

Analytical Speaking

Landmark Judgment on SICA



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1. Rehabilitation Schemes cannot force unsecured creditors to forego their claims – rules Delhi High court.

Our note: In a very significant recent ruling, the Delhi High court has interpreted section 18 (2) of the SICA holding that the scheme of the BIFR cannot force unsecured creditors to accept an abatement, waiver or reduction of their claims. The court drew a very significant distinction between section 391 of the Companies Act, 1956 and the relevant provisions of SICA, holding that there is no process of collective application of mind of the creditors under the SICA, as in case of schemes u/s 391. Therefore, the schemes framed by BIFR are not schemes of the creditors, and there is nothing in the SICA that entitles BIFR to force creditors to accept anything lesser than what is contractually due to them.

The Delhi High Court (“**Hon’ble Court**”) has granted to the unsecured creditors of a sick industrial company, an option of not accepting the rehabilitation scheme framed by the BIFR under SICA and instead waiting for the scheme to be worked out completely, thereafter recovering its dues in full from such company. This stand was adopted by the Hon’ble Court in the ruling of *Continental Carbon India Limited v. Modi Rubber Limited*¹, wherein a writ petition was filed by the petitioners against the order of the AAIFR which held it compulsory for the unsecured creditors to choose from one of the three options given to them under the rehabilitation scheme on the ground that allowing the petitioner to wait for the scheme to get over would put the entire sanctioned scheme of revival in jeopardy. The learned AAIFR also relied on section 391(2) of the Companies Act, 1956 (“**Companies Act**”) according to which if a scheme of compromise or arrangement has been approved by more than three-fourth of the creditors of one class, the same is binding on all creditors of the same class. Moreover, it also opined that the unsecured creditors are under a compulsion to accept the scheme as the SICA does not comprehend any kind of approval which is required to be taken from the unsecured creditors.

The Delhi HC, however, negated the above grounds of the AAIFR on the basis that the learned authority failed to distinguish between absence of requirement of consent of an unsecured creditor and compelling an unsecured creditor to write off a part of its dues. However, the SICA does not provide for both the issues.

The Hon’ble Court further observed that the provisions of section 391 of the Companies Act shall not be applicable to the respondent company as it envisages the convening and holding of meetings of different class of creditors of the

¹<http://www.indiankanoon.org/doc/14951184/> on July 31, 2012



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company wherein they decide whether, or not, to accept the propounded scheme for compromise or arrangement. However, the BIFR does not follow any such procedure and therefore the same had no applicability in the instant case.