

**2026 LiveLaw (SC) 373**

**IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION**

**RAJESH BINDAL; J., VIJAY BISHNOI; J.**

**WRIT PETITION (CIVIL) NO. 392 OF 2015; April 15, 2026**

**BHARTIYA MAZDOOR SANGH, U.P. & ANR. *versus* STATE OF U.P. & OTHERS**

**Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) – Repeal and Abatement of Proceedings – Insolvency and Bankruptcy Code, 2016 (IBC) – Section 252 and Eighth Schedule – Noted that after the repeal of SICA on 01.12.2016, any appeal pending before the AAIFR stood abated - Companies were granted a 180-day window to approach the NCLT under the IBC - Where Jaipur Udyog Ltd. (JUL) and Gannon Dunkerley & Co. Ltd. (GDCL) failed to file any reference before the NCLT within the prescribed period, the appeal pending before the AAIFR abated, and the BIFR's recommendation for winding up of the company stood revived. [Paras 173–174]**

**Constitutional Law – Article 142 – Scope of Extraordinary Powers – Condonation of Illegalities – Extraordinary powers under Article 142 cannot be invoked to condone significant illegalities committed by a party, such as the unauthorized sale of assets of a sick company and its subsidiary during the pendency of litigation - held it was not a case for "ironing of creases" but one involving multiple illegalities that could not be regularized. [Paras 166–176]**

**Administrative Law – Doctrine of Substantive Legitimate Expectation – Limitation – Legitimate expectation is not a legal right but an expectation based on a promise or practice of a public authority - It cannot override illegalities or serve as an independent basis for judicial review unless the denial leads to a violation of Article 14 - No legitimate expectation arose in favor of GDCL to claim ownership of JUL's assets simply because it cleared company debts, especially given its failure to revive the unit over two decades. [Paras 150–160]**

**Company Law – Subsidiary Companies – Distinct Legal Entity – Rights of Shareholders – While a subsidiary is a separate legal entity, when a holding company is being wound up due to financial distress, the valuation and shareholding of its 100% owned subsidiary (JAIL) must be factored into the rehabilitation or winding-up process - Clandestine changes to the shareholding pattern of a subsidiary by the management company without legal sanction are illegal - Physical revival of a unit closed for nearly four decades is impossible as employees have reached the age of superannuation. Heirs of deceased or superannuated employees do not have a vested right to employment in a defunct unit but maintain a right to receive unpaid wages and statutory dues. [Relied on *Sivanandan C.T. and Others vs. High Court of Kerala and Others* (2024) 3 SCC 799; *Vodafone International Holdings BV v. Union of India* (2012) 6 SCC 613; *Cement Workers Karamchari Sangh V. Jaipur Udyog Ltd.* (2008) 4 SCC 701; *BRS Ventures Investments Ltd. v. SREI Infrastructure Finance Ltd.* (2025) 1 SCC 456; Paras 112, 136, 155- 177]**

**With Contempt Petition (Civil) Diary No.61491 of 2025**

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## **BRIEF FACTS**

1. The case in hand has a checkered history.
2. A writ petition was filed in this Court praying for the following reliefs:
  - (a) For a writ of mandamus or order or direction to the Respondents to forthwith pay the wages and dues of the workmen of the M/s Jaipur Udyog Ltd. and its units including M/s Kanpur Jute Udyog.
  - (b) For a writ of mandamus or order or direction to the Respondents to forthwith implement the Award dated 05.12.2008 passed by Justice N.N. Mathur (Retd.) in favour of the workmen.
  - (c) For a writ of mandamus or order or direction to declare the date on which the Company was declared sick under SICA as the cut-off date for the purpose of implementation of award passed by Justice N.N. Mathur (Retd.).
  - (d) For a writ of mandamus or order or direction to BIFR to sell the properties of the Company and recover the dues payable to the workmen and disburse the same to the workmen.
  - (e) For an order or direction to pay costs of this petition to the petitioners.
  - (f) For any other order or direction that this Hon'ble Court may deem fit and appropriate in the interest of justice.
3. On 24.08.2016 a statement had been made at the Bar that there are some other unions that were not represented in the present writ petition. This Court, therefore, directed that notice be issued to all such unions, the names/details of which would be furnished by respondent nos.5 and 6. Vide order dated 25.08.2017, the respondent Nos.5 and 6 furnished list of nine trade Unions, which are listed hereinbelow and treated as Noticee Nos.1 to 9:
  - (1) Bhartiya Cement Majdoor Sangh, Shaka-Phallodi Quarry, Rajasthan

- (2) Jaipur Udyog Officer Union, Sawai Madhopur, Rajasthan
- (3) Cement Work Karamchari Sangh, Sawai Madhopur, Rajasthan
- (4) Sarvadaliya Samrik Sangharsh Samiti, Sawai Madhopur, Rajasthan
- (5) Kanpur Jute Udyog Trade Union Sanyukta Morcha, Kanpur, U.P.
- (6) Bhartiya Mazdoor Sangh, Kanpur, U.P.
- (7) Bhartiya Mazdur Sangh, Sawai Madhopur, Rajasthan
- (8) The Jaipur Udyog Works Karamchari Sangh, Sawai Madhopur, Rajasthan
- (9) Jaipur Udyog Staff Association, Sawai Madhopur, Rajasthan

3.1 Contempt Petition (Civil) Diary No.61491 of 2025 has been filed raising a plea of violation of orders passed by this Court by Gannon Dunkerley & Co. Ltd.<sup>1</sup> and for initiating proceedings for contempt against the Director of Jaipur Udyog Ltd.<sup>2</sup> and Managing Director of GDCL.

## ARGUMENTS

### ARGUMENTS ON BEHALF OF DIFFERENT LABOUR UNIONS

4. Taking us through the historical background of the case in hand, Mr. Nikhil Goel, learned senior counsel for the Noticee No. 6/Bhartiya Mazdoor Sangh (petitioner No.1 herein), submitted that JUL had set up a cement factory at Sawai Madhopur, Rajasthan. In the year 1967, it acquired a jute mill at Kanpur. JUL was declared a 'sick industry' vide order dated 17.09.1987 passed by BIFR<sup>3</sup> under Section 3(1)(o) of the Sick Industrial Companies (Special Provisions) Act, 1985<sup>4</sup>.

5. On 21.04.1992, a rehabilitation scheme submitted by GDCL was sanctioned by BIFR. JUL was to be reconstituted as a going concern under the scheme. *Inter alia*, sale of the assets was permitted only to the extent those were surplus or some scrap. The sale proceeds were to be utilized for renovation of the plant. Otherwise, GDCL was to infuse its own funds. There were a lot of waivers/concessions given by the banks and other financial institutions. In addition to that, there were other conditions also laid down in the scheme.

6. On 19.09.1994, it was found by the BIFR that the proposal submitted by GDCL could not be implemented. It called for fresh proposals. With the aforesaid order, the 1992 scheme, sanctioned by the BIFR, had gone into eclipse as BIFR passed an order calling for fresh proposals. This order was challenged by GDCL before AAIFR<sup>5</sup> by filing Appeal No.179/1994.

7. Referring to the conduct of the GDCL, it was submitted that despite GDCL having no right in the management of the JUL, it had changed the shareholding pattern of M/s Jai Agro Industries Ltd.<sup>6</sup> which otherwise was a subsidiary of JUL. It was without any permission from the BIFR. Its shareholding pattern was changed by issuing fresh shares to the sister concerns of GDCL. Strange enough that despite JAIL being a subsidiary of JUL, it was not even part of the rehabilitation scheme.

8. Vide order dated 24.11.2000, BIFR directed JUL to be wound up, finding that the company was declared sick about 13 years back on 17.09.1987. Even otherwise, the order of winding up of JUL was found to be in public interest.

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<sup>1</sup> M/s Gannon Dunkerley & Co. Ltd. (For short, 'GDCL')

<sup>2</sup> Jaipur Udyog Ltd. (for short, 'JUL')

<sup>3</sup> Board for Industrial and Financial Reconstruction (For short, 'BIFR')

<sup>4</sup> The Sick Industrial Companies (Special Provisions) Act, 1985 (For short, 'SICA')

<sup>5</sup> Appellate Authority for Industrial and Financial Reconstruction (for short, 'AAIFR')

<sup>6</sup> M/s Jai Agro Industries Ltd. (for short, 'JAIL')

9. In appeal<sup>7</sup> filed by JUL challenging the aforesaid order passed by the BIFR, initially AAIFR granted stay, however, finally the appeal was dismissed on 06.09.2001. The order specifically recorded that GDCL had refused to argue the appeal on merits. It was further recorded in the order that the total liability of JUL was exceeding ₹100 crores and there was no possibility of its rehabilitation.
10. In a writ petition<sup>8</sup> filed by the JUL before the Rajasthan High Court, vide order dated 02.08.2004, the High Court set aside the order dated 06.09.2001 passed by the AAIFR and the matter was remitted back for fresh consideration.
11. Challenging the aforesaid order, one of the labour union being Cement Works Karamchari Sangh filed SLP(C) No.4088 of 2005 before this Court, *inter-alia*, claiming that the dues of the workmen still remained unpaid. Pending the aforesaid SLP before this Court, two of the unions entered into a settlement with JUL, which at the relevant point of time was being managed by GDCL, though unauthorizedly. On 04.12.2006, this Court permitted the settlement without prejudice to the rights and contentions of the parties.
12. On 10.04.2007, this Court appointed Justice N.N. Mathur, a Retired Judge of Rajasthan High Court, to calculate dues of different categories of workmen.
13. On 24.03.2008, the aforesaid petition was converted into Civil Appeal No.2076 of 2008 and was disposed of with two sets of directions.<sup>9</sup>
- 13.1 Firstly, Appeal No.22 of 2001 was restored to AAIFR on conditions of deposit of ₹10 crores. Liberty was given to the AAIFR to consider a fresh scheme at the instance of GDCL and also the workmen.
- 13.2 Secondly, the status of appointment of Justice N.N. Mathur (Retd.) was converted into an Arbitrator under Section 10-B added in the Industrial Disputes Act, 1947, vide local amendment made in the State of Rajasthan vide Act No.34 of 1958, w.e.f. 01.07.1960.
14. It was submitted that, up to this stage, the order passed by BIFR recommending winding up of JUL was existing and further GDCL did not have any locus, as initial order passed in its favour for rehabilitation of JUL had lost significance with the passing of winding up order on 24.11.2000.
15. On 06.06.2008, on pre-deposit as directed by this Court, the appeal filed by GDCL/JUL before AAIFR was restored. Fresh schemes were submitted by the workers as well as by GDCL. At that stage M/s Shree Cements Ltd.<sup>10</sup> filed application (M.A.No.185 of 2008 in Appeal No.22 of 2001) for impleadment before AAIFR, seeking permission to submit an independent scheme for rehabilitation. The application was dismissed by the AAIFR vide order dated 17.07.2008.
16. Vide order dated 29.08.2008, passed in W.P.(C) No.5878 of 2008 Delhi High Court directed AAIFR to consider the scheme submitted by SCL. The same was challenged by GDCL before this Court by filing S.L.P.(C) No.22719 of 2008 (C.A. No.2937 of 2012). Finally, the order passed by Delhi High Court was set aside by this Court on 24.08.2016.
17. On 05.12.2008, Justice N.N. Mathur (Retd.) passed his award thereby deciding the principles on the basis of which the dues of the workman were to be calculated. It was further directed therein that AAIFR/BIFR will decide the modalities.

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<sup>7</sup> Appeal No.22/2001

<sup>8</sup> S.B. Civil Writ Petition No. 4380 of 2001

<sup>9</sup> Cement Workers Karamchari Sangh V. Jaipur Udyog Ltd., 2008 INSC 390; (2008)4 SCC 701

<sup>10</sup> M/s. Shree Cements Ltd. (for short, 'SCL')

**18.** As the workmen had not been paid for more than last two decades, the present writ petition was filed in this Court seeking implementation of the award of Justice N.N. Mathur (Retd.) with further directions.

**19.** Taking us through the facts regarding the locus of GDCL to deal with the properties of JUL, it was submitted that on 01.12.2016 SICA was repealed. As a result, AAIFR/BIFR were abolished. All proceedings pending before them stood abated. At that stage, the appeal filed by JUL was pending before the AAIFR. At this very stage, the Insolvency and Bankruptcy Code, 2016<sup>11</sup> was enacted. An opportunity was afforded to those companies, whose proceedings were pending before AAIFR or BIFR to move appropriate application before NCLT<sup>12</sup> within 180 days. The fact remains that in the case in hand JUL did not prefer any application in terms of provisions of IBC. As a consequence, the order passed by the BIFR recommending winding up of JUL, attained finality subject to its approval by the High Court.

**20.** Again, referring to the conduct of GDCL, learned senior counsel submitted that despite no right vested in it, GDCL, transferred the entire shareholding of the JUL to its associate companies in the year 2017-18. This is reflected in its Annual Returns. On objections raised by various lenders, GDCL did not have any choice but to revert back to the old shareholding pattern.

**21.** As BIFR only had competence to recommend winding up of a company and it was subject to approval by the High Court. The matter was registered with Rajasthan High Court as Company Petition No.21 of 2001. As per the records of the High Court, the matter was last taken up on 04.08.2020, wherein the High Court adjourned the same *sine die*, since the matter between the parties was pending before this Court.

**22.** During the pendency of the present writ petition before this Court, a settlement was arrived at between the workmen of Kanpur Jute Unit along with JUL and GDCL. In terms of that settlement, the workmen were to receive ₹48.74 crores towards the claim of 1334 workmen out of a total of 3535 workers. The amount was to be paid by GDCL. It is despite the fact that GDCL did not have any right, either to settle on behalf of JUL or offer to pay wages to the workmen. However, nearly 7 years later, till date, even that amount has not been paid. Though it is claimed by GDCL that amount was deposited with this Court, however, it was submitted that ₹20 crores out of that was by selling the scrap of JUL. Hence, the amount was not deposited out of its own funds by GDCL. It was further submitted that in the memorandum of settlement, it was wrongly recorded that the management of the JUL was transferred in favour of GDCL as per the rehabilitation scheme sanctioned by BIFR on 21.04.1992. It was further referred to, from the aforesaid settlement that, neither any timeline was mentioned for payment nor the sources from which funds will be arranged to pay to the workmen. In fact, it was an eye-wash. Kanpur Jute Unit was sold to fulfil the demand of the workmen, however, without permission of the court.

**23.** Vide order dated 29.07.2019 this Court accepted the settlement dated 26.02.2019 entered into between the Union of Kanpur Jute Unit and JUL. However, the manner in which the settlement was recorded and also the locus of GDCL to enter into that settlement needs to be adjudicated upon. GDCL was treating itself as the self-styled owner of JUL.

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<sup>11</sup> Insolvency and Bankruptcy Code, 2016 (for short, 'IBC')

<sup>12</sup> National Company Law Tribunal (for short, 'NCLT')

**24.** This Court vide order dated 21.08.2018 appointed Justice Aftab Alam (Retd.), a former judge of this Court, as Mediator to facilitate quantification of the dues of workmen after fixation of the cutoff date. Justice Aftab Alam (Retd.) had initially submitted a report dated 31.03.2019 laying down the principles for calculation of dues of workers of Sawai Madhopur unit and Phalodi Quarry.

24.1 On 31.01.2021, Justice Aftab Alam (Retd.) submitted his final report computing outstanding amount due to the workers at the Sawai Madhopur plant to be around ₹115 crores plus interest @5% per annum from the cut-off date fixed, i.e. 31.12.2008. It was in addition to the amount of provident fund to be received from the Employees Provident Fund Organization. The report categorically recorded the stand of GDCL before the Mediator that if this amount is directed to be paid it would suffer liquidation proceedings as GDCL was in dire financial stress as its accounts had been declared Non-Performing Assets (NPA).

**25.** In fact, the accounts of GDCL were subsequently declared NPA as is evident from its Balance Sheet for the year 2022-23.

**26.** On 29.08.2023, the Company acknowledged liability of ₹98 crores towards wages, gratuity and leave encashment of the workers of the Rajasthan Unit till the cutoff date of 31.12.2008, though the petitioner-Union contested this figure claiming the amount due to be around ₹115 crores plus interest and Provident Fund. Regarding the Kanpur Unit Settlement approved on 29.07.2019, only 512 out of 1334 employees have been paid from the total ₹48 crores due, leaving approximately ₹22 crores unpaid as 521 employees remained unidentified.

**27.** As GDCL was not able to clear the dues of the workmen of Cement Unit they arranged for an investor who is ready to revive the company and also pay dues to the workmen. I.A.No.170433/2024 was filed with the proposed scheme by M/s Frost Realty LLP.

**28.** On 23.08.2024, this Court was informed that GDCL had sold the properties of JUL without seeking permission of the Court. These alleged sales included three Sale Deeds executed by JUL and JAIL, involving properties in Kanpur, Sawai Madhopur, and Jodhpur. The sales included a ₹51 Crore transaction for sale of Kanpur Jute Unit (June 2024), a ₹21 Crore transaction (April 2021), and a ₹2.84 Crore transaction (September 2022) for sale of properties of JAIL. All sale transactions were undervalued. The sales were made by GDCL to overcome its financial difficulties. This Court restrained GDCL and JUL from further alienating any assets, except scrap, which was permitted by this Court. Further direction was issued for deposit of ₹51 crore from the Kanpur sale proceeds with the Registry within two weeks. The respondents at that time claimed the other properties belonged to JAIL, which was no longer a subsidiary of JUL. However, they were unable to clarify its shareholding status at the time the sales were executed. This court, therefore, directed GDCL to file affidavit disclosing the status of the shareholding pattern of JAIL as on 01.04.1992.

**29.** In compliance to the order dated 19.09.2024, GDCL filed affidavit dated 23.08.2024 in this Court. It is evident therefrom that the shareholding pattern of JAIL was changed with issuance of fresh shares to the associates of GDCL. This was done without any right available with GDCL.

**30.** It was further submitted that there is no final adjudication of rights in favour of GDCL and all proceedings are taking place in terms of the orders passed by this Court. All the settlements took place during the pendency of the present petition. At this stage, the

revival of the unit is impossible for the reason that the land pertaining to the mining area for Sawai Madhopur Cement Unit now falls in notified forest area.

31. In the aforesaid factual matrix and summing up the arguments, learned senior counsel submitted that while recommending winding up vide order dated 24.11.2000 BIFR recalled its 1992 scheme. Thereafter, GDCL did not have any authority to deal with the properties of JUL. No doubt, appeal against the aforesaid order was pending before AAIFR, however, with the repeal of SICA the appeal got abated. There was no fresh filing within the time permitted before the National Company Law Tribunal (NCLT), under the IBC. The position, as it stands today, is that, on recommendation made by BIFR for winding up of JUL, the Company Petition No.21 of 2001, is still pending before the High Court of Judicature at Rajasthan, for its approval.

32. If it comes to sale of assets, only the best available scheme should be examined by this Court to take care of the dues of the workmen and also for their welfare. As on today there are multiple applications pending before this Court proposing different schemes for rehabilitation of the unit or payment to the workmen, etc. The Scheme submitted by M/s Frost Reality is the best.

### **ARGUMENTS ON BEHALF OF NOTICEE NO.3**

33. Mr. Colin Gonsalves, learned senior counsel appearing for Noticee No.3 (Cement Work Karamchari Sangh) submitted that the present writ petition was filed for payment of dues to the workmen. Substantial amount stands paid. If the balance amount is cleared in terms of the award by Justice Aftab Alam (Retd.), they do not have any concern with the company. All false promises are being made by different applicants. If the prayer in the writ petition is seen, it is for payment of wages only.

34. The submission is that as far as Kanpur Jute Unit is concerned, the settlement was for 1334 workmen. Out of which 938 have been paid and the balance remain. The amount due to them, to the tune of ₹8.75 crores is lying deposited in this Court.

35. As far as Sawai Madhopur Unit is concerned, there were 3585 workers, out of which he represents a group of about 2000. Justice Aftab Alam's (Retd.) report calculated ₹115 crores as the amount due to them, plus interest and the provident fund. ₹146 crores are lying deposited in this Court. Another sum of ₹150 crores will be required to clear the arrears of wages, provident fund plus interest thereon, for which verification is in progress. JUL presently has assets of about ₹2000 crores. Adequate money being available, the workers are interested only in settlement of their dues as the amount was determined long back as the unit is lying closed since 1987. They should be paid some interest on account of delayed payment.

### **ARGUMENTS ON BEHALF OF NOTICEE NOS. 1, 2, 4, 6 to 9**

36. Mr. Gopal Sahankarnarayana, learned senior counsel appearing for Noticee Nos.1, 2, 4, 6 to 9, submitted that the workmen of Sawai Madhopur Unit have not been paid anything till date. GDCL could not take control of JUL as there is no effective order passed in its favour by any competent authority or court. It was merely acting as a trustee, but even that trust has been shattered. There was no authority vested in GDCL either to change the shareholding pattern of JUL or its subsidiary, or to sell its assets but GDCL had blatantly misused the trust posed in it.

37. Firstly, it had changed the shareholding pattern of JAIL, a subsidiary of JUL, by diluting shareholding of JUL in JAIL from 99.9% to 33%. It was done by issuance of new shares to its sister concerns. He further referred to the judgment of this Court in **Cement**

**Workers Karamchari Sangh's case (supra)** to submit that while noticing certain facts therein, one more opportunity was granted to GDCL as well as the workers including interveners to submit fresh rehabilitation scheme before AAIFR, subject to deposit of ₹10 crores.

**38.** Without clearing dues of the workmen and seeking permission of this Court, in 2017 GDCL transferred the entire shareholding of JUL to its associates. However, when it was pointed out, the same had to be reversed. This shows the conduct of GDCL. He further referred to the report dated 31.01.2021 submitted by Justice Aftab Alam (Retd.) wherein it is categorically recorded that GDCL refrained from mediation process on the plea that it does not have the ability to pay the employees their dues and if the computation is too high, it may push the company to liquidation.

**39.** The sale of assets of JAIL was for a consideration lower than the market price. In fact, in a clandestine manner, GDCL wanted to square off its own liabilities by selling the assets of JUL without any input from its own sources. Moreover, all sale transactions were made without permission of the Court.

**40.** Another glaring fact pointed out by Mr. Sankarnarayana, learned senior counsel, was that in the sale deed dated 14.09.2022 vide which agricultural land of JAIL was sold for a sum of ₹2.84 crores witness is Shankar Lal Meena, who is the authorized signatory of Noticee No. 3. The connivance of GDCL with the workers of Noticee No. 3 is thus evident.

**41.** It was further submitted that the scheme initially approved, was for revival of the unit, however, nothing was done. The assets of the Kanpur Jute Unit were sold by GDCL. In the garb of sale of scrap, even the machinery of Sawai Madhopur Unit was sold. In fact, it is from such sale proceeds only that the dues are being paid to the workmen.

**42.** As the dues of the workmen have not been paid despite decades having gone by, they have got investor to take over the unit and square off the dues of the workers. In his opinion, the offer by M/s Frost Reality LLP seems to be best, which has offered payment and in addition a 50 sq. yard plot at Sawai Madhopur besides ₹1,00,000/- each to Kanpur Jute Unit workers.

## **ARGUMENTS BY APPLICANTS**

### **I.A. No. 174033/2024**

**43.** Mr. Krishnan Venugopal, learned senior counsel appearing for M/s Frost Realty, a Limited Liability Partnership (LLP), submitted that his client has given a proposal for rehabilitation of the unit in association with Bhartiya Cement Mazdoor Sangh, who is Noticee No.1 before this Court. Vide order dated 29.10.2025 passed by this Court, M/s Frost Realty LLP was allowed to intervene. While referring to the judgment of this Court in **Cement Workers Karamchari Sangh's case (supra)**, it was submitted that this Court, while remanding the appeal back to AAIFR, allowed any of the parties therein to submit proposals for rehabilitation. The aforesaid order was further clarified in a subsequent order passed by this Court on 24.08.2016 wherein it was held that scheme could be filed only by the parties before this Court.

**44.** It was further submitted that vide order dated 09.08.2024, this Court had directed M/s Frost Realty LLP to deposit a sum of ₹25 crores to show his bona fide. The needful was done.

**45.** Further argument is that Bhartiya Cement Mazdoor Sangh represents about 3500 workmen. Its rehabilitation scheme was endorsed by six other noticees. Memorandum of

Understanding entered into on 06.08.2024 between (1) M/s Frost Realty LLP and Bhartiya Cement Mazdoor Sangh (Noticee No.1) and (2) M/s Frost Realty LLP and (i) Sarvadaliya Shramik Sangharsh Samiti Cement Factory (ii) Jaipur Udyog Officer Union (iii) Bhartiya Mazdoor Sangh, Kanpur (iv) Bhartiya Mazdur Sangh, Swaimadipur (v) The Jaipur Udyog Works Karamchari Sangh (vi) Jaipur Udyog Staff Association has also been referred to.

46. He has also referred to a list of the properties sold by GDCL without permission from this Court. These properties belong to JAIL, Kanpur Jute Unit of JUL and the entire machinery of the cement plant at Sawai Madhopur in the garb of scrap. In fact, the entire contribution by GDCL either for deposit of any amount before this Court or payment of dues to the workmen, was from the sale proceeds of the assets of JUL for which GDCL did not have any right.

47. Further, the contention raised is that GDCL was, at the most, custodian of the properties of JUL. The same could not be sold by it. Vide order dated 12.07.2018, Rajasthan High Court had even appointed the provisional liquidator in pursuance to the recommendations made by BIFR for winding up of JUL, in which only final order was to follow. However, vide subsequent order dated 28.05.2019, in an application filed by GDCL, operation of the earlier order passed by the High Court on 12.07.2018, was stayed.

48. The argument is that, either the Court or AAIFR/BIFR was *de jure* controlling JUL, which was under liquidation. However, the assets were under physical control of GDCL, without there being any right vested in it. Any property sold by GDCL is void and has to be declared so, without even issuing notice to the subsequent buyers. The buyers cannot be allowed to raise the plea of bona fide purchaser as they were required to do due diligence. In support of his argument reliance was placed upon the judgments of this Court in **Kanhaiyalal v. Dr. D. R. Banaji & Ors.**,<sup>13</sup> **NGEF Ltd. vs. Chandra Developers (P) Ltd.**<sup>14</sup> and **Raheja Universal Limited Vs. NRC Limited and Ors.**<sup>15</sup>

49. He further referred to the scheme prepared by M/s Frost Realty LLP. In terms of which subject to certain conditions, namely, setting aside of sale of Kanpur Jute Unit, others properties of JUL and JAIL, M/s Frost Realty LLP will pay ₹233.69 crores, due to the workmen, allot plots measuring 50 sq. yards at Sawai Madhopur to all the workmen, refund the entire money, if any, deposited by GDCL from its own resources besides other small benefits for the workmen.

50. On a query by the Court, as to the properties owned by JUL and JAIL, reference was made to the list submitted by GDCL. However, nothing was pointed out to show the list of properties, owned by JUL and JAIL, as on the date, the rehabilitation scheme was prepared and approved initially.

#### **I.A.Nos. 19952/2026 and 19965/2026**

51. Mr. Vikas Singh, learned senior counsel appearing for the applicants in I.A. Nos. 19952 and 19965/2026 filed by the workmen/The Jaipur Udyog Limited Shramik Sangathan, submitted that the aforesaid application has been filed by 129 workmen, out of total 546 workmen identified by the Court Commissioner, for payment of arrears of their wages and other dues. Along with them, 348 legal representatives of the workmen, who had expired, have also joined the proceedings. He supported the proposal of rehabilitation as submitted by M/s Dickey Asset Management Private Limited (applicant in I.A. Nos.

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<sup>13</sup> 1958 INSC 32; 1958 SCC OnLine SC 149

<sup>14</sup> 2005 INSC 459; (2005) 8 SCC 219

<sup>15</sup> 2012 INSC 77; (2012) 4 SCC 148

43384 and 43386/2026). He further submitted that to determine siphoning of the assets of JUL and JAIL by GDCL, without there being any right vested in it, forensic audit will be required. It is to find out which of the properties were sold, misappropriated or were transferred with under-valuation.

**52.** It was further submitted that there was no contribution by GDCL. The amount due to the workmen was not paid. Whenever it was paid, the same was after sale of properties of JUL and JAIL. Because of the pendency of the present petition, even the winding up proceedings were also stalled. Even till today, some of the workmen have not been paid. This writ petition was filed by the workmen after waiting for decades for payment of their dues.

**53.** The interlocutory applications, bearing I.A. No(s). 43385 and 43388/2026 have been filed by the applicant/M/s Dickey Asset Management Private Limited. No proposal was annexed for which time was sought. Further, direction was sought to review the proposal submitted by other bidders. An offer was made to deposit a sum of ₹25 crores with this Court, as was directed to be done in the case of M/s Frost Realty LLP, to show its bona fide.

### **RESPONSE OF GDCL/JUL**

**54.** In response, Mr. Dhruv Mehta, learned senior counsel for the GDCL, submitted that from the arguments raised by learned counsel for the petitioners and the applicants, mainly three issues may arise (1) payment of entire dues to the workmen; (2) the right of GDCL to deal with the properties of JUL and JAIL; and (3) the status of the properties/assets of JUL and JAIL sold during the pendency of the litigation.

**55.** Taking us through the historical background, it was submitted that JUL was declared a sick company under the SICA on 17.09.1987 by BIFR. Industrial Reconstruction Bank of India (IRBI) (which was later on renamed as 'Industrial Investment Bank of India' (IIBI)) was appointed as the operating agency to examine the viability and preparation of the scheme for rehabilitation of JUL.

**56.** On 30.01.1989, BIFR formed a prima facie opinion that JUL should be wound up. However, the recommendation for the purpose was vague. On 12.06.1989, in an appeal preferred against the aforesaid order, AAIFR directed the operating agency/IRBI to furnish fresh scheme. On 23.08.1990 GDCL submitted a proposal for taking over and revival of JUL.

**57.** On 21.04.1992 BIFR sanctioned the scheme. The workers preferred appeals against the aforesaid order. Vide order dated 13.04.1993, AAIFR approved the scheme of GDCL. On 20.10.1993 AAIFR directed GDCL to deposit ₹3.035 crores by 10.11.1993. The condition was complied with by GDCL.

**58.** On 19.09.1994, BIFR called for fresh proposals as the earlier rehabilitation scheme could not be implemented. The aforesaid order was challenged by GDCL before AAIFR. On 30.09.1994 operation of the order dated 19.09.1994 passed by the BIFR was stayed. In the aforesaid appeal, AAIFR passed an order on 11.11.1994 directing transfer of the management of JUL to GDCL. As a consequence, the rehabilitation scheme submitted by the GDCL was revived. Thereafter, ₹2 crores were deposited by the GDCL in November and December 1994 making it a total deposit of ₹ 5.035 crores. On 31.01.1995, another sum of ₹1 crore were deposited by GDCL in the JUL Revival Scheme Account.

**59.** On account of a notification dated 30.11.1984 issued by the Forest Department of the State of Rajasthan stopping mining operation in the area with JUL for the purpose

manufacture of cement and also on account of labour unrest, the Rajasthan unit had to be closed.

60. As the revival scheme could not be implemented, on 12.07.2000 BIFR issued show cause notice for winding up of JUL. Subsequent thereto, on 31.08.2000 BIFR issued notice under Section 20(1) of SICA for winding up of JUL. Vide order dated 24.11.2000, BIFR recommended winding up of JUL for consideration by Rajasthan High Court.

61. The aforesaid order was challenged by JUL by filing Appeal No. 22/2001 before the AAIFR, on behalf of which, GDCL being appellant/promoter appeared. On 04.01.2001 AAIFR stayed operation of the order dated 24.11.2000 passed by the BIFR recommending winding up of JUL. On 03.08.2001, AAIFR directed GDCL to deposit ₹10 crores. The aforesaid order was challenged by GDCL before the Rajasthan High Court by filing SB C.W. No.4380 of 2001.

62. On 06.09.2001 the appeal preferred by GDCL before AAIFR was dismissed. The aforesaid writ petition was disposed of by Rajasthan High Court on 02.08.2004 while setting aside the order passed by the AAIFR and remitting the case back to AAIFR for decision afresh.

63. On 29.01.2005, the aforesaid order passed by the Rajasthan High Court was challenged by Cement Work Karamchari Sangh (Noticee No.3) before this Court by filing SLP(C) No.4088 of 2005 raising the issue of non-payment of dues to the workmen.

64. During the pendency of the aforesaid petition before this Court, a settlement was arrived at between the workmen working in the Kanpur Jute unit and also the Cement Division in Rajasthan with JUL, and GDCL on 28.06.2006. Vide order dated 04.12.2006, this Court approved the aforesaid settlement.

65. In the aforesaid petition on 10.04.2007, this Court appointed Justice N.N. Mathur, a Retired Judge of the Rajasthan High Court, to determine the wages and other lawful dues payable to different categories of workmen.

66. Vide order dated 24.03.2008, this Court disposed of SLP (C) No.4088 of 2005 (C.A. No.2076 of 2008), by converting the appointment of Justice N.N. Mathur (Retd.) into an Arbitrator under Section 10-B of the Industrial Disputes Act, 1947 as amended in the State of Rajasthan.

67. On 16.05.2008, JUL deposited ₹10 crores. In the proceedings pending before the AAIFR after remand by the Rajasthan High Court, SCL filed an application for impleadment. The same was dismissed vide order dated 17.07.2008. The aforesaid order was challenged by SCL before Delhi High Court by filing W.P.(C) No.5878 of 2008. The same was disposed of by Delhi High Court by directing AAIFR to consider the scheme of SCL as well. The aforesaid order was challenged by GDCL before this Court by filing SLP(C)No.22719 of 2008 wherein this Court vide order dated 22.09.2008 stayed further proceedings before the AAIFR.

67.1 This Court vide order dated 24.08.2016 passed in SLP(C)No.22719 of 2008, set aside the order of the High Court and held that SCL's rehabilitation scheme could not be considered since the order of this court in **Cement Workers Karamchari Sangh's case (supra)** was meant to give all parties an opportunity to file their rehabilitation schemes. As SCL was never a party before AAIFR, it was not entitled to propose any rehabilitation scheme.

68. Justice N.N. Mathur (Retd.) passed his award on 05.12.2008. In his Award, Justice N.N. Mathur (Retd.) had only determined the principles on the basis of which the workmen

were to be entitled to receive their wages and even the percentage thereof. Actual quantification was not done as the cut-off date was yet to be fixed.

**69.** From the aforesaid award, Mr. Dhruv Mehta, learned senior counsel appearing for GDCL, referred to the arguments raised by GDCL before Justice N.N. Mathur (Retd.) and also the conduct of the workmen, noticed by him, who did not allow the unit to function.

**70.** As the wages of the workmen could not be quantified on account of stay of proceedings before AAIFR by this Court vide order dated 22.09.2008 passed in SLP(C)No.22719 of 2008, Bhartiya Mazdoor Sangh filed the present writ petition in this Court in July 2015. Prayer was for implementation of the 2008 Justice N.N. Mathur's (Retd.) award as no payment had been made till that date. It was specifically pleaded by the writ petitioners that the GDCL be directed to pay the amount, pointing to the fact that the learned Arbitrator had observed that GDCL was responsible for withholding the dues of the workmen. As per the arbitrator, such dues amounted to ₹1,241 lacs and it would be just and fair to pay the aforesaid amount instead of ₹6 lacs, as per the settlement arrived at in the year 2006, since the same would be grossly inadequate.

**71.** Vide order dated 23.11.2015, this Court directed the parties to submit calculation of the amount due to be payable to the workmen on the basis of Justice N.N. Mathur's (Retd.) award. On 07.12.2015, this Court directed respondent Nos.5 and 6 to file list of workmen who would be entitled to receive the awarded amount.

**72.** With effect from 01.12.2016, Sick Industrial Companies (Special Provisions) Act, 1985 was repealed. It was replaced by the IBC. On 24.08.2016 this Court had taken up the present writ petition and C.A. No.3927 of 2012 together. Vide the aforesaid order passed in the aforesaid writ petition, GDCL was directed to deposit ₹35 crores with the Registry of this Court for payment to the workmen/beneficiaries. Notice was directed to be issued to various unions.

**73.** Vide order dated 21.08.2018, to make an effort to resolve the pending dispute of payment of wages of the workmen, this Court appointed Justice Aftab Alam, a former Judge of this Court as mediator for quantification of the dues. All along, the effort of GDCL was to clear the dues of the workmen. It had not shirked its responsibility towards that. Besides initial contributions, GDCL had deposited ₹35 crores with this Court on 01.10.2016. Thereafter, the process of verification of claim of the workmen started, with appointment of retired District Judges for the purpose.

**74.** On 31.03.2019, Justice Aftab Alam (Retd.) submitted his report specifying the principles for calculating the dues of workers in the Sawai Madhopur and Phalodi Quarry units. This report fixed December 31, 2008, as the cut-off date for the cessation of employment and mandated that simple interest @5% per annum be applied to all dues from that date until payment is actually made. Crucially, the Mediator reaffirmed that any amount previously disbursed to workmen under the 2006 Settlement shall be adjusted and deducted, ensuring that only the net outstanding dues are paid.

**75.** Vide order dated 29.07.2019, this Court accepted the settlement arrived at between GDCL and the workmen of Kanpur Jute Mill. The amount deposited with this Court was paid to them.

**76.** On 31.01.2021, Justice Aftab Alam (Retd.) had given his second report. The learned Mediator accepted the computations aggregating to approximately ₹115 crores (excluding interest and Provident Fund). He further recommended for payment of simple interest @5% per annum from the cut-off date (December 31, 2008) until the date of actual payment. For the provident fund dues, he recommended the same to be handled by the

PF Department under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952<sup>16</sup>, which workers deemed to have contributed from 1987 to 2008. Finally, the learned Mediator Court suggested that this Court may appoint a retired Judge of the Rajasthan High Court to oversee the disbursement of payments.

**77.** Vide order dated 28.09.2021, this Court directed GDCL to calculate the amount as per the proposed settlement. In the order passed by this Court on 29.08.2023, it is reflected that for Rajasthan Unit, GDCL accepted that the amount payable is around ₹98 crores, whereas unions claimed that as per their calculation the amount would be about ₹115 crores plus interest and provident fund.

**78.** Vide this Court's order dated 29.08.2023, GDCL was permitted to sell scrap lying in Sawai Madhopur Unit as the factory was lying closed for decades.

**79.** Referring to the applications filed by M/s. Frost Realty LLP, it was argued that a new dimension was given to the simple writ petition filed for payment of wages. A new rehabilitation scheme was sought to be proposed.

**80.** Vide order dated 09.08.2024, this Court directed GDCL to deposit ₹100 crores with the Registry of this Court in two installments. To see the bona fide of M/s Frost Realty LLP, even it was also directed to deposit ₹25 crores with this Court.

**81.** Before that, the properties of JUL at Kanpur were sold by GDCL without seeking permission of the Court. For that, Mr. Dhruv Mehta, learned senior counsel for the GDCL, submitted that it was an error, for which an apology was tendered.

**82.** Vide order dated 23.08.2024, this Court directed GDCL to deposit the entire sale consideration of ₹51 crores received from sale of Kanpur unit, with this Court.

**83.** Responding to the arguments raised by learned senior counsel for the petitioner and the applicants regarding the assets of JAIL, Mr. Mehta submitted that, for the last two decades no issue was raised with reference to the assets of JAIL or the shareholding pattern thereof. The issue cannot be permitted to be raised at this late stage. For the purpose of allotment of new shares of JAIL proper procedure under the Companies Act was followed. It was a sick unit. Money was required to be infused to put it on rails.

**84.** As far as the assets of JUL is concerned, he submitted that the record being very old, whatever is available with GDCL has been placed on record. He referred to a communication dated 24.09.2003 sent by JUL to the State Bank of India, New Delhi wherein it enumerated the details of title deeds of properties returned after the loans were repaid. JUL being sick, its entire properties were under mortgage. It was further submitted that more than 1600 flats/quarters in the cement unit of JUL at Sawai Madhopur are still in occupation of the erstwhile employees, their family members or they may have been sold or transferred to third parties illegally.

**85.** To sum up his arguments on this issue, it was contended that JUL cannot claim right on any of the property of JAIL even if it was its subsidiary. The rights of a shareholder in a limited company, which is a separate legal entity, are distinct. In support of the arguments, reliance was placed upon judgment of this Court in **Vodafone International Holdings BV v. Union of India**<sup>17</sup>.

85.1 He further submitted that GDCL has not committed any illegality. At the most, there may be some irregularities, which can be condoned by this Court. The management of

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<sup>16</sup> For short "EPF and MP Act 1952

<sup>17</sup> 2012 INSC 45; (2012) 6 SCC 613

the company was transferred to GDCL by an order passed by AAIFR. Ever since then, GDCL has taken care of it. It has cleared the dues of all creditors and as of today, no dues are pending. It is a fact that the recommendations made by BIFR for winding up of JUL has not yet been accepted by the Rajasthan High Court. Nothing is to be paid to any of the creditors. The winding up of JUL should not be ordered. As far as dues of the workmen is concerned, sufficient amount deposited by the GDCL is lying with this Court.

**86.** GDCL has been making huge investments in JUL ever since it submitted its rehabilitation plan. Initially the workers did not allow the unit to function. Thereafter, the mining area was notified as protected forest/sanctuary. Further, on account of an application filed by SCL, substantial time was wasted.

**87.** To the argument raised by the learned senior counsel for the petitioner/applicants regarding repealing of SICA and abatement of the proceedings before AAIFR, it was not denied that after repeal, JUL/GDCL had not taken any steps which were required. However, that should not be taken as a fatal blow to the efforts made by GDCL all along. It all happened during pendency of the present proceedings.

**88.** Challenging the locus of the applicants it was argued that it is a *lis* between the workers, JUL and GDCL and no intervener can step in. The petitioners and applicants are estopped by their conduct to raise all the issues, which are now sought to be raised, when substantial dues of the workmen have been paid and for the balance, the amount is lying deposited with this Court.

**88.1** The workers cannot be permitted to approbate and reprobate. Initially, the writ was filed only for getting the wages. Now after the same has reached at the fag end, proposals of rehabilitation are being submitted. Considering the present scenario there is no possibility of rehabilitation. The Kanpur Jute Mill had already been sold. The Cement unit at Rajasthan cannot function as there is neither mining lease nor any limestone available.

**88.2** The action of the petitioner is also barred by doctrine of election. All along, they have been treating GDCL as the relevant party. The workers had been entering into settlement with it. GDCL was even permitted to represent JUL. Monies were being deposited by it and being released to the workmen. It is too late now to take a summersault and raise an argument that GDCL does not have any locus. In support of the aforesaid arguments, reliance was placed upon judgments of this Court in ***Tata Iron & Steel Co. Ltd. v. Union of India***,<sup>18</sup> and ***Bank of India v. O.P. Swarnakar***<sup>19</sup>.

**89.** The limited role, which the new applicant/intervener can play, is to assist the court and not claim any relief for itself. However, in the applications filed by M/s Frost Realty LLP and M/s Dickey Asset Management Private Limited, substantial relief has been claimed by them, which is not permissible. In support of the arguments, reliance was placed on the judgment of this Court in ***Collector v. Raja Ram Jaiswal***.<sup>20</sup>

**90.** Even if JUL had been declared sick, that would not automatically take away the status of JAIL, which was a subsidiary of JUL and an independent company. It will not go into liquidation automatically. Hence, the issue regarding JAIL cannot be dragged into the present litigation.

**91.** It was further submitted that JAIL, though a subsidiary, was never before BIFR or part of the scheme. Issue regarding JAIL cropped up only when M/s Frost Realty LLP

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<sup>18</sup> 2000 INSC 560; (2001) 2 SCC 41

<sup>19</sup> 2002 INSC 547; (2003) 2 SCC 721

<sup>20</sup> 1985 INSC 109; (1985) 3 SCC 1

came into picture. It was in the business of farming. GDCL had to infuse new equity therein as there were liabilities to be cleared. The prayer is for permitting GDCL to continue with its scheme and treat the same as approved.

92. He further submitted that GDCL has also submitted a revival scheme to use the assets of JUL for execution of some plans. The revival scheme proposes significant job creation and other benefits. The plan details establishment of five distinct operational units:

- **Unit I (Concrete Sleeper Plant):** A state-of-the-art facility to support railway infrastructure and provide technical skill development for the local workforce.
- **Unit II (ISO Container Complex):** An integrated complex for manufacturing shipping containers to bolster regional logistics and export supply chains.
- **Unit III (Agri-Logistics):** A 10,000 MT Cold Storage Facility designed to assist local farmers by reducing post-harvest losses and improving market access.
- **Unit IV (Renewable Energy):** A 34 MW Solar Power Plant featuring a Battery Energy Storage System (BESS) for clean energy and industrial sustainability.
- **Unit V (Hospitality):** A 100-key Luxury Hotel intended to tap into Sawai Madhopur's tourism potential and support ancillary services like transport and local crafts.

93. To the issue raised by the petitioner regarding Non Performing Assets shown in the balance sheet of GDCL for the year 2022-23, it was submitted that the same stands cleared. GDCL is a running concern having projects worth ₹2500 crores in hand.

94. To the proposal submitted by M/s Frost Realty LLP, it was submitted that it is a limited liability partnership, which was constituted only about two months prior to submission of the offer. It has no background or source of funds. The offer submitted by it is conditional. It does not have any locus. Such offers deserve to be rejected at the threshold. M/s Frost Realty LLP is showing itself to be a representative of some workers which, in fact, is a new union formed just on 11.06.2024.

95. With reference to an application filed by the M/s Dickey Asset Management Private Limited, it was submitted that the applicant herein is a paratrooper who has just filed the application in the matter at the fag end of the litigation. It is claimed to be supported by a small section of workmen whose credentials are yet to be proved. Even otherwise, the Dickey Asset Management Private Limited does not have any locus to enter into this litigation. No third party has been invited to submit offers. The prayers made in the application go well beyond the scope of the writ petition. The same accordingly deserves to be rejected.

96. Dr. Abhishek Manu Singhvi, learned senior counsel appearing for respondent Nos.5/JUL and 6/GDCL, in addition to the arguments addressed by Mr. Dhruv Mehta, learned senior counsel, submitted that the scope of a simple writ petition filed for release of wages, has been expanded. It is being done by some vested interests in the name of the labour but not for their welfare. When the issue is at the fag end of settlement, new entities have jumped in to derail the efforts. It is a fit case in which this Court should exercise its power under Article 142 of the Constitution of India to give it a quietus. In case there are any technicalities, this Court can iron out the creases. There is no question of considering any of the schemes sought to be projected by the applicants. If allowed, the process will be endless as there may be offers and counter offers with some objections raised by either of the parties. GDCL had infused about ₹266 crores in JUL to keep it alive and pay its liabilities. Even if there was no formal infusion of equity, the amount was paid by GDCL to square off the debts. Even the amount due to the workmen is being regularly paid after verification. No assets owned by JAIL can be treated as part of JUL, even if the

holding company goes, the subsidiary can still survive. Reference was made to the judgment of this Court in **BRS Ventures Investments Ltd. v. SREI Infrastructure Finance Ltd.**<sup>21</sup>

### **REJOINDER BY PETITIONERS AND APPLICANTS**

**97.** In response, Mr. Nikhil Goel, learned senior counsel appearing for the Noticee No.6/Bhartiya Mazdoor Sangh, submitted that it is a fight between investors, which may go on. In case any revival scheme is considered, equal treatment should be given to the workmen of both the units, even if the dues of workmen of Kanpur Unit were settled.

**98.** He supported the scheme submitted by M/s Frost Realty LLP. He further submitted that the order passed by BIFR on 24.11.2000 became final as appeal against that order filed before AAIFR abated. GDCL was merely a caretaker and cannot possibly claim its ownership. The Kanpur properties were sold illegally. The same should be restored to JUL. Similar is the position with regard to the shareholding and properties of JAIL. In a clandestine manner, shareholding of JUL was changed in the year 2017 and when pointed out, the same was reversed in the year 2019. The workers could point out the same, only when they came to know about it.

**99.** Mr. Colin Gonsalves, learned senior counsel appearing for Noticee No.3 (Cement Work Karamchari Sangh), submitted that, in addition to what he had argued initially, the workers also need to be paid their provident fund dues and also the interest on account of delayed payments. Verification of dues of a large number of workmen is still pending. The same should be carried out without any delay.

**100.** Mr. Krishnan Venugopal, learned senior counsel appearing for M/s Frost Realty LLP, submitted that after reference was registered, BIFR had the control of the company. Reliance was placed upon judgment of this Court in **Ghanshyam Sarda v. Shiv Shankar Trading Co.**<sup>22</sup> GDCL was only given the management. It did not mean that it could sell assets belonging to either JUL or JAIL, which is its subsidiary. No part of the scheme can be relied upon for the purpose, as the same was never approved. To show the financial worth of GDCL, it was submitted that this company itself is sick. Bids were invited to sell off the debts of GDCL running into about ₹1600 crores. This happens only when a borrower is not able to serve its debts. Hence, it does not have funds to execute the projects as proposed. As is the past conduct of GDCL, it will only sell off the assets to cure its sickness.

**101.** To the applications filed by M/s Dickey Asset Management Private Limited, it was submitted that the same has been filed by a small group of workers, whose credentials are seriously doubtful.

**102.** Mr. Vikas Singh, learned senior counsel appearing for the Jaipur Udyog Limited Shramik Sangathan/workmen in I.A. No(s). 19952 and 19965/2026, submitted that M/s Frost Realty LLP does not have any credentials or past experience whereas M/s Dickey Asset Management Private Limited has substantial experience in revival of sick units. No payments were made by GDCL at the initial stage. Rather it was quite at late stage, that too, after selling off the assets. GDCL was only given the management and in that capacity it had been representing JUL. Revised scheme has been filed in the Court, which is said to be unconditional.

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<sup>21</sup> 2024 INSC 548; (2025) 1 SCC 456

<sup>22</sup> 2014 INSC 775; (2015) 1 SCC 298

**103.** Mr. Balbir Singh, learned senior counsel appearing for M/s Dickey Asset Management Private Limited (applicant in I.A. Nos. 43384 and 43386/2026), submitted that a new unconditional scheme has been given. He again reiterated the stand that GDCL is in financial trouble now, hence, short of funds to implement any scheme. No equities flow in favour of GDCL. It cannot take the plea of estoppel.

### **DISCUSSIONS**

**104.** Heard learned counsel for the parties, applicants in various applications and perused the relevant referred record.

### **LIST OF DATES AND EVENTS**

**105.** Before we proceed and discuss various facets of the arguments raised by the learned counsel, we wish to add a brief synopsis of the case, as the same would help in appreciating the arguments raised by the learned counsels.

<b>Date</b>	<b>Details</b>
17.09.1987	An application was filed by JUL before BIFR, which was registered as Case No.17 of 1987. JUL was declared a sick industry under Section 3 (1)(o) of SICA.
26.09.1987	Industrial Reconstruction Bank of India (IRBI) was appointed as the operating agency.
30.01.1989	BIFR prima facie formed an opinion that JUL should be wound up.
12.06.1989	In appeal preferred against the aforesaid order passed by the BIFR, the appellate authority (AAIFR) directed the operating agency to furnish a fresh scheme.
23.08.1990	GDCL submitted a proposal for taking over and reviving JUL.
21.04.1992	BIFR sanctioned the scheme known as Sanctioned Scheme 1992 (SS-92). In terms thereof, JUL was to be reconstituted as a going concern.
June 1992	The aforesaid order was challenged by the workers before AAIFR.
13.04.1993	AAIFR approved the scheme submitted by GDCL.
20.10.1993	BIFR directed GDCL to deposit ₹3.035 crores by 10.11.1993. The same was deposited by GDCL.
January 1994	CWP No. 146 of 1994 was filed before Allahabad High Court by the workers of Kanpur Jute unit challenging the order dated 13.04.1993 passed by AAIFR.
19.09.1994	As the scheme proposed by GDCL could not be implemented, BIFR called for fresh proposals.
30.09.1994	Appeal No.179 of 1994 was filed by GDCL impugning the order dated 19.09.1994 passed by BIFR.
11.11.1994	AAIFR set aside the order dated 19.09.1994 passed by BIFR and handed over the management of JUL to GDCL subject to certain conditions regarding infusion of funds as there was default in compliances to be made earlier. GDCL agreed to deposit the entire balance amount as per schedule up to 31.05.1995. ₹1 crore was to be deposited within one week and remaining ₹4 crores were to be deposited by 31.03.1995. As on account of delay in implementation of the rehabilitation, more funds were required, GDCL was directed to deposit another ₹2 crores. As claimed, GDCL deposited ₹1 crore on 17.11.1994, another ₹1 crore on 31.12.1994. ₹1 crore were further deposited on 07.01.1995 and ₹1 crore were deposited on 31.01.1995. Making it a total of ₹6.035 crores out of ₹8 crores towards promoters contribution.

June 1998	As still the scheme submitted by GDCL was not implemented, fresh proposals were invited by the BIFR.
12.07.2000	<p>BIFR issued notice to the interested parties under Section 20(1) of SICA Act to show cause as to why JUL should not be wound up. No objections were received in pursuance to the notice published in two newspapers under Section 20(1) of SICA Act. No proposals were received even for rehabilitation of the company. The relevant part of the order dated 12.07.2000 passed by BIFR is extracted below:</p> <p>“In view of the submissions made during the course of the hearing, the bench came to the conclusion that SS-92 had failed essentially due to total inaction on the part of the new promoters, the important points to be noted were (a) A period of 8 years had already lapsed since the sanction of the scheme and the company had made no efforts for the implementation of SS-92. (b) The factory had been lying closed for 12 years and no production activity had taken place. (c) The paid up capital of the company was only ₹6.11 crores whereas the accumulated losses conservatively amounted to ₹59.17 crores. (d) The accounts of the company had not been audited for many years. (e) The company had huge amount of dues both from secured and unsecured creditors and had failed in meeting his liabilities as per the sanctioned scheme. (f) The statutory dues of the company namely the excise dues and income tax were also substantial. (g) In spite of specific provisions in SS-92, the company had not made any payment to the labour. (h) The secured creditors and MA had opined that in view of the above, there was no chance of revival of the company. The bench, also noted that the company had already been with the BIFR for nearly 13 years and thus more than adequate time and opportunity had been provided to the new promoters to revive the unit, which had failed. In view of the above and keeping the view the RBI guidelines limiting the maximum period for rehabilitation of sick unit to 7 years, the bench formed its prima facie view that the company was unlikely to revive and make its net worth positive while discharging its due financial obligations within a reasonable period.”</p>
24.11.2000	After hearing all the stakeholders, BIFR recommended winding up of JUL. The stand of all the creditors was recorded, who prayed for the winding up of JUL except the promoters. The JUL had even failed to submit the audited/provisional Balance Sheet as on 30.06.2000, which could have shown its financial status. At this stage, JUL was under the management of GDCL, in pursuance of order dated 11.11.1994 passed by AAIFR. Even the MOU with the workers had not been renewed. The BIFR found it just and equitable to recommend winding up of JUL. The creditors were granted liberty to file suit or initiate proceedings for recovery of the amount due to them before appropriate forums.
12.01.2001	JUL filed Appeal No.22 of 2001 against the order dated 24.11.2000 passed by BIFR.
04.01.2001	AAIFR stayed the order dated 24.11.2000 passed by BIFR.
03.08.2001	AAIFR passed the order directing GDCL to deposit ₹10 crores in non-lien account with the SBI, out of which, part was to be utilised for payment of terminal benefits to the retired workers.
2001	GDCL challenged the order dated 03.08.2001 passed by AAIFR by filing SBCWP No.4380 of 2001 before the Rajasthan High Court.

06.09.2001	<p>Appeal No.22 of 2001 was dismissed by AAIFR. The AAIFR specifically recorded that the appellant had not come with any other rehabilitation scheme. The debt of JUL had increased to more than ₹100 crores. The JUL was already before the BIFR for more than a decade. The technology of the cement plant was obsolete and not economically viable. Hence, there was no possibility of rehabilitation. The important fact noticed by the AAIFR was that GDCL having challenged the order dated 03.08.2001 before the Rajasthan High Court clearly showed that it was not in a position to deposit ₹10 crores, part of which was to be paid towards terminal benefits of the workers.</p>
02.08.2004	<p>Rajasthan High Court allowed SBCWP No.4380 of 2001 and set aside the order dated 06.09.2001 passed by AAIFR. It is noticed in the aforesaid order that JUL or GDCL had not challenged the order dated 06.09.2001 passed by the AAIFR dismissing the appeal. Judicial notice of aforesaid order was taken by the Court, while recording a fact that the High Court had stayed the operation of the order dated 03.08.2001 by which direction was given to the GDCL to deposit ₹10 crores. Hence, the appeal on merits should not have been considered by AAIFR. The orders dated 03.08.2001 and 06.09.2001 passed by the AAIFR were set aside and the matter was remitted back to the AAIFR for decision afresh within a period of two months.</p>
29.01.2005	<p>The Cement Works Karamchari Sangh filed SLP(C) No.4088 of 2005 before this Court, challenging the order dated 02.08.2004, which later was registered as Civil Appeal No.2076 of 2008.</p>
26.08.2006 and 28.08.2006	<p>During the pendency of the aforesaid petition, settlement was reached between JUL and the workers of Cement Division at Sawai Madhopur on 26.08.2006. Similar settlement agreement was reached between JUL and the workers of Kanpur Jute Unit on 28.08.2006.</p>
04.12.2006	<p>This Court vide order passed on 04.12.2006 approved the settlement dated 26.08.2006 entered into between the parties, considering the long pendency of the matter before different forums, however, with a caveat that the order is without prejudice to rights of other parties. Certain unions and workmen had raised objections.</p> <p>It is relevant to add that at that stage JUL had been recommended to be wound up against which an appeal filed by the AAIFR was rejected. However, in SBCWP No.4380 of 2001, the Rajasthan High Court had remanded the matter back to AAIFR.</p> <p>Meaning thereby, whatever action GDCL was taking, it was on behalf of JUL and not in its independent capacity. The earlier rehabilitation scheme, SS-92, submitted by it had already been rejected and the matter was to be considered afresh.</p>
10.04.2007	<p>This Court appointed Justice N.N. Mathur, a retired Judge of the Rajasthan High Court for undertaking the exercise of finding out the dues of the workmen.</p>

24.03.2008	Civil Appeal No.2076 of 2008 was finally disposed of. In the judgment, this Court noticed that as per the rehabilitation scheme approved in the year 1992, the cost was ₹38.41 crores out of which ₹18.12 crores were to come from GDCL. A sum of ₹10 crores was to be arranged by the sale of assets and remaining ₹10.29 crores with deferment of sale tax liability. Loans were rescheduled for repayment. Justice N.N. Mathur, a retired Judge of the Rajasthan High Court was appointed as arbitrator as per Section 10B of Industrial disputes Act, 1947 (Rajasthan Amendment) for determination of the dues of the workmen. The appeal was disposed of by this Court on 24.03.2008 while restoring Appeal No.22 of 2001 filed by JUL before the AAIFR with a condition that a sum of ₹10 crores as directed by AAIFR on 03.08.2001 be deposited within two months. In case the amount, as directed, was deposited, it will be open for GDCL to submit a revised rehabilitation scheme. Even other parties including the workmen were given liberty to do that. The matter was directed to be disposed of by AAIFR within four months.
06.06.2008	M.A. No.185 of 2008 was filed by M/s Shree Cements Ltd. for impleadment in the matter pending before AAIFR.
17.07.2008	The aforesaid application [M.A. No.185 of 2008] was dismissed by the AAIFR.
29.08.2008	W.P.C. No.5878 of 2008 filed by SCL was disposed of by Delhi High Court directing AAIFR to consider the scheme submitted by SCL as well.
22.09.2008	In SLP(C) No.22719 of 2008 filed by GDCL challenging the order dated 29.08.2008 passed by Delhi High Court, operation of the order dated 29.08.2008 passed by High Court of Delhi was stayed. SLP(C) No. 22719 of 2008 was converted into Civil Appeal. No. 2937 of 2012.
24.08.2016	The aforesaid appeal was allowed by this Court, holding that SCL did not have locus to submit any rehabilitation scheme. Thereafter, the matter remained pending before AAIFR even though the eclipse on proceedings created with the intervention of the SCL was over.
24.11.2016	With the enforcement of The Sick Industrial Companies (Special Provisions) Repeal Act, 2003, the SICA, 1985 was repealed w.e.f. 01.12.2016.
01.12.2016	The IBC was enacted. Different provisions were enforced at different times. Section 252 of IBC providing for amendment of The Sick Industrial Companies (Special Provisions) Repeal Act, 2003 was enforced. The amendment as contained in 8 <sup>th</sup> Schedule attached with IBC was enforced w.e.f. 1.11.2016 In terms of the aforesaid amendment, all appeals, references or inquiries pending under the SICA, stood abated. Liberty was given to the party concerned in whose cases the proceedings had abated, to make reference to the Company Law Tribunal under the IBC within 180 days from the commencement of IBC. The undisputed fact which remains on record is that neither JUL nor GDCL filed any proceedings before NCLT and the appeal pending before AAIFR stood abated. Meaning thereby, the recommendation made by BIFR for winding up of JUL stood revived.

### **REHABILITATION SCHEME SUBMITTED BY GDCL (SS-92)**

**106.** The salient features of the rehabilitation scheme submitted by GDCL in the year 1992, were as under:

- (i) Management of JUL to be taken over by GDCL along with assets and liabilities.

(ii) Jute Mill was to be disposed of, for which process was to be monitored by a Sales Committee comprised of representatives from SBI, IRBI, Special Director BIFR, State of Uttar Pradesh and GDCL.

(iii) Disposal of other assets not connected with the production was also permitted through the same Sales Committee.

(iv) Existing promoters were to write off equity and preference shares by 90%. New promoters (GDCL) were to contribute ₹8 crores with upfront ₹6.07 crores immediately on sanction of scheme by BIFR. The amount was to be converted into equity, and thereafter, unsecured loans of ₹1.93 crores to be inducted in two instalments, ₹1.5 crore by 31.03.1993 and ₹0.43 crores in 1994-95 (first quarter).

### **CONTRIBUTIONS MADE BY GDCL**

**107.** BIFR vide order dated 28.04.1992 sanctioned the rehabilitation scheme of JUL in favour of GDCL. Out of the required promoter's contribution which was an amount of ₹8 crores, GDCL initially deposited an amount of ₹3.035 crores on 10.11.1993. Further, as claimed by GDCL, it deposited ₹1 crore on 17.11.1994, another ₹1 crore on 31.12.1994. An amount of ₹1 crore was deposited on 07.01.1995 and ₹1 crore were deposited on 31.01.1995, making it a total of ₹6.035 crores out of ₹8 crores towards promoters' contribution. As per AAIFR order dated 11.11.1994, GDCL was also required to deposit an additional ₹2 crores to cater to the shortcomings in the implementation of the rehabilitation scheme. However, this amount was never paid by GDCL. Thereafter, another sum of ₹10 crores were deposited in terms of order dated 24.03.2008 passed by this Court.

**108.** As per the arguments submitted by Dr. Abhishek Manu Singhvi, learned senior counsel appearing for respondent Nos.5/JUL and 6/GDCL, GDCL had infused about ₹266 crores in JUL to keep it alive and pay its liabilities. However, as per the figure mentioned in 'Annexure A' attached with the synopsis dated 25.11.2025 filed on behalf of respondent nos.5 and 6, the cumulative figure is ₹236,72,63,660/-.

**109.** As per the aforesaid synopsis filed on behalf of respondent Nos.5 and 6 on 25.11.2025, under the directions of this Court to deposit money for safeguarding the interests of the workmen, GDCL has till date deposited a sum of ₹166 crores approximately with the registry of this Court, which with interest now have grown to ₹193.75 crores. The details as available in the aforesaid synopsis, is reproduced herein below:

<b>Date of Deposit</b>	<b>Amount Deposited as per orders of this Court (in ₹)</b>
16.05.2008	10 crores
01.10.2016	35 crores
29.08.2023	10 crores
14.10.2023	5 crores
01.04.2024	5 crores
22.08.2024	50 crores
17.09.2024	51 crores
<b>Total</b>	<b>166 crores</b>
<b>Money inclusive of Interests</b>	<b>193.75 crores</b>

109.1 Following details are available from the table in paragraph 41 of the synopsis filed on behalf of respondent nos.5 and 6.

<b>Particulars</b>	<b>Amount (in ₹)</b>
Payments made to secured creditors	7,47,00,000
Settlement amount paid against utility bills	9,05,63,609
Payment of statutory liabilities	5,82,49,262
Payment against advance from customers and sundry creditors	2,52,44,343
Workers dues	44,18,91,082
Deposited with Hon'ble Supreme Court	166,00,00,000
<b>Total</b>	<b>235,06,48,296/-</b> (Rupees Two Hundred and Thirty-Five Crores Six Lakhs Forty-Eight Thousand Two Hundred and Ninety-Six only)

109.2 For details of payment made to the creditors, reference was made to 'Annexure A' annexed therewith. The aforesaid annexure shows the total payments to the tune of ₹236,72,63,660/-, which includes ₹166 crores deposited with this Court. The total amount calculated at the end of the figures does not tally as such.

109.3 GDCL had, earlier to that, only paid a meagre amount between 2003 till 2009 which as per its own affidavit amounts to ₹22,57,11,133/-. This amount includes a substantial sum of ₹8,93,13,000/- paid to Rajasthan Electricity Board and ₹4,17,05,901/- paid to the Rajasthan Sales Tax. When we look at the amount paid to multiple creditors between the years 2010 till 2012, it comes to ₹18,59,11,640/-. An amount of ₹1,69,03,641/- was paid by GDCL from July, 2013 to July 2016. A sum of ₹1,64,12,692/- were paid to Rajasthan State Mine and Minerals Ltd. in 2024-25. A sum of ₹35.59 crores are shown to have been paid to the workmen of Kanpur Jute Unit upto July, 2024. The aforesaid table shows that besides initial payments, as per the rehabilitation scheme (SS-92), i.e., ₹7.035 crores, a very small amount was paid to the creditors till 2013. The substantial payments and deposits were made only thereafter. Even no dues certificate from Jaipur Vidyut Vitran Nigam Limited is dated 25.11.2009.

**110.** Needless to add here that out of the aforesaid amount, the sum of ₹51 crores has been deposited by GDCL in view of the sale of Kanpur Jute Mill on 07.06.2024. It is important to mention here that the sale proceeds of other two assets of JAIL, which were sold for a sum of ₹21 crores and ₹2.84 crores, vide sale deeds dated 26.04.2021 and 14.09.2022, respectively, have not been deposited before this Court.

### **REGARDING JAIL**

**111.** Coming to the sale of assets of JAIL by GDCL, when this issue was pointed out by learned counsel for the applicants, as noticed in the order dated 23.08.2024, the stand taken by learned counsel for GDCL was that it had nothing to do with JUL as it was no more a subsidiary thereof. As the counsel could not readily provide the shareholding pattern of JAIL, time was granted to file an affidavit showing the shareholding pattern of JAIL as in April, 1992.

**112.** JAIL was a fully owned subsidiary of JUL as it held about 2,49,974 shares (99.99%) out of the total 2,50,000 shares. Despite the fact that JAIL was undisputedly a fully owned subsidiary of JUL, strangely enough, nothing about it was mentioned either in the winding

up proceedings, rehabilitation schemes or any time during litigation. How GDCL came in control of JAIL is a mystery. Even if the argument raised by GDCL is accepted to the extent that JAIL being an independent company and rights of its shareholders may be limited, the fact remains that when the holding company was being wound up by reason of financial trouble, valuation of shares in a subsidiary company should have been factored. To that extent it cannot be said to be totally disconnected. The position may be different if only the subsidiary company was being wound up. Therefore, even the scheme for rehabilitation prepared for JUL is defective to the extent that it does not take into account the finances of JAIL. In fact, it is a patent error in the entire process which goes to the route of the case and in our opinion, is also incurable.

**113.** GDCL is claiming that it has taken all actions as per the rehabilitation scheme (SS-92), however, the fact remains that JAIL is not at all part of the scheme. On failure of implementation of the rehabilitation scheme when the BIFR vide order dated 24.11.2000, had recommended winding up of JUL, the rehabilitation scheme (SS-92) had lost its significance. Even as per arguments raised by learned counsel for GDCL, JAIL was an independent company. In the absence of any mention of JAIL in the entire process, there is no explanation available with reference to GDCL's control over JAIL.

**114.** As is evident from the rejoinder affidavit dated 21.08.2024 (Annexure R4) filed by the Noticee No.1, subscribed capital of JAIL was 2,50,000 shares out of which 2,49,974 were in the name of JUL. Subsequent thereto, 1,00,000 shares each were allotted in the names of United India Agencies Pvt. Ltd., Abhyuday Investments Ltd. and M.R. Holdings Pvt. Ltd. on 25.06.1998. These new investors are stated to be group companies of GDCL. As a result, through the group companies, GDCL became the majority shareholder in JAIL. In addition to that, 70,000 shares each were allotted in the names of United India Agencies Pvt. Ltd. and Abhyuday Investments Ltd. on 15.03.1999 and 60,000 shares were allotted in favour of M.R. Holdings Pvt. Ltd.. Meaning thereby, out of total 7,50,000 shares, now the group companies of GDCL owned 5,00,000 shares.

**115.** Regarding allotment of new shares in JAIL to the group companies of GDCL, the only answer was that due process as per Companies Act, 1956 was followed but to justify the same, there is no material on record. There are no financial statements of JAIL on record to show that this company was also in financial stress, hence, its assets were required to be sold. There is no detail available about other assets of JAIL. The sale proceeds of the property of JAIL are still lying with GDCL. Again, it was a sale by private negotiation only, for which the arguments raised by counsel for the petitioner is that it was undervalued.

**116.** The entire transactions of share allotment in JAIL made by GDCL to its group companies had to be held to be bad. At the cost of repetition, we may hold that JAIL was never a part of the rehabilitation scheme. Its worth was not considered by BIFR at the time of declaration of JUL as a 'sick industry'. It is not in dispute as it was almost a 100% owned subsidiary of JUL. Maybe, with the sale of assets of JAIL at that time, JUL could be out of financial trouble.

### **REGARDING FINANCIAL STATUS OF GDCL**

**117.** It was pointed out at the time of hearing, that in the Balance Sheet for the year 2022-23, debts of GDCL were declared to be NPAs.

**118.** Bid process document issued by the lenders of GDCL was referred to. It is evident therefrom that GDCL was in financial trouble and was not able to serve its debts. GDCL being in financial trouble, the lenders had invited bids for sale of its debt of ₹1,392.02

crores. The process was initiated in May 2025 and was to close by July 2025. The debts were being sold on 'as is where is' basis. The bids were invited as against the offer of ₹600 crores received by the Assets Management Company. Any company does not go into financial stress all of a sudden. From 2022-23 the facts have been placed on record by the other side showing the account of GDCL to be NPA. In fact, it is the time when the assets of JUL and JAIL were sold by GDCL without taking the court into confidence.

**119.** If we go into the background, there is an order dated 03.08.2001 passed by the AAIFR which directed GDCL (as the promoter of JUL) to deposit ₹10 crores into a no-lien account. ₹3 crores from that were to be utilized for payment of retiral dues of workers. This was a pre-condition for hearing the appeal filed by GDCL. Meaning thereby, failure of the same would have led to dismissal of the appeal. However, GDCL challenged that order before the Rajasthan High Court by filing SB C.W. No. 4380 of 2001. Later, the AAIFR dismissed the appeal on 06.09.2001. On 02.08.2004, the Rajasthan High Court set aside both orders dated 03.08.2001 and 06.09.2001 and remanded back the matter to the AAIFR to decide afresh. However, the order dated 02.08.2004 was challenged by the Cement Works Karamchari Sangh before this Court in S.L.P.(C) No.4088 of 2005 (Civil Appeal No.2076 of 2008). Finally, vide final order dated 24.03.2008 in the aforesaid Civil Appeal, this Court while remanding the matter back to AAIFR, directed GDCL to deposit the amount of ₹10 crores. The same was complied with by GDCL on 16.05.2008, at the fag end of the time granted by this Court.

**120.** Further, from Justice Aftab Alam's (Retd.) supplementary mediator's report dated 31.01.2021, it is evident that the argument raised by GDCL was that in case it is required to contribute the employees' dues at a level that is too high, it does not have the ability to pay and such a requirement "would ultimately push the company into liquidation".

**121.** The aforesaid facts, *prima facie*, established that GDCL was in financial stress for a long time.

### **CONDUCT OF GDCL**

**122.** On 21.04.1992, BIFR sanctioned a rehabilitation scheme (SS92) submitted by GDCL, under which GDCL was to take over the management of JUL along with its assets and liabilities, with the cut-off date fixed as 31.03.1992. The total cost of the scheme was ₹38.41 crores. Of this, GDCL was required to contribute ₹18.12 crores, comprising ₹8 crores as "Promoter's Contribution" and ₹10.12 crores as interest-free funds to be arranged by it. The remaining contribution was to come from sale of assets of JUL (₹10 crores) and sales tax deferment (₹10.29 crores).

**123.** It is relevant to note in this context that the Sawai Madhopur area, where JUL's cement factory was located, had already been declared forest land vide notification dated 30.11.1984, and JUL's lease over that mining land had expired in 1989. These pre-existing encumbrances cast a shadow on the very viability of any revival of the unit and should be in knowledge of GDCL when it took over management, as well as the BIFR and other stakeholders.

**124.** As GDCL failed to implement the scheme, BIFR vide order dated 19.09.1994 called for fresh proposals. GDCL challenged this order before AAIFR. Vide order dated 11.11.1994, AAIFR set aside the BIFR order, while expressly recording that the delay in implementation of the sanctioned scheme was on account of GDCL's default in infusing money into JUL as required. Notwithstanding this finding, one more opportunity was extended to GDCL, with a revised time schedule for further investment.

**125.** GDCL was permitted to continue looking after the management of JUL. It was directed to deposit ₹1 crore by 18.11.1994, followed by the remaining ₹4 crores (out of the ₹8 crore Promoter's Contribution) in four monthly instalments from December 1994 to March 1995. Additionally, GDCL was directed to deposit further ₹2 crores (₹1 crore in April and ₹1 crore in May 1995) to meet any shortfall in implementation of the scheme. Total amount required to be deposited was ₹7 crores in addition to the earlier deposited amount of ₹3.035 crores.

**126.** Against this, GDCL deposited only ₹6.07 crores out of the total ₹8 crores due. The additional ₹2 crores directed to be deposited to cover shortfalls was never paid.

**127.** On 19.01.1996, GDCL commissioned the Sawai Madhopur cement unit, only to declare a lockout seven months later on 12.08.1996. Arguments of workmen have been noticed by this Court in its judgment dated 24.03.2008 in **Cement Workers Karamchhari Sangh's case (supra)**, to state that the commissioning was an eyewash and the promoters had no intention to run the unit on a sustained basis, no repairs were made in the plant lying idle for a long time, no raw materials were brought in, and no supervisory, managerial or technical staff were engaged. The lockout by the management was subsequently declared illegal by the State Government by order dated 25.05.1999 passed under Section 10(3) of the Industrial Disputes Act, 1947. On 11.08.1997, the management of JUL entered into a revised tripartite settlement with the representatives of the workers, but, as the Court observed, the revival of JUL remained as elusive as ever.

**128.** As no positive steps were taken for revival of the Unit, after issuance of a show cause notice, vide order dated 24.11.2000, BIFR recommended winding up of JUL. A perusal of the aforesaid order shows that GDCL was duly represented before the AAIFR. Paragraph 4 of the aforesaid order records that no objections were received in pursuance to the notice published in two newspapers under Section 20(1) of SICA. No proposal was received even for rehabilitation of the company. The representatives of the State Bank of India or Punjab National Bank submitted no objection against the proposal to wind up JUL. Similar was the stand of the Ministry of Industry, Government of India and Government of Rajasthan and Uttar Pradesh. Similarly, there was no objection of various other creditors and government departments as recorded in the aforesaid order.

**129.** BIFR noticed in its order that the company was not serious about its revival as even the fresh audited/ provisional balance sheet for the year 1999-2000 was not made available. The aforesaid order refers to an earlier order passed by the BIFR on 12.07.2000 in which following directions were issued:

“(a) A Show Cause Notice (SCN) be issued to the company and other, interested parties under Section 20 (1) of the Sick Industrial Companies (Special Provisions) Act, 1983 (SICA) to show-cause as to why it should not be wound up.

(b) A separate notice shall be issued to the promoters under Section 33 of SICA to show cause as to why they should not be prosecuted for non-payment of labour dues and failure to comply with the provisions of the sanctioned scheme of 1992.

(c) The Rajasthan Finance Corporation Ltd (RFCL) was directed to take over possession of assets the company under Section 29 of SFC Act.

(d) The SBI was directed to insure the company's assets.”

**130.** Nothing has come on record to suggest that the earlier order dated 12.07.2000 passed by the BIFR directing taking over of the assets of JUL by Rajasthan State Financial Corporation under Section 29 of the State Financial Corporation Act, 1951 was

challenged. Meaning thereby, at that stage, GDCL had lost legal control of the assets of JUL.

**131.** GDCL challenged the order dated 24.11.2000 before AAIFR, which stayed the proceedings on 14.02.2001. However, on 03.08.2001, AAIFR directed JUL to deposit ₹10 crores as a condition precedent for admitting the appeal. JUL filed a writ before the Rajasthan High Court challenging this direction on 04.09.2001, and the High Court stayed that direction, though no stay was granted in respect of the proceedings before AAIFR. On 06.09.2001, AAIFR dismissed the appeal due to non-compliance of the condition as GDCL failed to deposit the amount as required, thereby confirming BIFR's winding up order.

**132.** The Rajasthan High Court, vide order dated 02.08.2004 passed in SBCWP No.4380 of 2001, set aside both the AAIFR orders dated 03.08.2001 and 06.09.2001, and remitted the matter back to AAIFR for fresh consideration after affording opportunity to all concerned parties. The direction to deposit ₹10 crores as a condition for admitting the appeal had, in the meantime, not been complied with by GDCL/JUL.

**133.** The order of remand passed by the Rajasthan High Court was challenged before this Court by the **Cement Workers Karamchari Sangh (supra)**. This Court, vide its judgment dated 24.03.2008, while noting that the delay only benefits JUL/GDCL and causes great prejudice to the creditors and deep distress to the workmen, gave one further opportunity to GDCL as well as the workers to submit a fresh rehabilitation scheme before AAIFR, subject to the deposit of ₹10 crores. GDCL ultimately deposited the ₹10 crores on 16.05.2008, several years after it had first been directed to do so. Thereafter, on 06.06.2008, AAIFR restored Appeal No. 22/2001. Fresh schemes were submitted by the workers along with Kamala Mills on 05.09.2008, and by GDCL on 12.09.2008. However, while issuing notice in a challenge filed by GDCL in SLP No. 22719 of 2008, this Court on 22.09.2008 stayed further proceedings before AAIFR with the result that neither fresh scheme was ever considered.

**134.** Other substantial payments to creditors were also made by GDCL around the year 2015. Substantial amount of ₹1,69,03,641/- was paid by GDCL from July, 2013 to July 2016 and later, ₹35 crores deposited on 01.10.2016, pursuant to directions of this Court. Another sum of ₹1,64,12,692/- were paid to Rajasthan State Mine and Minerals Ltd. in 2024-25. A sum of ₹35.59 crores are shown to have been paid to the workmen of Kanpur Jute Unit upto July, 2024. However, as pointed out by the workmen, a significant portion of what GDCL claims to have paid on behalf of JUL was sourced from the sale proceeds of JUL's own assets and those of its subsidiaries, and not from GDCL's own resources.

**135.** Upon repeal of SICA on 01.12.2016 and abolition of BIFR and AAIFR, all pending proceedings abated. Companies affected were entitled to approach NCLT under the IBC within 180 days. GDCL/JUL chose not to do so, foreclosing any fresh rehabilitation. As on date, no scheme is in existence, and GDCL continues to exercise control over JUL without any legal sanction therefor.

**136.** Despite having no subsisting legal authority, and with the matter sub judice before this Court, GDCL proceeded to sell the assets of JUL and its wholly owned subsidiary, JAIL, without seeking any permission from this Court. It may be noted that JAIL, which was a 100% subsidiary of JUL as on the date of the sanction of the scheme in 1992, was not part of the rehabilitation scheme. GDCL had, in a clandestine manner, changed the shareholding pattern of JAIL in 1998 and 1999 by issuing fresh shares to GDCL's group companies, thereby reducing JUL's shareholding in JAIL from 99.99% to 33.33%.

**137.** Thereafter, GDCL sold JAIL's agricultural land situated at Jodhpur by a registered sale deed dated 26.04.2021 for ₹21 crores, and another agricultural land at Sawai Madhopur by sale deed dated 14.09.2022 for ₹2.84 crores, all without seeking prior permission of this Court. The proceeds of these sales remain with GDCL.

137.1 The scrap of machinery lying at the Sawai Madhopur Unit was also sold by way of private negotiation by GDCL. Although permission for this was subsequently obtained from the Court. An objection raised by the workmen led to a stay on lifting of the scrap. The sale proceeds thereof continue to lie with GDCL.

**138.** Further, during the pendency of the present Writ Petition, GDCL sold the Kanpur Jute Mill Unit by a registered sale deed dated 07.06.2024 for ₹51 crores, again without seeking any permission from this Court or proceeding through the Sale Committee as envisaged under the sanctioned scheme. Pursuant to the directions of this Court, the sale proceeds were directed to be deposited with the Registry.

### **SALE OF ASSETS OF JUL BY GDCL**

**139.** During the course of hearing of the present writ petition on 23.08.2024, it was pointed out by Mr. Ranjit Kumar, learned senior counsel appearing for one of the applicants, that GDCL has sold Kanpur Jute Mill vide sale deed dated 07.06.2024 without seeking permission of this Court. GDCL could not affect the sale as it had to be through the Sales Committee as provided under the Scheme. Further, the stand was that the sale was undervalued as the property was worth about ₹150 crores and shown to be sold for ₹51 crores only.

**140.** Learned counsel appearing for GDCL admitted the fact that Kanpur Jute Mill has been sold without taking permission from this Court. The counsel fairly submitted that there is no explanation available for selling the Kanpur Jute Mill without seeking permission from this Court. This may be an error, which may be condoned as the sale proceeds were deposited with this Court.

**141.** Further, as was submitted by Mr. Ranjit Kumar, learned Senior Counsel that the properties of JAIL situated in Sawai Madhopur and Jodhpur were sold by GDCL via two sale deeds. One of the Sale Deeds was executed on 26th April, 2021 for a sale consideration of ₹21 crores and the other one on 14th September, 2022, for a sale consideration of ₹2.84 crores, that too without taking this court into confidence. This fact was also not denied by learned counsel for GDCL. The only explanation given was that JAIL was not part of the scheme, hence, its properties could be dealt with by GDCL.

**142.** However, after hearing the learned counsel for the parties, we don't find any justification in the action of GDCL in selling the assets of JUL or JAIL. Firstly, even as per the Sanctioned Scheme (SS-92), Kanpur Jute Mill could be sold by the Sale Committee constituted therein. That process was not followed. GDCL was dealing with the assets of JUL as if it had been transferred full ownership thereof. Whereas the fact remains that it was only the management of the unit, which was transferred, which did not confer any rights on GDCL to sell off its properties. Firstly, the procedure for sale of Jute Mill and other property was mentioned in the scheme submitted before BIFR. Even that process was not followed. However, the scheme had lost its significance as subsequently winding up of JUL was recommended. The appeal against that order filed before AAIFR stood abated with repeal of SICA. Further, at the time when the sales were carried out, the matter was pending in this Court. At least this Court could have been taken into confidence. Nothing was done. Such an illegality cannot be condoned by any stretch of imagination.

**143.** This Court vide order dated 23.08.2024 directed GDCL to deposit ₹51 crores with this Court within two weeks. Needful was done.

**144.** Mere deposit of the sale proceeds in this Court, that too only when the same was pointed out by opposite counsel or otherwise will not come to the rescue of GDCL.

**145.** Even at the time of seeking permission for sale of scrap, this Court was not taken into confidence about the status of the GDCL and complete facts of the case. The permission was sought in a casual manner. Even the conduct of the labour unions before this Court is also fishy as neither of them pointed out complete facts of the case or the status of GDCL nor did they object to the sale. However, when the scrap was being lifted, the issue was raised and thereafter this court passed an order dated 23.08.2024, restraining the sale of any properties (movable/immovable) of JUL without permission of this Court. It needs to be added there that as on the date of sale of scrap also, the only status which GDCL had, was controlling the management of JUL and nothing beyond. The Company Petition No. 21 of 2000 for winding up was pending before Rajasthan High Court. This sale of scrap was also without following any process, namely going through the mode of auction or seeking permission about the mode of sale. Such sale cannot be held to be *bona fide* and has to be held to be illegal. Any amount paid by the buyer shall be refunded by GDCL to the buyer as those sale proceeds were never deposited in this Court.

### **PRESENT STATUS**

**146.** The position as it stands today is that JUL was declared a sick company on 17.09.1987. Thereafter, the following events took place:

Background regarding closure of Units at Sawai Madhopur and Kanpur	The Sawai Madhopur cement factory first closed on 09.09.1975 due to recurring losses and erosion of working capital, but was restarted in April 1976 under a nursing programme supported by the Central and State Governments, and SBI. It was briefly reopened in March 1988 under a Government-appointed nominee, however, owing to labour unrest and consequent withdrawal of SBI's cash credit facility, the factory closed again in July 1988. Under GDCL's management, the factory was reopened on 01.09.1995 and formally commissioned on 09.01.1996, with a successful trial run on 28.03.1996, which however also marked the cessation of operations due to fresh labour unrest. A formal lock-out was thereafter declared effective 21.08.1996 at the Sawai Madhopur factory and Jaipur office, and at the Phalodi Quarry unit, with effect from 07.09.1996. As regards the Kanpur unit, it was acquired in 1967 for manufacture of cement bags. It suffered losses from 1972, and was closed in October 1975. It was restarted again in August 1976 pursuant to a Tripartite Settlement between the management, workers' union, and the State Government of Uttar Pradesh, but remained largely nonoperational following the broader financial crisis of 1987. BIFR, by 1992, found the unit unviable and proposed its disposal.
21.04.1992	BIFR sanctioned a rehabilitation scheme submitted by Gannon Dunkerley & Co. Ltd. (GDCL), under which management and assets were transferred to the new promoters.
19.09.1994	Because the GDCL scheme could not be implemented, BIFR called for fresh proposals for revival of the company.
11.11.1994	In a challenge to the BIFR order, AAIFR directed transfer of management to GDCL to proceed with rehabilitation efforts.

24.11.2000	After more than 6 years of failed rehabilitation attempts, BIFR formally recommended winding up of JUL, noting that no viable proposal had been submitted.
Post-2000	GDCL/JUL preferred an appeal (Appeal No. 22/2001) before the AAIFR impugning the BIFR's winding-up recommendation.
Repeal of SICA	During the pendency of the appeal, the Sick Industrial Companies Act, 1985 (SICA) was repealed w.e.f 01.12.2016. The Insolvency and Bankruptcy Code, 2016 was enacted and in terms of Section 252 thereof which amended the The Sick Industrial Companies (Special Provisions) Repeal Act, 2003, all proceedings before BIFR and AAIFR abated. Interested parties were given 180 days to approach the NCLT within 180 days. The appeal stood abated as JUL/GDCL did not file any reference before the NCLT within the permissible 180-day window.
Current Status	The BIFR's order recommending winding up stands revived. The matter is currently pending in the Rajasthan High Court (Company Petition No. 21 of 2001), where proceedings have been stayed because of pendency of proceedings before this Court.

**147.** As on today, more than 34 years since rehabilitation scheme was first sanctioned by BIFR in 1992 and nearly three decades after the initial lockout was declared by GDCL on 12.08.1996, the unit remained completely non-functional. The BIFR, in its review hearing on

12.07.2000, and its subsequent recommendation for winding up on 24.11.2000, had recorded that the company had already been under its purview for over 13 years and had failed to meet the 7-year maximum period for rehabilitation prescribed by RBI guidelines.

**148.** The fact recorded in the BIFR order dated 24.11.2000, recommending winding up of JUL, is critical, as the Bench concluded that the company was unlikely to revive or make its net worth positive within a reasonable timeframe. It was further observed in the BIFR order dated 12.07.2000, and reiterated by the AAIFR on 06.09.2001, that the technology utilized by the cement plant (old wet process technology) is now obsolete and economically unviable in a competitive market.

**149.** The current status of the assets confirms the impossibility of a restart. The position as stands today is as under:

- **Jute Mill:** The Kanpur Jute Mill land was sold by GDCL for ₹51 Crores vide Sale Deed dated 7.06.2024, without prior permission of the Court.
- **Machinery:** The factory and machinery have become rusted and useless, with specific allegations that GDCL dismantled and sold valuable machinery, including turbines worth approximately ₹20 Crores, as scrap. Though it was done with permission of this Court, but scrap is yet to be lifted.
- **Limestone Mining:** While the promoters initially claimed to be seeking renewal of mining leases for revival, such requests were rejected by the State Government since the land around Sawai Madhopur Cement Unit was notified as a forest land vide notification dated 30.11.1984. Thereafter, mining of any kind in those areas was declared to be prohibited and a violation of Rajasthan Forest Act, 1953 and Soil Conservation Act, 1972.

**150.** This is even corroborated by rehabilitation scheme submitted by GDCL. In that, even GDCL also does not propose to revive the Cement Unit. It only proposed to setup a Concrete Sleeper Plant, an ISO Container Complex, a Cold Storage Facility, a 34 MW Solar Power Plant and a 100-key Luxury Hotel.

**151.** At the most, according to the AAIFR order dated 11.11.1994, management of JUL was handed over to GDCL, but the promoters failed to fulfil their financial commitments. BIFR recommended for winding up of JUL vide order dated 24.11.2000. The appeal preferred by JUL/ GDCL against the aforesaid order to AAIFR stands abated with the repeal of SICA, 1985.

**152.** Meaning thereby, as on today, the rehabilitation or restart of the unit is a factual impossibility, and only the assets of JUL and its subsidiary, JAIL, are available to satisfy the long-standing dues of the workmen.

### **HOUSES/ FLATS CONSTRUCTED BY GDCL IN OCCUPATION OF THE WORKERS/ EMPLOYEES**

**153.** At the time of hearing, it was pointed out by learned counsel for the GDCL that there are more than 1600 houses/flats constructed by JUL in its Sawai Madhopur unit, which were allotted to the erstwhile employees as licensees. Though the unit was closed more than 4 decades back, they are still occupying the same, without paying any rent or license fee. If the workers are claiming their arrears of wages, JUL is also required to be compensated for use and occupation of the properties of the company by the employees.

**154.** For the purpose we add that an inventory of the house/flats in possession of erstwhile workers of JUL shall be got prepared. It shall contain the following details, besides any other relevant factor:

- i) Identity of the accommodation, area thereof.
- ii) the person who was allotted the same. iii) the date of allotment.
- iv) the person in possession of the accommodation, at present.
- v) Whether he is the family member of the original allottee or any third party? If third party, the details thereof.
- vi) If any person other than the employee or his family member is in possession thereof, his/her capacity and status. How he/she came in possession thereof?
- vii) If any underhand transactions are found where the management, employee or his/her family member had transferred the title or possession of the accommodation to any third party, no right shall flow to him/her and the property will revert back to JUL. If in the process any clandestine transaction is found, the person may be liable for criminal action as well. Transferee of title or possession will have right to proceed against the person who transferred him/her the rights.
- viii) after entire dues are paid to the workers of Rajasthan Unit, they will handover vacant physical possession of the accommodation in their possession to person nominated by this Court at that stage, i.e., 6 months after the payment is made to them. Thereafter, they may be charged penal rent to be decided by this Court at that time.

They will not be liable to pay any charges for use and occupation of the same as their dues were not paid and they were in litigation before various forums.

### **REGARDING APPLICATIONS FILED BY PROPOSED INVESTORS**

**155.** A lot needs to be read between the lines. All of a sudden, the Unions or certain groups of workers, who have now formed different Unions, have brought in new investors to revive the unit. Nearly four decades have passed since the company was declared sick in 1987. All the workers of JUL may have now attained the age of superannuation. Consequently, the physical revival of the unit as it once existed is a factual impossibility.

There is no legal liability for an employer to offer employment to the family members of a serving employee after he reaches the age of superannuation, with the sole exception being compassionate employment for the ward of an employee, who dies during service. This again is subject to specific rules or policies of the employer and on fulfilment of certain mandated conditions.

### **Application by M/s Frost Reality LLP<sup>23</sup>**

**156.** The scheme submitted by M/s Frost Reality LLP shows that they intend to develop the area as an integrated multi-sector redevelopment project by making further investments. This implies that the primary interest lies in substantial properties of JUL or JAIL. The proposal provides for reimbursement of the amount already paid by GDCL to the lenders or for clearance of statutory liabilities, allotment of plots of specific size to the workers of the Rajasthan unit, and additional lump-sum payments to the workers of the Kanpur unit, who had otherwise settled their dues. Furthermore, it is argued that these investors will infuse huge amounts of capital, which will provide employment to the family members of erstwhile employees and generate further local employment.

**157.** There is a long list of assets belonging to JUL, as is evident from various documents placed on record by GDCL. This includes land and bungalow at Delhi, Jaipur, flat at Mumbai, land at Sawai Madhopur, etc.

**158.** The offer includes payment of dues to the workers, and the costs associated with the plots to be allotted. In this regard, M/s Frost Realty has proposed to discharge a total liability of ₹264.93 Crores under the scheme. This comprises ₹204.60 Crores towards dues of the workers of the Cement Unit, including interest at 5% as per the Justice Aftab Alam Report.

### **Application by M/s Dickey Asset Management Private Limited<sup>24</sup>**

**159.** M/s Dickey Asset Management Private Limited offered to settle worker dues totalling approximately ₹214.10 Crores, which includes the principal amount of ₹115.40 Crores (as crystallized in Justice Aftab Alam's (Retd.) report) plus ₹98.70 Crores as interest calculated @ 5% per annum from 31.12.2008. It further proposes to offer an additional 5% interest on the gratuity amount from the cut-off date, totalling approximately ₹20.10 Crores and another ₹10 Crores to be distributed among verified workers or their heirs.

159.1 In addition to financial payments, the proposal includes long-term support programs for workers and their families. They are offering to provide training for verified workers or one family member in government-approved institutions, with preference for future employment in revived projects. Further, they also offered to extend scholarship support for higher education (graduation and above) for one family member per worker for up to three years. They are further offering quarterly health camps for workers and their families for three years. In terms of housing support, an ex-gratia payment of ₹1 Lakh is offered to workers willing to surrender occupied residential plots within JUL-owned land in Sawai Madhopur. For verified Kanpur Jute Unit workers, an ex-gratia payment of ₹1 Lakh for the purchase of residential plots is also proposed.

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<sup>23</sup> I.A. No. 170433/2024 in W.P. (Civil) No. 392 of 2015

<sup>24</sup> I.A. No.43386 of 2026 in W.P. (Civil) No. 392 of 2015

## **Offer of GDCL**

**160.** A scheme has also been submitted by GDCL, which provides for a multi-sector redevelopment plan. This scheme includes setting up of a concrete sleeper manufacturing plant, an integrated ISO container complex, 10,000 MT cold storage facility, a 34 MW solar power plant and a 100-key Luxury Hotel, alongside the settlement of worker dues.

## **Analysis of Offers**

**161.** How can such offers be accepted when there is a long list of properties owned by JUL and its associate JAIL, and the current market value of those assets remains unquantified before this Court? The Court, acting as *custodia legis* of the assets of JUL and its associate, must weigh all options to act in the best possible interest of the estate rather than for the benefit of any single party.

**162.** None of the aforementioned parties have pointed to any legal provision that would allow the assets of JUL to be transferred to them through acceptance of these schemes without a formal valuation being available with the Court.

**163.** At this stage, the first priority is to identify the workers or their family members for payment of their dues and thereafter to deal with the assets of JUL and JAIL.

163.1 The offers as submitted cannot be accepted.

## **CREDIT TO APPLICANTS**

**164.** Still, in our opinion, credit for some core issues pointed out by the applicants before this Court regarding sales of assets of JUL or JAIL by GDCL, has to be given to them. However, effectively they cannot be granted any relief. Had they not flagged some of the facts before this court, the stamp of this Court could have been on the illegalities committed by GDCL, merely after payment of dues to the workers, on which stress was being laid from the very beginning. The process was going on with the presumption that the scheme stood approved and only wages were to be paid now as the unit could not be revived.

## **INVOCATION OF POWER OF THIS COURT UNDER ARTICLE 142**

**165.** The prayer was made by GDCL for condoning the illegalities in the entire process in exercise of powers vested in this Court under Article 142 of the Constitution of India. It was with reference to retaining the properties, sale of assets of JUL and JAIL and abatement of proceeding before AAIFR.

**166.** In our view, power under Article 142 of the Constitution of India cannot be invoked to condone the illegalities committed. In fact, after repeal of SICA with effect from 01.12.2016 and no proceedings having been initiated before NCLT in terms of provisions of IBC within the time permitted, the appeal filed by GDCL/ JUL before the AAIFR stood abated. Thus, the recommendation made by the BIFR for winding up of JUL revived. As a result, GDCL had lost any locus to deal with the properties of JUL and JAIL. It is a matter of fact that GDCL is a professionally managed company and in the case in hand, it had been dealing with various litigations of JUL/ JAIL. It may be too far-fetched to accept ignorance of GDCL to take action after repeal of SICA, within the time permitted as per IBC. The abated appeal can neither be revived nor an application which was required to be filed before NCLT can be said to be deeming filed.

166.1 It is also a fact that the present writ petition was filed in this Court in the year 2015 and GDCL/ JUL filed the counter affidavit on 15.09.2015 and ever since then the

proceedings are pending in this Court. However, no effort was made even in the present writ petition to highlight the aforesaid fact.

166.2 It is also a fact, which cannot be lost sight of, is that the *bona fide* of GDCL could have been worth consideration had the unit been revived. However, the fact remains that ever since the unit was closed in the year 1987, it is only the properties of the JUL and JAIL which remain. Those are also being disposed of by GDCL in clandestine manner treating the same to be its own.

**167.** For the aforesaid reasons, we are of the considered view that it is not a fit case for exercise of power under Article 142 of the Constitution of India as it is not a case where merely ironing of creases is required, rather, it will require condoning number of illegalities, which cannot be done.

### **LEGITIMATE EXPECTATION**

**168.** GDCL also invoked the jurisdiction of this Court raising the principles of legitimate expectation. It was argued that GDCL having cleared all the debts of JUL legitimately expected that the scheme for revival, even if failed, the entire dues of JUL having been cleared by it, the ownership and management of JUL along with its all assets and liabilities will stand transferred to it. However, we do not find any merit in the aforesaid submission as well. An illegality cannot be condoned. Legitimate expectation cannot override the illegalities committed by a party. The principle of legitimate expectation have been dealt with by the Constitutional Bench of this Court in ***Sivanandan C.T. and Others vs. High Court of Kerala and Others***<sup>25</sup>. Relevant paragraph for ready reference is extracted below:

“46. From the above discussion, it is evident that the doctrine of substantive legitimate expectation is entrenched in Indian administrative law subject to the limitations on its applicability in given factual situations. The development of Indian jurisprudence is keeping in line with the developments in the common law. The doctrine of substantive legitimate expectation can be successfully invoked by individuals to claim substantive benefits or entitlements based on an existing promise or practice of a public authority. However, it is important to clarify that the doctrine of legitimate expectation cannot serve as an independent basis for judicial review of decisions taken by public authorities. Such a limitation is now well recognised in Indian jurisprudence considering the fact that a legitimate expectation is not a legal right. It is merely an expectation to avail a benefit or relief based on an existing promise or practice. Although the decision by a public authority to deny legitimate expectation may be termed as arbitrary, unfair, or abuse of power, the validity of the decision itself can only be questioned on established principles of equality and non-arbitrariness under Article 14. In a nutshell, an individual who claims a benefit or entitlement based on the doctrine of legitimate expectation has to establish: (i) the legitimacy of the expectation; and (ii) that the denial of the legitimate expectation led to the violation of Article 14.

**169.** The case in hand does not fall in that category. The management of JUL was handed over to GDCL by an order passed by AAIFR on 11.11.1994. Despite being in management for a period of 13 years, the unit could not be revived. As a result, its winding up was recommended by BIFR vide order dated 24.11.2000. As to what happened thereafter in more than two decades, has already been narrated in the previous part of the judgment. The conduct of GDCL also has been noticed. There was no legitimate expectation arising in favour of GDCL in the aforesaid facts and circumstances. Therefore, even that argument raised by GDCL does not have any merit. Hence, rejected.

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<sup>25</sup> 2023 INSC 709; (2024) 3 SCC 799

## **REGARDING ABATEMENT OF PROCEEDINGS**

**170.** Vide order dated 24.11.2000 passed by the BIFR, JUL was recommended to be wound up. The reference was registered as Company Petition No.21 of 2001 and is currently pending before the Rajasthan High Court.

**171.** Simultaneously, GDCL/JUL challenged the order dated 24.11.2000 passed by the BIFR recommending winding up of JUL by filing an appeal before the AAIFR. The matter reached up to this Court. It was with reference to an application filed by SCL seeking to intervene and propose a scheme for rehabilitation of JUL. Finally, this Court vide judgment dated 24.08.2016 opined that SCL will not have any locus to intervene. The appeal before the AAIFR was revived.

**172.** On the other side, in Company Petition No.21 of 2001 registered on the basis of recommendation made by the BIFR, Rajasthan High Court vide order dated 12.07.2018 had appointed provisional liquidator. He was directed to take immediate steps to take over the assets of the company. However, subsequently vide order dated 28.05.2019, the implementation of aforesaid order was stayed as the matter was pending in this Court.

**173.** During the pendency of the appeal before the AAIFR, Sick Industrial Companies (Special Provisions) Act, 1985 was repealed vide The Sick Industrial Companies (Special Provisions) Repeal Act, 2003, which came into force on 01.12.2016. Simultaneously, The Insolvency and Bankruptcy Code, 2016 was enacted. Section 252 thereof came into force with effect from 01.11.2016. The same is extracted below:

**“252. Amendments of Act 1 of 2004.** – The Sick Industrial Companies (Special Provisions) Repeal Act, 2003 shall be amended in the manner specified in the Eighth Schedule.

x x x

THE EIGHTH SCHEDULE (See section 252)

AMENDMENT TO THE SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) REPEAL ACT, 2003 (1 OF 2004)

In section 4, for sub-clause (b), the following subclause shall be substituted, namely—

“(b) On such date as may be notified by the Central Government in this behalf, any appeal preferred to the Appellate Authority or any reference made or inquiry pending to or before the Board or any proceeding of whatever nature pending before the Appellate Authority or the Board under the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) shall stand abated:

Provided that a company in respect of which such appeal or reference or inquiry stands abated under this clause may make reference to the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016 within one hundred and eighty days from the commencement of the Insolvency and Bankruptcy Code, 2016 in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016:

Provided further that no fees shall be payable for making such reference under Insolvency and Bankruptcy Code, 2016 by a company whose appeal or reference or inquiry stands abated under this clause.

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

Provided also that in case, the statutory period within which an appeal was allowed under the Sick Industrial Companies (Special Provisions) Act, 1985 against an order of the Board had not

expired as on the date of notification of this Act, an appeal against any such deemed approved resolution plan may be preferred by any person before National Company Law Appellate Tribunal within ninety days from the date of publication of this order.”

**174.** Vide aforesaid section, amendment made in Section 4 of the 2003 Repeal Act provided that all pending proceedings before BIFR or AAIFR shall stand abated. However, any company affected by that, in whose case the proceedings were abated, was given liberty to make reference to the NCLT under IBC within 180 days from the commencement of IBC, in terms of provisions thereof. It is not in dispute that IBC came into force with effect from 01.12.2016. No proceedings were initiated by GDCL or JUL before NCLT within the permitted time. Meaning thereby, the appeal pending before AAIFR abated. As a consequence thereof, the recommendation of the winding up made by the BIFR to the High Court was revived.

**175.** The fact remains that neither any rehabilitation scheme was submitted by GDCL in terms of liberty granted by this Court years back in 2008 nor can the Unit be revived because of subsequent developments. It will be too late now to permit GDCL to submit any rehabilitation scheme. Firstly, the Unit cannot be revived, for which details have already been noticed in the previous paragraphs. And further none of the employees who may be working in the JUL may be up to the age, who can be reengaged for employment. It is only their children who also may or may not be interested. Furthermore, they also do not have any right to claim employment merely because their predecessors were working in any unit, which is closed. They only have a right to receive unpaid wages.

**176.** At this stage we are unable to accept the argument raised by learned counsel for GDCL that it was merely a lapse, and this court can iron out the creases instead of going into technicalities. GDCL is a big corporate, which is managed by professionals. In fact, actions were being taken by GDCL from the very beginning as per its convenience. No benefit can accrue to GDCL on this lapse especially when the unit has not been revived and its only sale of its assets. The scheme for setting up alternative industrial units also came from GDCL, when other applicants submitted their proposals.

### **STATUS OF SHARE ALLOTMENT IN JAIL AND JUL**

**177.** It is a fact that the rehabilitation scheme prepared and initially approved by BIFR was not implemented, and thereafter, BIFR recommended winding up of JUL. GDCL was only handed over management of JUL by an order dated 11.11.1994 passed by AAIFR. That also lost significance after the winding up of JUL was recommended by BIFR. Appeal against that order abated with repeal of SICA. Any allotment of new shares by GDCL to its group companies has to be declared illegal. Ordered accordingly.

### **CALCULATION OF DUES OF WORKERS**

**178.** As far as calculation of dues of the workmen is concerned, it has come on record that the same stood settled as far as the workers of Kanpur Jute Mill is concerned. However, the issue is pending with regard to the cement plant.

**179.** There is an initial award dated 05.12.2008 passed by Justice N.N. Mathur (Retd.) deciding the principles on the basis of which the calculation of the dues is to be made.

**180.** Subsequently, quantification thereof was made by a committee headed by Justice Aftab Alam (Retd.).

**181.** According to GDCL, the aforesaid amount is about ₹96 crores whereas the workmen claimed that the dues are to the tune of ₹115 crores. In addition to that, simple

interest @5% per annum was also awarded. Further, provident fund dues are also to be calculated.

**182.** We may clarify that we have merely noticed briefly what transpired in the two reports. For the purpose of calculation, the reports have to be considered in detail.

**183.** For the purpose of identifying the workers or their family members, exercise is being done since 02.09.2021 by appointment of Court Commissioners with representation of the workers union as well as GDCL. Substantial amount has been paid as well. Whatever amount remains, for that, exercise has to be carried out in a time bound manner as the matter cannot be kept pending for infinity for that purpose. Simultaneously, the provident fund dues of the workmen also need to be calculated for which Regional Provident Fund Commissioner, Rajasthan may have to be looped in.

### **STATUS OF WINDING UP**

**184.** From various documents on record, it is evident that BIFR had recommended winding up of JUL vide order dated 24.11.2000 to the Rajasthan High Court. Initial notice of the winding up of JUL was issued on 27.07.2001. However, subsequently on 18.01.2002, the proceedings were directed to remain pending on account of stay of the order dated 24.11.2000 passed by the BIFR recommending winding up of JUL in S.B. (Civil) Writ Petition No.4380 of 2001. After the appeal filed by JUL/ GDCL against the order dated 24.11.2000 abated with the repeal of SICA and enactment of IBC, the proceedings were re-initiated.

**185.** Before that, vide order dated 12.07.2018, the Rajasthan High Court appointed the official liquidator attached to that Court as the provisional liquidator. He was directed to take steps for taking over the assets of the company. Formal order in terms of Rules 106 and 109 of Companies (Court) Rules, 1959 was directed to be prepared, however the publication was dispensed with.

**186.** Vide order dated 15.11.2018, Rajasthan High Court noticing the pendency of the present writ petition before this Court kept the matter in abeyance, to wait for further orders by this Court.

**187.** On 18.01.2002, the Rajasthan High Court stayed further proceedings in the main Company Petition No. 21 of 2001 because the underlying orders of the BIFR and appellate authority had already been stayed in a separate writ petition. The second stay was granted on 28.05.2019, wherein the Court stayed the operation and effect of its own provisional winding-up order dated 12.07.2018, noting that it was appropriate to keep that order in abeyance until the related matter was decided by this Court to avoid any ambiguity.

**188.** As such, the aforesaid petition is pending before Rajasthan High Court.

**189.** Winding up of JUL was recommended by BIFR as it had failed to pay its debts. Even the rehabilitation scheme submitted by GDCL was also not implemented. However, the fact which emerge as on today, is that all the debts of GDCL have been cleared. Meaning thereby, it is not a company in default. Considering the aforesaid fact, the recommendation made by BIFR for winding up of JUL, as pending before the Rajasthan High Court, will be rendered infructuous.

### **FUTURE COURSE OF ACTION FOR THE ASSETS OF JUL AND JAIL**

**190.** There is a long list of assets of JUL and JAIL, as was pointed out by Mr. Dhruv Mehta, learned counsel appearing for Respondent Nos. 5 and 6. No defects were pointed

out in the list. But still, the Court appointed Administrator can enquire if there is any other asset of JUL and also the leftover assets of JAIL.

**191.** Some part of the assets of JUL as well as JAIL were sold by GDCL without following any process of law.

**192.** As far as sale of Kanpur Jute Mill is concerned and two properties of JAIL is concerned, we do not wish to enter into that part as it may open a new Pandora's box. The buyers of those properties may have to be heard in compliance with principles of natural justice. Accordingly, we do not set aside the sales. Even though, the allegation of the petitioners as well as the applicants is that the transactions were under valued. To reach to that conclusion, evidence will have to be led.

**193.** As far as the sale of scrap of Sawai Madhopur Unit is concerned, though permission from this Court was taken, however, on an objection raised by some of the workers, lifting of the scrap was stayed by this Court. For how much amount the scrap was sold, was not disclosed before the Court. The amount is also lying with GDCL.

**194.** An application (I.A. No.253716 of 2024) has been made by the buyer of the scrap, namely R.A. Enterprises seeking permission from this Court to lift the same. However, considering the fact that the scrap has not yet been lifted, we set aside the sale. GDCL shall refund the amount received on account of sale of scrap along with interest @ 8% p.a. within a period of two months.

**195.** As far as the balance properties of JUL and JAIL is concerned, in terms of the documents placed on record, an inventory thereof shall be prepared. Before any action is taken, its proper valuation has to be made after finding the status thereof. It is only after the estimated valuation thereof is available with the Court, any action for disposal or use thereof can be taken. This Court, at this stage, is not forming any opinion on this issue. The same is left upon to be considered after the dues of the workmen are cleared. But *prima facie* it should be used for some good public use. However, the process of identification and valuation of the assets can go simultaneously and needs to be done in a time bound manner.

## **RELIEFS**

### **REGARDING DUES OF THE WORKMEN**

**196.** An exercise be carried out in a time bound manner for verification of dues of the workmen in order to clear that liability within a period of four months. As all the employees or their wards are represented before this Court through various Unions, it will be the last and final public notice to them to cooperate in the process so that beneficiaries could be identified and the amount be paid to them. Needful be done finally by 31.08.2026.

196.1 Simultaneously, Employees Provident Fund Organisation be also looped in for calculating the provident fund dues of the workmen and even that payment should also be released in their favour.

### **HOUSES/ FLATS IN POSSESSION OF WORKERS**

196.2 As far as the houses and plots in the Sawai Madhopur Unit or at any other place is concerned, following directions are issued:

- i) Identity of the accommodation, area thereof.
- ii) the person who was allotted the same. iii) the date of allotment.
- iv) the person in possession of the accommodation, at present.

v) Whether he is the family member of the original allottee or any third party? If third party, the details thereof.

vi) If any person other than the employee or his family member is in possession thereof, his/ capacity and status. How he/she came in possession thereof?

vii) If any underhand transactions are found where the management, employee or his/her family member had transferred the title or possession of the accommodation to any third party, no right shall flow to him/her and the property will revert back to JUL. If in the process any clandestine transaction is found, the person may be liable for criminal action as well. Transferee or title or possession will have right to proceed against the person who transferred him/her the rights.

viii) after entire dues are paid to the workers of Rajasthan unit, they will handover, vacant physical possession of the accommodation in their possession to person nominated by this Court at that stage, i.e., 6 months after the payment is made to them. Thereafter, they may be charged penal rent to be decided by this Court at that time.

They will not be liable to pay any charges for use and occupation of the same as their dues were not paid and they were in litigation before various forums.

### **ASSETS OF JUL and JAIL**

196.3 An inventory of assets of JUL and JAIL may be prepared. Its present status and the person in possession thereof may be found. An exercise may be undertaken for its valuation. Local authorities of the places concerned shall assist in the process.

### **SALE OF PROPERTIES OF JUL and JAIL**

196.4 For the purpose of payment of dues to the workmen and, reimbursement of the amount spent or invested by GDCL, some of the properties of JUL/JAIL may have to be sold. After the process of identification of the properties and its valuation is complete and report is before this Court, the issue will be decided as to how and which of the properties need to be sold.

### **SALE OF ASSETS BY GDCL**

196.5 The Kanpur Jute Mill and two properties of JAIL sold by GDCL without permission of either this Court or through the committee as suggested by BIFR is not interfered with. However, the sale of scrap of Sawai Madhopur Unit is set aside as the amount of sale consideration is lying with GDCL. The same may be refunded to the buyer, alongwith interest @ 8% p.a. within 2 months.

196.6 The amount already paid by GDCL to the creditors of JUL shall be reimbursed to it from the sale proceeds of the properties of JUL along with interest @ 8% p.a. after sale of properties. Amount lying deposited in this Court will be refunded to GDCL along with interest accrued thereon. However, a sum of ₹ 1 crore shall be retained out of the same for the process to be carried out as per directions issued in this judgment, which shall be paid to GDCL along with other amount payable to it, after sale of properties of JUL/JAIL.

### **COMPANY PETITION NO. 21 OF 2001**

196.7 The Company Petition No.21 of 2001 pending before the Rajasthan High Court shall stand disposed of as infructuous as JUL is no more in debt.

**REGARDING APPLICATIONS FILED BY M/S FROST REALITY LLP AND M/S DICKEY ASSET MANAGEMENT PRIVATE LIMITED**

**197.** I.A.No.170433/2024 filed by M/s Frost Realty LLP and I.A.No(s).43385 and 43388/2026 filed by M/s Dickey Asset Management Private Limited shall stand rejected, as without valuation of the assets of JUL, their proposal for taking over of the unit upon some payment to the workmen either in cash or in the form of plots cannot be accepted. A sum of ₹25 crores deposited by M/s Frost Realty LLP with this Court shall be refunded to it along with the interest accrued thereon. The amount be transferred in its bank account on furnishing the details thereof.

**COURT ADMINISTRATOR**

**198.** For the purpose of compliance of directions issued in paragraph Nos. 196-197, to oversee work of the Court Commissioners appointed for verification of the claims of the workmen and also coordinate with the PF authorities for calculation of PF dues. We appoint Justice Manindra Mohan Shrivastava, former Chief Justice of Madras High Court as Administrator. He can engage staff as per requirement and exigency of the assigned tasks. He shall also have the power to call for copies of relevant records from government offices for valuation of assets and liabilities. In the process of valuation, he may avail the services of experts/professionals as need be. An amount of ₹50 lakhs is to be transferred from ₹1 crore, to be retained with this Court in an escrow account in the name of JUL, with the appointed administrator being its authorized signatory. For the period of his appointment, the administrator shall be paid a monthly honorarium of ₹2 lakhs. In addition, a sum of ₹2 lakhs per month shall remain at his disposal for payment to the staff engaged, payment to the experts and other miscellaneous expenses. In case more than the aforesaid amount is required for the the tasks assigned, the administrator will be at liberty to write a letter/communication to the Registrar of this Court, who shall list the same before the Court without any delay, treating the same as a Miscellaneous Application. The soft copies of the entire records of the Writ Petition (Civil) No. 392 of 2015 shall be supplied by the Registry of this Court to the Administrator.

**199.** Before parting with the order, we may make it clear that how the balance assets or surplus after clearance of the dues of the workmen will be used is to be decided by this Court, later on, when entire exercise is completed. For the purpose of compliance, a report in that regard be filed before this Court within six months. Liberty to mention and seek clarification from the Court by the appointed administrator.

**200.** The present Writ Petition (Civil) No.392 of 2015 is accordingly disposed of.

**201.** In view of the discussions made above, no further order is required to be passed in Contempt Petition (Civil) Diary No.61491 of 2025. The same is accordingly disposed of.

**202.** Pending application(s), if any, shall also stand disposed of.

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