mr. Rao contended that section 22 must be read in the light of the marginal note and when so read it becomes obvious that only legal proceedings of the type mentioned in sub-section (1) thereof are barred and not the exercise of a right such as the one conferred by section 29 of the 1951 Act. In support of his contention that the marginal note can be used as an aid to interpretation he invited our attention to a 7-Judge Bench decision of this Court in *The Bengal Immunity Company Ltd.* v. *The State of Bihar & Ors.*, [1955] 2 SCR 603 at 636. In that case the marginal note to Article 286 of the Constitution was referred to and it was said that it furnished some clue as to the meaning and purpose of the Article. But at the same time the Court pointed out that unlike the marginal notes in the statutes of the British Parliament, the various Articles of the Constitution were passed by the Constituent Assembly with the marginal notes and, therefore, the Court considered it permissible to use the marginal note to understand the meaning and purport of the Article. But so far as statutes are concerned this Court in the case of *Board of Muslim Wakfs, Rajasthan* v. *Radha Kishan & Ors.*, [1979] 2 SCC 468 held in no uncertain terms that the weight of the authority was in favour of the view that the marginal note appended to a section cannot be used for construing the section (See paragraph 24 at p. 479). Section 22(1) shorn of the irrelevant part provides that where an appeal under section 25 relating to an industrial company is pending, then, notwithstanding anything contained in any 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 appointment of a Receiver in respect thereof shall lie or be proceeded with further, except with the consent of the BIFR or, as the case may be, the Appellate Authority. The purpose and object of this provision is clearly to await the outcome of the reference made to the BIFR for the revival and rehabilitation of the sick industrial company. The words 'or the like' which follow the words 'execution' and 'distress' are clearly intended to convey that the properties of the sick industrial company shall not be made the

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A subject-matter of coercive action of similar quality and characteristic till the BIFR finally disposes of the reference made under section 15 of the said enactment. The legislature has advisedly used an omnibus expression 'the like' as it could not have conceived of all possible coercive measures that may be taken against a sick undertaking. The action contemplated by B section 29 of the 1951 Act is undoubtedly a coercive measure directed at the takeover of the management and property of the industrial concern and confers a further right on the Financial Corporation to transfer by way of lease or sale the properties of the said concern and any such transfer effected by the Financial Corporation would vest in the transferee all rights in or to the transferred property as if the transfer was made by the owner C of the property. So also under the said provision the Financial Corporation will have the same rights and powers with respect to goods manufactured or produced wholly or partly from goods forming part of the security held by it as it had with respect to the original goods. It is, therefore, obvious on a plain reading of section 29 of the 1951 Act that it permits coercive D action against the defaulting industrial concern of the type which would be taken in execution or distress proceedings; the only difference being that in the latter case the concerned party would have to use the forum prescribed by law for the purpose of securing attachment and sale of property of the defaulting industrial concern whereas in the case of a Financial Corporation that right is conferred on the creditor corporation E itself which is permitted to takeover the management and possession of the properties and deal with them as if it were the owner of the properties. If the corporation is permitted to resort to the provision of section 29 of the 1951 Act while proceedings under sections 15 to 19 of the 1985 Act are pending it will render the entire process nugatory. In such a situation the law merely expects the corporation and for that matter any other creditor to obtain the consent of the BIFR or, as the case may be, the Appellate Authority to proceed against the industrial concern. The law has not left them without a remedy. We are, therefore, of the opinion that the word 'proceedings' in section 22(1) cannot be given a narrow or restricted meaning to limit the same to legal proceedings. Such a narrow meaning would run counter to the scheme of the law and frustrate the very object and purpose of section 22(1) of the 1985 Act.

Mr. Rao, however, invited our attention to the definition of the expression 'legal proceedings' as found in *Black's Law Dictionary* (Fourth I Edition) which reads as under :

" Any proceedings in court of justice....by which property of debtor is seized and diverted from his general creditors.....This term includes all proceedings authorised or sanctioned by law, and brought or instituted in a court of justice or legal tribunal, for the acquiring of a right or the enforcement of a remedy."

Even this definition does not militate against the view we are inclined to take. In the first place action under section 29 of the 1951 Act is to seize the property of the defaulting industrial concern and to appropriate it for satisfying the debt. It gets diverted from the general body of creditors. The Corporation is fully empowered to dispose it of to a third party and pass a clear marketable title. All this can be done by the Corporation without the need to go to a court or tribunal or any other recovery agency. The Corporation is itself permitted to play that role. In substance the Corporation is playing the same role. From the point of view of quality and character the remedy is the same as in execution or distress proceedings. Therefore, even if one goes by the said meaning and understands the term 'proceedings' in the light of the object and purpose of section 22(1) of the 1985 Act, no difficulty is experienced in taking the view that it must be widely construed.

Reliance was placed on decisions of two High Courts in support of the contentions urged on behalf of the appellant Company. We shall deal with them briefly. In *Texteels Ltd.* v. *Radhaben Ranchhodlal Charitable Trust* AIR 1988 Gujarat 213 the short point for decision was whether a winding up proceeding already commenced against an industrial company ought to be dismissed or stayed during the pendency of the reference under section 15 of the 1985 Act. The High Court held that the word 'be proceeded with further' in section 22 cannot be interpreted to mean that the proceedings should be kept in abeyance but the various provisions of the enactment must be construed to put an end to both the contemplated and pending winding up proceedings. The High Court held that if the winding up proceedings are kept pending it may be difficult to effectively administer the schemes under section 18 or grant financial assistance under section 19 of the 1985 Act. The High Court held that the provision must be broadly construed keeping in mind the scheme of the law so that the ultimate objective is achieved and not defeated. In the other case of *Industrial Finance Corporation of India* v. *Maharashtra Steel Ltd. & Ors.*,

A AIR 1988 Allahabad 170 the view taken was that pending enquiry by the BIFR the exercise of power under section 30 of the 1951 Act would not be proper in view of section 22(1) of the 1985 Act. Section 30 empowers the Financial Corporation to require an industrial concern by notice to discharge its liabilities before the agreed date. Even though no legal B proceedings are contemplated under that provision, the High Court did not permit such an action during the pendency of proceedings under the 1985 Act. These two cases reinforce the view that the provision of section 22(1) of the 1985 Act should receive a broad construction. These cases, therefore, support the view that the expression 'proceedings' in section 22(1) need not be limited to 'legal proceedings' understood in the narrow C sense notwithstanding the use of that expression in the marginal note.

Mr. Rao, however, invited our attention to the decision of the Andhra Pradesh High Court in *The Andhra Cement Co. Ltd., Secunderabad* v. *A.P. State Electricity Board & Ors.,* AIR 1991 A.P. 269. That was case in D which the company sought a permanent injunction against the Electricity Board to restrain it from refusing to supply electrical energy to the sick undertaking. The High Court held 'non-supply of further goods under a contract cannot, in our view, be equated with the kind of proceedings contemplated by section 22(1)'. Since non-supply of goods in future cannot amount to action proposed against the property of the Company, the High E Court held that section 22(1) was not attracted. It is, therefore, obvious that the decision turned on the peculiar facts of that case and does not militate against the view which commends to us.

Now we come to the impugned decision. The High Court was con- F siderably influenced by the fact that the appellant-company owed crores of rupees to banks and felt that so far as such creditors are concerned different considerations may come into play but the High Court with respect failed to appreciate that the 1985 Act was enacted primarily to assist sick industrial undertakings which *inter alia* failed to meet their G financial obligations. It is, therefore, difficult to accept the view of the High Court that where the creditors of a sick industrial concern happen to be Banks or State Financial Corporations different considerations would come into play. It must be realised that in the modern industrial environment large industries are generally financed by banks and statutory corporations created specially for that purpose and if they are permitted to resort to H independent action in total disregard of the pending inquiry under sections

15 to 19 of the 1985 Act the entire exercise under the said provisions would be rendered nugatory by the time the BIFR is able to evolve a scheme of revival or rehabilitation of the sick industrial concern by the simple device of the Financial Corporation resorting to section 29 of the 1951 Act. We are, therefore, of the opinion that where an inquiry is pending under section 16/17 or an appeal is pending under section 25 of the 1985 Act there should be cessation of the coercive activities of the type mentioned in section 22(1) to permit the BIFR to consider what remedial measures it should take with respect to the sick industrial company. The expression 'proceedings' in section 22(1) therefore, cannot be confined to legal proceedings understood in the narrow sense of proceedings in a court of law or a legal tribunal for attachment and sale of the debtors's property.

Before we part we must state that it has not been our endeavor to examine the correctness or otherwise of the decision of BIFR dated 20th July, 1991 as an appeal under section 25 is pending against the same. The BIFR will dispose of that appeal as early as possible on merits.

For the above reasons, we allow this appeal and set aside the impugned judgment and order of the High Court. We, however, make it clear that the respondent-corporation will be at liberty to seek the consent of the Appellate Authority under section 25 of the 1985 Act for taking action under section 29 of the 1951 Act. There will be no order as to costs throughout.

V.P.R. Appeal allowed.