M/S. S.R.F. LIMITED

v.

M/S. GARWARE PLASTICS AND POLYESTERS LTD. AND ORS.

MARCH 7, 1995

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

Sick Industrial Companies (Special Provisions) Act, 1985 :

Ss.3(1)(0),15(1),16,17(1),17(3),18,21 and 28—Sick industrial company—Revival of—Interested person—Operating agency inviting offers from parties evincing interest in revival of sick company—Respondent and another company submitting their schemes on 'stand alone' basis—Appellant submitting proposal for merger of sick company with it—Scheme of respondent rejected—Board of Industrial and Financial Reconstruction approving scheme of merger—Respondent evincing no interest in the matter any further, except filing appeal against final order of Board—Held, respondent not an interested person—It has acquiesced by consent to orders barred by Board—Central Government and Board of Direct Taxes necessary parties in merger scheme and should be given notice.

Respondent No. 4 (in Civil Appeal No. 3277/95) was a public limited company. It was closed with effect form August 1990 and was declared a sick company under Sick Industrial Companies (Special Provisions) Act, 1985 by the Board of Industrial and Financial Reconstruction (BIFR) on 6.12.1991, Industrial Financial Corporation of India (IFCI) was appointed as operating agency to prepare a financial package to revive the sick company by 30.9.1992. IFCI invited offers requiring the interested parties to submit their revival proposals before 15.5.1992. Three companies namely, the appellant and respondent No. 1 (in Civil Appeal No. 3277/95) and Assam Asbestos Ltd. submitted their schemes. The schemes submitted by respondent No. 1 and the Assam Asbestos Ltd. were on 'stand alone' basis whereas the proposal of the appellant was for merger of the sick company with it. The proposal of respondent No. 1 was rejected. Thereafter respondent No. 1 did not show any interest in the matter. It neither appeared before the BIFR at the time of hearing nor did it respond to any of the communictions of the operating agency. ultimately, by order dated 23.4.1993, BIFR approved the scheme of revival of the sick company by the

A appellant with certain observations regarding benefits under s.72-A of the Income tax Act, 1961. However, on clarification by the appellant giving up s.72-A benefits, the Board modified the order and approved the merger by its order dated 19.11.1993, and directed circulation and publication of the draft scheme fixing 27.1.1994 for hearing of objections or suggestions to the scheme.

B

Respondent No. 1 filed an appeal before the Appellate Authority for Industrial and Financial Reconstruction against the order dated 19.11.1993 passed by BIFR. It also filed a writ petition before the High Court of Bombay at its Orangabad Bench, which had no territorial juris-
C diction. The Appellate Authority dismissed the appeal on 28.1.94. Thereafter respondent No. 1 amended the writ petition, which was transferred to Delhi High Court.

The High Court opined that respondent No. 1 was an interested
D person deeply interested in revival of the sick company. It allowed the writ petition and set aside the order dated 19.11.1993 and the other orders passed by BIFR and the Appellate Authority holding that the same were violative of principles of natural justice and fair play. It also held that since the merger scheme entailed huge financial sacrifice at the cost of the central exchanquer, the order of revival of the sick company without notice
E either to the Central Government or the Central Board of Direct Taxes, was bad in law. Aggrieved, the company seeking revival of the sick company by its merger filed Civil appeal No. 3277/95, and the sick company filed Civil Appeal No. 3275/95, challenging the order of the High Court. A share holder of the sick company also filed another appeal (CA No. 3276/95)
F against the order of the Appellate Authority confirming merger of the sick company.

It was contended for the appellant companies in civil Appeals No. 3277/95 and 3275/95 that the conduct of respondent No. 1 would show that it was not an interested party in as much as it never evinced interest after
G rejection of its initial scheme nor did it submit any fresh proposals. In fact it was a trade rival having trade interests and was interested in prolonging revival of the sick company so as to keep it away from competition; that the decision of BIFR was correct inasmuch as the Preamble and the provisions of the Act required that revival of a sick company should be
H done expeditiously in order to avoid financial hardship to workmen and

loss of revenue to State. A

Allowing the appeals filed by the two companies and dismissing the appeal of the share holder, this Court

HELD : 1. Respondent No. 1 is not a person interested. Though B respondent No. 1 was put on notice of the steps taken and the orders passed by the Board of Industrial and Financial Reconstruction, it evinced no interest in revival of the sick company on 'stand alone' basis or any other alternative scheme. Its consistent conduct in not responding to the communications of the operating agency and in not appearing before the Board on different dates do establish that after rejection of its scheme C initially submitted it evinced no interest in the matter. For the initial interest evinced by respondent No. 1 it had acquiesced by its conduct to the orders passed by the Board, and as such only two persons namely, the appellant and Assam Asbestos Ltd. remained in the field and the latter did not challenge the order. The appellant unquestionably was a healthy D company and its capacity to revive the sick company was not in doubt. All through its scheme was for merger of the sick company with it. Therefore, no fault can be found with the order passed by the Board approving the scheme of the operating agency of the merger of the sick company with the appellant for revival of the former. The High Court was clearly in error in holding that though respondent No. 1 stood by, it was not out and still an E interested person and was entitled to be heard before accepting the scheme of the appellant for merger of the sick company with it. [577-D-H, 578-A-B]

2. The legislative intent which becomes clear form ss.17(1), 18(1) and 26 of the Act, is that sick or potentially sick industry should be detected F timely. Proceedings for revival and rehabilitation of the sick or potentially sick company should expeditiously be completed within the time frame and if unavoidable, it should be done within a reasonable time thereafter, say six months. The proceedings are not to be allowed to be used as dilatory tactics to prevent rehabilitation of the sick company or potential sick company, in particular by rival companies. The Board and the Appellate G Authority and the High Court should give effect to the provisions, comply with procedural format and should finalise the proceedings expeditiously within the time frame so that not only the starving workmen who are kept in agonising wait for revival of sick company without wages, be rescued, but also needless accumulation of losses by the company and the loss of H

A revenue to the State is avoided. [576-B-E]

3. Since merger scheme, which was given effect from April 1, 1992, involves tax concessions and sacrifices enumerated in ss. 70, 71 and 72 of the Income-tax Act, 1961 as set off, the Central Government and Central Board of Direct Taxes are necessary and proper parties before the Board
B and the Board of Industrial and Financial Reconstruction should have given notice to the Central Government before finalising merger scheme and approving its draft scheme for merger of the sick industrial company with a healthy company. Admittedly by two letters the appellant had given up the benefits under s.72-A of the Income-tax Act. The counsel for the
C appellant had given an undertaking in the High Court and reiterated before this Court that the merger scheme would be effective from April 1, 1994. Consequently, the benefits of set off under ss.70,71 and 72 of the Income-tax Act have been marginalised and, therefore, no considerable revenue loss would occur to the public exchequer. Any minor benefits
D would be consequential to the offer of merger with the healthy company. In these appeals and before the High Court, they are impleaded as respondents and were heard through a counsel, who has stated that there would be no loss of revenue to the State and benefit under s.43-B of Income-tax Act is bound to be given to a company revived on either basis. In that view, the order passed by the Board and approved by the Appellate Authority
E are not vitiated by any error of law warranting interference. [578-C-F]

4. The appeal filed by the shareholder smacks a *bonafides*. After hearing him and others by proceedings dated December 6, 1991, the Board declared respondent No. 4 to be a sick industrial company. He had not
F challenged the said order by filing any proceedings in the High Court. Proceedings under s.16 were initiated on the basis of the report by Board of Directors of respondent no. 4 and its audit report. He has shown only a facade of interest by filing an appeal as a pretext before the Appellate Authority against the final order passed by the Board by which date
G respondent No. 1 had already initiated writ proceedings. The camouflage of interest is torn apart from his conduct which would indicate that he is only pretender to respondent no.1 who intends to see that respondent no. 4, a trade rival, would not be revived so that he may continue to have market monopoly in the field. Therefore, he is only a stooge in the hands of respondent no. 1 and his appeal deserves to be dismissed with exemplary
H costs of Rs. 25,000. [578-G-H, 579-A-D]

5. The orders of the High Court are set aside and those of the Appellate Authority and the Board are confirmed with costs quantified as Rs. 20,000. All costs to be deposited with the Supreme Court Legal Aid Committee. [579-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3277, 3275, 3276 of 1995.

From the Judgment and Order dated 8.8.94 and 27.9.94 of the Delhi High Court and Appellate Authority for Industrial and Financial Reconstruction, New Delhi in C.W.P. No. 1493/94 and AAIFR/App. No. 49 of 1994.

Dipankar Gupta, Solicitor General, Ashok Mahajan, F.S. Nariman, Dr. S. Ghosh, B.B. Ahuja, Ashok Desai, Soli J. Sorabji, Ajay Bahl, N. Ganpathy, M.A. Rangaswamy, Ms. R. Rangaswamy, Ranbir Chandra, S.N. Terdol, Mr. S. Ganesh R. Karanjawala, P.K. Mullick, Bhaskar Pradhan, Mrs. M. Karnjawala, Kirit Ravol, Ashok Mathur and Mukul Mudgal, Sumant Batra and Ms. Vijay Lakshmi Menon for the appearing parties.

The Judgment of the Court was delivered by

K. RAMASWAMY, J. Leave granted.

These appeals by special leave arise from the judgment and order of the Division Bench of the Delhi High Court made in Civil Writ Petition No. 1493/94 dated August 8, 1994. The appellants are respondent No. 3 and respondent No. 4 - M/s. Flowmore Polyester Ltd., (for short, 'Flowmore') in the writ petition and 3rd appellant - B.P. Mittal is a share-holder. Flowmore was closed from August 1990. Pursuant to a reference made by its Board of Directors under Sub-s.(1) of s.15 of the Sick Industrial Companies (Special Provisions) Act, 1985, (for short, 'SICA') Flowmore was declared a sick industrial company (for short, 'sick company') by the Board for Industrial and Financial Reconstruction (for short, 'BIFR') by order dated December 6, 1991. By an order made under s.17(3) of SICA, the IFCI was appointed as operating agency (for short, 'OA') to prepare a financial package to revive Flowmore with a cut off date as 30.9.92. By clause (3) thereof, OA was directed to examine the feasibility of amalgamation of Flowmore with other "healthy companies or change of managment of the company on stand alone basis" and directed

A to submit its report by July 30, 1992. The OA invited offers from the parties evincing interest in the revival of Flowmore and requested to submit their revival proposals before May 15, 1992. The first appellant (for short, 'SRF'), the first respondent (for short, 'Garware') and Assam Asbestos Limited (for short, 'AAL') submitted their respective schemes. The B schemes submitted on 15.7.92 (after seeking three extensions) by Garware and AAL were on 'Stand Alone' basis while the one submitted by SRF was for "merger" of Flowmore with SRF. Despite the BIFR sending notices to all parties including Garware intimating that they would be heard on their respective schemes on October 5, 1992 and of receipt of such notices by them, Garware did not appear. SRF and AAL being represented through C their agents were heard. On October 5, 1992, BIFR gave further time to SRF and AAL and all other bidders to submit their final offers along with their revival proposals to the OA by November, 7, 1992 so as to enable it to submit its report by October 13, 1992. OA had stated at the hearing that SRF, Garware and AAL had already undertaken techno-economic viability D study of Flowmore prior to the receipt of the proposals and "the consensus at the joint meeting of the banks and the institutions was that only the proposal of M/s SRF Ltd. based on merger of the unit with SRF was acceptable". The BIFR passed an order stating in para 10 therein that the representatives of AAL shall submit by October 15, 1992 to the Bench and E OA with a copy thereof to the banks and the institutions, the detailed proposals for rehabilitation of the company indicating the source of their technology and the expenditure involved therein. The OA was further directed to give detailed right-up on technology proposed to be utilised for manufacture of various products, break-up of processing features, dues etc. All the proposals for revival of the unit if found unviable, the OA was F required to explore the possibility of change of management. The copy of the order even though was sent to Garware, it did not file any revised scheme with OA or review application to the Board as to why its earlier proposal should not have been rejected. By proceedings dated October 19, 1992, BIFR, at the request of AAL, granted extension of time for submit- G ting revised proposals to the OA up to November 7, 1992. It was further stated that "no further extension of time will be granted". Even this order was communicated to the Garware but it did not submit any revised scheme to the OA by November 7, 1992. BIFR sent notice on the report submitted by the OA on November 5, 1992, to all parties including Garware intimat- H ing that it would hear the matter on December 11, 1992 and Annexure -B

is the copy of the notice sent to all. On November 30, 1992, OA submitted its evaluation report as directed by BIFR on the revival proposal submitted by SRF and AAL. On December 3, 1992, Garware by its letter addressed to AAL offered its technical assistance to AAL for revival of Flowmore. On December 8, 1992, the OA submitted its report to BIFR along with minutes of the joint meeting it had held with banks and financial institutions. It would, therefore, be apparent that instead of submitting its revised proposal to the OA or BIFR, Garware had agreed with AAL to assist it for revival of Flowmore. At the time of hearing by BIFR, on December 11, 1992, the AAL had referred to and BIFR had taken note of the letter of Garware dated December 3, 1992, in which Garware had undertaken to assist AAL for the revival of Flowmore on stand alone basis, as is evident from para 3 of the proceedings at page 130 of the paper book. Although time and again, Garware was given repeated opportunities to submit its revised scheme for revival of flowmore on stand along basis, it had chosen to stand out from BIFR and had contracted with AAL to give its technical know-how assistance to AAL for consideration for revival of Flowmore.

On December 11, 1992, BIFR had considered the proposals of SRF and AAL. At this juncture, it may be relevant to note that one ATCO, a U.S. based company, also represented to assist AAL and appeared before the Board which was directed to deposit by December 1992 an amount of one million U.S. dollars in a 'No Lien Account' with the Lead Bank, the State Bank of Saurashtra, and latter was directed to communicate, by December 21, 1992, to the OA with a copy marked to the BIFR whether ATCO had deposite the amount with them or not. AAL and ATCO were directed to submit by December 28, 1992 the revised proposal with the OA marking a copy to BIFR, besides making available any other information required by OA after adopting cut off date of 30th September, 1992. SRF was also directed to submit its modified revival proposal within the aforesaid period. The BIFR thereafter in the final order directed to submit to it by January 18, 1993 a revival report of SRF and AAL by January 18, 1993 alongwith minutes of its joint meeting with Banks and financial institutions. It had also ordered that "no request for extension of time either for deposit of fund or for submission of proposal shall be entertained in any case" and that it would hear the case as soon as OA submitted its report. On January 13, 1993, the OA submitted its report. Again on February 15, 1993, BIFR had sent notice to all parties including Garware intimating that it would hear the matter on March 18, 1993, (Annex-C is

A the notice). On March 18, 1993, Garware did not appear before the BIFR. BIFR noted that two schemes submitted by SRF and AAL were being considered. After hearing the parties, SRF, AAL/ATCO and Flowmore, the order was reserved. By this stage, ATCO had backed out from its earlier proposal and it did not deposit the amount as directed in the earlier proceedings. It would, thus, be clear that after submitting its revival B proposal on stand alone basis, despite repeated directions and notices, Garware neither complied with the directions of the BIFR for modification of its original scheme as per the RBI guidelines nore evinced any further interest in the matter of revival of the sick company on stand alone basis nor did it participate in any of the proceedings before BIFR.

C

By order dated April 23, 1993, BIFR approved the scheme of revival of Flowmore proposed by SRF with the obsevation that "*However, its main and substantial demerit is that it envisages much larger sacrifices form finacial institutions/banks apart from a huge tax-shield of Rs. 10.17 crores at the cost* D *of the Central Exchequer under Section 72-A of the Income-tax Act, which makes the proposal,* in comparison with that of AAL too expensive an alternative for the revival of the sick company. The large stream of gross profits of nearly Rs. 73 crores over a period of first seven years, in the context of which a further gain of Rs. 10.17 crores under Section 72-A would be wholly unwarranted." The SRF in its letter dated March 23, 1993 E and April 16, 1993 filed before BIFR, expressly had given up s.72-A benefits. Therefore, by petiton dated May 4, 1993, SRF sought review of the order dated April 23, 1993 pointing out its undertaking in the aforesaid two letters and requested the Board to modify the order and approve the merger scheme. By order dated November 1993, BIFR had rectified the F mistake.

Before it was done, SRF filed an appeal before the Appellate Authority for Industrial and Financial Reconstruction (for short, 'Appellate Authority'). On May 1993, the Appellate Authority dismissed the G appeal on the ground that order dated April 23, 1993 was only an interim order. By a joint meeting held on June 10, 1993, the banks and financial institutions includng OA agreed for the merger proposal submitted by SRF as "most appropriate" and they recommended to the BIFR accordingly by its report. ATCO also filed an appeal before the Appellate Authority. On H September 7, 1993, the Chief Officer of the ATCO stated that ATCO was

not willing to invest any money in the Flowmore. So the appeal was dismissed. ATCO then filed a writ petition in the High Court of Allahabad which was also dismissed as withdrawn on October 27, 1993.

As stated earlier, by proceedings dated November 1993, BIFR had rectified the mistake it had committed and accepted rehabilitation-cum-merger scheme of SRF and directed circulation and publication of the draft schemes and fixed January 27, 1994 for hearing of the objections or suggestions to the schems. The copy thereof was also sent to Garware - Annex-D. On January 14, 1994 Garware filed the apeal before the Appellate Authority against the order dated November 19, 1993 and on January 21, 1994 and after hearing the arguments of all concerned, order was reserved. Before it pronounced the order, Garware filed writ petition No. 354/94 before the High Court of Bombay at Aurangabad Bench which admittedly has no territorial jurisdiction. The High Court did not pass any interim orders but issued notice returnable on February 8, 1994. On January 27, 1994, Garware appeared before the BIFR and admitted its failure to submit its revival proposal after rejecting its initial proposal. By proceedings dated January 28, 1994, the Appellate Authority dismissed the appeal of the Garware. Subsequently, Garware amended the writ petition which was transferred by this Court to the Delhi High Court.

The Division Bench allowed the writ petition primarily on the ground that Garware is "an interested person" and "deeply interested in the revival of" the Flowmore by "stand alone basis". The High Court set aside the orders of BIFR dated November 19, 1993 made without notice to Garware noting that it was violative of principle of natural justice and fair play. The merger scheme entails with huge financial sacrifice at the cost of the central exchequer without notice either to the Central Government or to the Central Board of Direct Taxes and that, therefore, the order of revival of Flowmore (sick company) with SRF was bad in law. Accordingly, the orders dated November 19, 1993 and January 27, 1994 of BIFR and order dated January 28, 1994 of he Appellate Authority were set aside and remitted the matter to the BIFR for reconsideration and decision according to law.

Shri F.S. Nariman, learned senior counsel for the first appellant, contended that the High Court was wholly unjustified in its finding that Garware is an interesed person and deeply interested in the revival of

A Flowmore on stand alone basis. The BIFR was justified in its conclusion that SRF alone was in the field to revive Flowmore. Garware though was given number of chances to submit its revised scheme on stand alone basis, it did not do it. The revival by merger was not vitiated for failure to give notice to Garware. Garware at no point of time had evinced any interest
B after rejecting its revival scheme by BIFR, nor did it submit fresh proposals. The consistent conduct of Garware would show that Garware is not an interested person. The omission to appear either before BIFR or OA with revised proposal is eloquent and self speaking. Its agreement with AAL would indicate that it was interested only in earning profits. Garware
C lacked *bona-fides* in the revival of its trade rival-Flowmore and intended to keep its trade rival closed for long, as is evident form its conduct of filing the writ petition in Bombay High Court at Aurangabad which has no territorial jurisdiction since Flowmore is admittedly in Uttar Pradesh and no part of the cause of action had arisen within the territorial jurisdiction of the Bombay High Court. Admittedly, it is a trade rival and had trade
D interest. It is interested to prolong the revival of Flowmore so as to keep the company away from the competition. It had acquiesced to the order passed by the BIFR at different dates. The High Court was, therefore, not right in its conclusion that Garware was deeply interested person and is entitled to file its revised scheme on stand alone basis. While conceding
E that notices to the Central Government and the Central Board of Direct Taxes necessarily should have been given by the BIFR, he contended that SRF had expressly given up before BIFR the benefits of s.72-A. During the course of the hearing in the High Court, his counter-part, Shri Harish Salve, had undertaken and SRF still stood-by that the revival scheme would
F be operative from April 1, 1994. Thereby, other benefits of set off under s.70, 71 and 72 of the Income-tax Act would be marginalised. Therefore, there would be no revenue sacrifices to the State. The benefit of rebate on interest on the outstanding loans paid during relevant accounting year to the banks and financial institutions would be available either to Flowmore
G on stand along basis or SRF on merger basis since it would arise only after the rehabilitating the company. Therefore, there is no revenue loss or revenue sacrifice to the State. The preamble and the provisions of SICA would indicate that revival of the company should be done expeditiously. The proceedings before BIFR or Appellate Authority or before the Court under Article 226 are meant to be disposed of expeditiously and should
H

not be procrastinated. The delay in revival would entail the workmen with great finanicial hardship and loss of revenue to the State. Therefore, it was not meant to be used by trade rival to prolong the rehabilitation. The BIFR without unduly prolonging the matter, should enquire and complete the proceeding keeping always the urgency at the back of its mind.

Shri Desai, learned senior counsel for Garware, contended that under SICA the BIFR has to consider either stand alone scheme or merger scheme, whichever is more feasible to revive sick company, when change of management was found to be not sufficient to revive Flowmore (sick company). Since AAL had submitted its revised proposal on stand alone basis, Garware had agreed to assist AAL to rehabilitate Flowmore on stand alone basis when BIFR initially ordered SRF to revive Flowmore on stand alone basis it had no grievance but when it reviewed the order and directed revival by merger of Flowmore with SRF, notice should have been given by BIFR to the Garware and it would have been heard before passing the impugned order dated January 23, 1994. The Appellate Authority committed equally the same manifest error in that behalf. He also contended that when a huge financial sacrifice was to be made and an additional benefits in the region of Rs. 70 crores with Rs. 10.17 crores would accrue to SRF under s.70 to s.72-A of the Income tax Act, notices to the Central Government as well as Central Board of Direct Taxes were mandatory. An order of revival by merger without notice to them is per-se illegal.

Having given our anxious consideration to the respective contentions, we are of the view that the contentions of Sri Nariman merit acceptance. The first question for consideration is whether the proceedings before the BIFR should be expeditiously disposed of? The preamble of SICA reads thus:-

> "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."

A Under s.17(1), the Board, after making inquiry, has to decide, *as soon as may be* by order in writing, whether it is practicable for the company to make its networth exceed the accumulated losses within a reasonable time. Similarly, s.18(1) envisages for preparations of sanction of schemes. The Board while making the order under s.17, the operating agency shall prepare, *as expeditiously as possible and ordinarily within a period of ninety days from the date of such order,* a scheme as per the particulars enumerated thereunder. Section 26 of the Act has expressly divested the civil court of its jurisdiction over the orders passed by the Board or the Appellate Authority or the proposals made under the Act. The legislative intent which, therefore, becomes clear is that sick or potentially sick industry should be detected timely. Proceedings for revival and rehabilitation of the sick or potentially sick company should expeditiously be completed within the time frame and if unavoidable, it should be done within a reasonable time thereafter, say six months. The proceedings are not to be allowed to be used as dilatory tactics to prevent rehabilitation of the sick company or potential sick company, in particular by rival companies. The Board and the Appellate Authority and the High Court should give effect to the provisions, comply with procedural format, should finalise the proceedings expeditiously within the time frame so that not only the starving workmen who are kept in agonising wait for revival of sick company without wages, be rescued, but also needless accumulation of losses by the company and the loss of revenue to the State is avoided.

The question then is whether Garware is an interested person? The SICA indicates that the Board has to devise a scheme for rehabilitation of sick industry with diverse steps. Section 16 read with regulations 21 to 25 provides the procedure for inquiry by BIFR to determine whether the industry became a sick company. On recording its finding under s.17(1) read with regulation 26 that it became a sick company, the Board has to decide whether it is practicable to make the networth of the sick company, exceed the accumulated losses within a reasonable time as envisaged in s.17(1). If the BIFR decides that it is not so practicable, then next step would be whether it is necessary or expedient in the pubic interest to adopt any of the measures specified in s.18 and to direct any operating agency to prepare a scheme as provided in sub-s.(3) of s.18 as per the provisions and R.B.I. guidelines and the Board has been given power to review or modify such order after the OA makes submission in that behalf as envisaged under s.18(1) and (2) of SICA. After its examination and hearing all

concerned as envisaged under s.18(3) and regulations 27 to 31, the Board would finalise it and direct sanctioning the scheme and specify the date when the sanctioned scheme shall come into force as enjoined under s.18(4) of the Act. The regulations provide the procedure in that behalf. It is seen, as held earlier, that inquiry shall be completed and concluded as expeditiously as possible to revise the sick company or potential sick company.

The question, therefore, is whether the procedure adopted by the BIFR is vitiated by any error of law and Garware is an interested person ... reviving Flowmore. It is seen that Garware and AAL had offered their schemes on stand alone basis. All through SRF had submitted its scheme of rehabilitation by merger of Flowmore with SRF. The narration of facts given earlier obviate the need to reiterate them. However make it obvious that despite notices and opportunities given to Garware, time and again, it did not chose to submit its revised schem as directed by BIFR before OA. Its consistent conduct in not appearing before the Board on different dates, do establish that, after rejection of its scheme initially submitted, Garware evinced no interest in the matter. On the other hand, it had entered with an agreement with AAL to extend its technical know-how assisance for revival of flowmore for consideration even though at every stage, the proceedings were communicated to Garware. Therefore, Garware was put on notice of the steps taken and the ordes passed by the Board. Yet Garware evinced no interest in the revival of Flowmore on stand alone basis or any other alternative scheme. Thereby it is not a person interested. For its initial interest evinced by Garware, it had acquiesced by its conduct in the orders passed by the Board. It is true that in the order dated April 23, 1993, the Board declined to approve merger scheme of SRF on the premise that SRF would gain undue advantge of the tax benefits under s.72-A etc.etc. and stand alone basis proposal was ordered to be published. But when the misake it had committed in the matter was brought to its notice, the Board reviewed its order on November 19, 1993, no doubt without hearing any party and accepted the scheme for merger of Flowmore with SRF and direction in that behalf was accordingly issued to the OA for publication of scheme as draft scheme. Since Garware had acquiesced in the order passed and had not evinced any interest, only two persons that remained in the field were AAL and SRF. AAL also did not challenge the order. SRF unquestionably a 'healthy' company and its capacity to revise Flowmore was not in doubt. All through its scheme was

A for merger of Flowmore with SRF. Therefore, no fault can be found with the orders passed by the Board approving the scheme of the OA of the merger of Flowmore with SRF for revival of Flowmore. The High Court was clearly in error in holding that though Garware stood by, it was not out and still an interested person and was entitled to be heard before accepting the scheme of SRF for merger of Flowmore with SRF.
B

It is true that no notice was issued by the Board either to the Central Government or to the Central Board of Direct Taxes . The Central Government shall be required to pass an order under s.72-A of tax benefits and that therefore it is entitled to be heard. Since merger scheme, which
C was given effect from April 1, 1992, involves tax concessions and sacrifices enumerated in ss.70, 71 and 72 as set off. So, there would be great revenue losses. Therefore, Central Government and Central Board of Direct Taxes are necessary and proper parties before the Board. The Board before finalising merger scheme and approving its draft scheme for merger of the sick industrial company, with a healthy company, notice should be given to
D the Central Government as well as to the Central Board of Direct Taxes. Admittedly by two letters SRF had given up the benefits under s.72-A. The counsel for the SRF had given an undertaking in the High Court and reiterated before this Court that the merger scheme would be effective from April 1, 1994. Consequently, the benefits of set off under ss.70, 71
E and 72 have been marginalised and, therefore, no considerable revenue loss would occur to the public exchequer. Any minor benefits would be consequential to the offer of merger with the healthy company. In these appeals and before the High Court, they are impleaded as respondents and were heard through Sri. Ahuja, learned senior counsel, who has stated that there
F would be no loss of revenue to the State and benefit under s. 43-B of Income Tax Act is bound to be given to a company revived on either basis. In that view, the order passed by the Board and approved by the Appellate Authority are not vitiated by any error of law warranting interference.

The appeal filed by the shareholder smacks a *bona-fides*. After
G hearing him and others by proceedings dated December 6, 1991, the Board declared "Flowmore to be a sick industrial company". As per the audited report for the year ending 31.3.91, the accumulated losses stood at Rs. 1131.45 lakhs against the networth of Rs. 764.80 lakhs comprising of paid-up capital only, the company has suffered cash loss of Rs. 451.72 lakhs
H and Rs. 626.60 lakhs for the years ending 31.3.90 and 31.3.91, respectively.

As on 31.3.91, the company owned Rs. 2699.10 lakhs to the financial institutions and the banks besides other contingent liabilities. According to Section 3(o), "sick industrial company" means an industrial company being a company registered for not less than five years which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth. He had not challenged the order of BIFR declaring Flowmore a sick company by filing and proceedings in the High Court. Proceedings under s.16 were initiated on the basis of the report by Board of Directors of Flowmore and its audit report. On the other hand, he stood by and has shown only a facade of interest by filing appeal as a pretext before the Appellate Authority against the final order passed by the Board by which date Garware had already initiated writ proceedings. The camouflage of interest is torn apart from his conduct which would indicate that he is only pretender to Garware who intends to see that Flowmore, a trade rival, would not be revived so that he may continue to have market monopoly in the field. Therefore, he is only a stooge in the hands of Garware and his special leave application directly filed under Article 136 against the orders of the Appellate Authority deserves to be dismissed with exemplary costs of Rs. 25,000.

The appeals are accordingly allowed. The orders of the High Court are set aside and those of the Appellate Authority and the Board are confirmed with costs quantified as Rs. 20,000. All costs may be deposited with the Supreme Court Legal Aid Committee within four weeks and in default, the SCLA Committee would be entitled to recover the same as a decree in its favour.

R.P. Appeals allowed.