

M/s. S.R.F. Limited v. M/s. Garware Plastics and Polyesters Ltd. and others

Civil Appeal No. 3277 of 1995 / Civil Appeal No. 3275 of 1995 / Civil Appeal No. 3276 of 1995

[1995] 2 SCR 565 | 1995-03-07

Whether BIFR's rehabilitation merger should be set aside for lack of notice to the Central Government and CBDT where the scheme implicated section 72A and tax set-offs, and what effect to give the express waiver of section 72A benefits, a later effective-date undertaking and the tax authorities' subsequent participation.

72A | 70 | 71 | 72 | 43B

Two-judge bench | K. Ramaswamy, J. | N. Venkatachala, J.

Assessment years: See the source-scope notes; no year inferred.

Historical tax-authority hearing ruling in a SICA merger

The merger survived on SRF's express waiver of section 72A benefits, its undertaking to use 1 April 1994 as the effective date, and the tax authorities' participation and stated revenue position. The Court affirmed their right to prior notice; it did not grant a quantified deduction or section 72A benefit, or hold that merger approval automatically creates a tax entitlement. Current statutory application, later treatment and 2025 mapping remain unverified.

01 FACTS OF THE CASE

Flowmore Polyester Ltd. had closed in August 1990. On a reference by its board, BIFR declared it a sick industrial company on 6 December 1991 under the Sick Industrial Companies (Special Provisions) Act, 1985. IFCL, as operating agency, invited rehabilitation proposals. SRF proposed a merger, while Garware and Assam Asbestos Ltd. proposed revival on a stand-alone basis. Despite repeated opportunities and notices, Garware did not submit a revised proposal or participate as required; it instead offered technical assistance to Assam Asbestos (physical PDF pages 5–8 / SCR 569–572).

The tax consequences affected the scheme process. BIFR's April 1993 observations included concern about a Rs 10.17 crore section 72A tax shield. SRF pointed out that its letters of 23 March and 16 April 1993 had expressly surrendered section 72A benefits. BIFR subsequently rectified its approach, accepted the rehabilitation-cum-merger scheme and directed publication of the draft for objections. The cited tax-shield figure was a scheme concern, not a tax relief quantified or awarded by the Supreme Court (physical pages 8–9 / SCR 572C–573D).

The Delhi High Court set aside the BIFR and appellate-authority orders. It regarded Garware as an interested participant who should have been heard and also considered the absence of notice to the Central Government and CBDT fatal because the merger entailed tax concessions. The company appeals and a separate shareholder challenge came before the Supreme Court. During the litigation SRF undertook that the merger would take effect from 1 April 1994, rather than the earlier 1 April 1992 date; the undertaking was reiterated before the Supreme Court (physical pages 9–11, 14 / SCR 573–575, 578).

Source: See the proposition-specific paragraph and PDF-page references below.

02 DISCUSSION BY THE HON'BLE COURT

The Court treated expeditious rehabilitation as central to SICA. It read sections 17 and 18, together with the exclusion of civil-court jurisdiction in section 26, as requiring timely completion rather than permitting a rival to prolong closure. On the facts, Garware's nonparticipation despite notices and opportunities amounted to acquiescence. It was not an interested person entitled to reopen the process in the way the High Court had allowed. The Court therefore rejected that separate natural-justice ground for disturbing the merger (physical pages 12–14 / SCR 576A–578B).

The tax-authority issue was different. The Court acknowledged that BIFR had not issued notice to the Central Government or CBDT. It reasoned that the Central Government would be required to pass the section 72A tax-benefit order and was therefore entitled to be heard. Because the merger as initially dated involved set-off concessions under sections 70, 71 and 72 with potential revenue loss, the Central Government and CBDT were necessary and proper parties. BIFR should give both notice before finalising and approving the merger scheme. This passage decides the procedural interaction with the 1961 Act even though the appeal as a whole concerns a SICA rehabilitation scheme (physical page 14 / SCR 578B–D).

The Court nevertheless found no error warranting interference in the circumstances before it. First, SRF had expressly given up section 72A benefits. Second, the undertaking fixing 1 April 1994 as the effective date marginalised the set-off benefits under sections 70–72, so the Court considered that no considerable revenue loss would occur and any minor benefit would be consequential to the merger. Third, the Central Government and CBDT had been impleaded and heard in the High Court and Supreme Court. Their counsel, Sri Ahuja, stated that there would be no revenue loss and that section 43B benefit would be available whether the company was revived on a stand-alone or merger basis. The Court's refusal to disturb the orders rests on that combined factual position; the section 43B statement must remain attributed to counsel within that reasoning (physical page 14 / SCR 578D–F).

The source does not decide an assessment, determine an allowable deduction amount or issue a section 72A tax-benefit order in SRF's favour. In particular, the express surrender of that benefit is a reason for sustaining the rehabilitation outcome, not a grant of it. Nor does the Court state that eventual participation invariably cures the omission of advance notice in every rehabilitation case.

Source: See the proposition-specific paragraph and PDF-page references below.

03 JUDICIAL DECISION

The Court allowed the company appeals, set aside the High Court's orders and confirmed the BIFR and appellate-authority orders, with costs quantified at Rs 20,000. It rejected the shareholder's separate challenge with exemplary costs of Rs 25,000. The judgment directed the costs to be deposited with the Supreme Court Legal Aid Committee within four weeks, with recovery in default. The notice requirement for the tax authorities was affirmed, but the merger was not invalidated on the particular waiver, undertaking and hearing record (physical pages 14–15 / SCR 578B–579E).

Source: See the proposition-specific paragraph and PDF-page references below.

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: SRF and Flowmore in the company appeals; against Garware's challenge and against the separately challenging shareholder

Company appeals allowed; High Court orders set aside; BIFR and appellate-authority orders confirmed with Rs 20,000 costs. Shareholder challenge rejected with Rs 25,000 exemplary costs, payable as directed to the Supreme Court Legal Aid Committee.

Final reasoned disposal of rehabilitation appeals with a narrow 1961 Act/SICA procedural-interplay holding; no final adjudication or quantification of income-tax liability or deduction

Historic section 72A/rehabilitation notice issue. Sustaining the scheme depends on express section 72A waiver, the 1 April 1994 effective-date undertaking and tax-authority participation and position. No automatic tax entitlement from merger approval and no universal cure of absent prior notice.

Source: See the proposition-specific paragraph and PDF-page references below.

05 AKHB REVIEW POINT

Read the notice holding together with the reason the Court did not set the scheme aside. The first establishes the tax authorities' right to participate when the proposed rehabilitation affects statutory tax concessions. The second depends on what remained of those concessions after the waiver and effective-date undertaking, and on the authorities actually being heard. Keeping those parts separate prevents the favourable merger result from being mistaken for permission to bypass the tax authorities.

For a historical scheme file, the practical research questions are whether tax benefits were sought or surrendered, which scheme effective date was promised and adopted, what tax consequences remained, and whether the competent tax authorities participated. The judgment cannot by itself prove that any particular deduction or carry-forward condition was satisfied. The Rs 10.17 crore figure belongs to the earlier scheme concern, while the awarded sums at the end are litigation costs.

Application to a later restructuring requires checking the governing statutory framework and subsequent treatment. Neither the continuing availability of the historical SICA procedure nor the present form of section 72A is certified here.

Source: See the proposition-specific paragraph and PDF-page references below.

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, date, bench and full appeal group

Source url: [Open cited source](#)

Pdf pages: 1; 5

Paragraphs: Unnumbered judicial text; SCR 565 and 569B–E

Source role: reported metadata and judicial text

2.

Topic: Rehabilitation proposals and procedural history

Source url: [Open cited source](#)

Pdf pages: 5; 6; 7; 8; 9

Paragraphs: Unnumbered judicial text; SCR 569E–573G

Source role: judicial text

3.

Topic: Section 72A tax-shield concern and express waiver

Source url: [Open cited source](#)

Pdf pages: 8

Paragraphs: Unnumbered judicial text; SCR 572C–F

Source role: judicial text

4.

Topic: Tax-notice dispute and effective-date undertaking in submissions

Source url: [Open cited source](#)

Pdf pages: 10; 11

Paragraphs: Unnumbered judicial text; SCR 574E–575E

Source role: advocates submissions in judgment

5.

Topic: SICA expedition and Garware acquiescence

Source url: [Open cited source](#)

Pdf pages: 12; 13; 14

Paragraphs: Unnumbered judicial text; SCR 576A–578B

Source role: judicial text

6.

Topic: Central Government section 72A role and tax-authority right to notice

Source url: [Open cited source](#)

Pdf pages: 14

Paragraphs: Unnumbered judicial text; SCR 578B–D

Source role: judicial text

7.

Topic: Waiver, 1 April 1994 undertaking, tax-authority hearing and section 43B statement

Source url: [Open cited source](#)

Pdf pages: 14

Paragraphs: Unnumbered judicial text; SCR 578D–F

Source role: judicial text with expressly attributed counsel position

8.

Topic: Separate shareholder outcome, company appeals and costs

Source url: [Open cited source](#)

Pdf pages: 14; 15

Paragraphs: Unnumbered judicial text; SCR 578G–579E

Source role: judicial text

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

K. Ramaswamy, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

RELATED STATUTES CONSIDERED

Sick Industrial Companies (Special Provisions) Act, 1985, including sections 15, 16, 17, 18 and 26

SOURCE & VERIFICATION

[Hon'ble Supreme Court source PDF \(reported judgment\)](#)

Identified source rendition: 15 PDF pages; SHA-256

95563c5cb026115934e96f4c6c76515bbae73a9118dbfca0124f55319001cc5e. Original bytes preserved.

Complete judicial text at physical PDF pages 5–15 / SCR 569D–579E. Editorial headnote at pages 1–4 and opening page 5 is separately identified. All 15 page images were screened and the material tax holding at page 14 was enlarged and read. No adjacent judgment is included.

[Open cited source rendition](#)

No assessment-year liability is adjudicated. The rehabilitation scheme's proposed 1 April 1992 date and undertaken 1 April 1994 date are effective dates, not inferred assessment years.

The dominant litigation concerns SICA rehabilitation. Inclusion is confined to the actually resolved tax-authority-order/notice issue and its factual treatment.; SRF expressly waived section 72A benefits; the judgment does not grant them.; The shift from 1 April 1992 to 1 April 1994 is an effective-date undertaking central to the reasoning, not an assessment-year finding.; Section 43B availability is recorded as the tax authorities' counsel's position in a no-revenue-loss discussion, not an independently examined blanket deduction rule.; Company appellants and the shareholder receive different dispositions and different cost orders. The concluding reporter label Appeals allowed must not flatten those outcomes.; No numbered judicial paragraphs appear in this report; pinpoints use verified one-based PDF pages and the printed SCR page/letter locations.; Comprehensive later treatment, present statutory application and 2025 mapping remain unverified.

Section 72A supplies the direct tax-authority-order and hearing issue. Sections 70–72 concern the scheme's set-off consequences as discussed by the Court; section 43B appears in the tax authorities' counsel's position accepted in the fact-specific disposal. These tags do not represent a separate final allowance or quantification under each section. SICA governs the rehabilitation proceeding.

STATUTORY SCOPE

No automatic mapping to the Income-tax Act, 2025 or certification of present law. The note concerns the historical Income-tax Act/SICA interaction examined in 1995.

LATER TREATMENT

Source checked 2026-10-04. Comprehensive subsequent judicial treatment, later statutory amendments and present application of the historical SICA/section 72A procedure have not been verified. No later judgment is relied upon.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 15](#)

SHA-256: 95563c5cb026115934e96f4c6c76515bbae73a9118dbfca0124f55319001cc5e

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