(2018) 09 DEL CK 0364

In the Delhi High Court

Case No : Civil Writ Petition 2133 Of 2017 & Cm Appl. 10304 Of 2017

Agarpara Company Ltd APPELLANT

Vs

Union Of India & Ors RESPONDENT

Date of Decision : 26-09-2018

Acts Referred:

Sick Industrial Companies (Special Provisions) Repeal Act, 2003 — Section 4(b), 18
Eighth Schedule of the Insolvency and Bankruptcy Code, 2016 — Section 252

Citation : (2018) 09 DEL CK 0364

Hon'ble Judges : S. Ravindra Bhat, J;A. K. Chawla, J

Bench : Division Bench

Final Decision : Diposed Off

Judgement

S. RAVINDRA BHAT

1. The petitioner had pursuant to the previous order filed an affidavit stating the matters in which one of us (S. Ravindra Bhat, J) had recused. It

appears from the affidavit that in two orders â?" relating to M/s Agarpara Jute Mills Ltd. [W.P.(C) 1345-1348/2016, W.P.(C) 1356/2016, W.P.(C)

3465/2016 and W.P.(C) No.5980/2018] one of us (S. Ravindra Bhat, J) had expressed, at some stage, reservations and recused from hearing.

However, there are orders which disclose that in respect of the company, which is the subject matter of the present proceedings i.e. Agarpara

Company Ltd., no such order was made. In fact, order dated 04.03.2016 indicates to the contrary. Having regard to these, learned counsel submitted

that the petitioners do not have any reservations with respect to the present pending proceedings. Â

2. Petitionerâ??s grievance is with respect to the lack of forum projected by it on account of the Sick Industrial Companies (Repeal Act), 2003 which

came into force on 01.12.2016 as well as the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 as amended by Section 252 read with

Eighth Schedule of the Insolvency and Bankruptcy Code, 2016 and the consequent Removal of Difficulties Order, 2017.

3. In view of the final order that we propose, detailed facts are not necessary; a scheme under the erstwhile Sick Industrial Companies (Special

Provisions) Repeal Act, 2003 was sanctioned under Section 18 of the SICA on 31.10.2013 â?" which was released on 29.11.2013 and became

effective. The present writ petitioner (represented by one Mahindra Sharma Group) had preferred appeals No.33 & 34/2014 there-against before the

Appellate Authority for Industrial and Financial Reconstruction (AAIFR). The same have been pending on the file of that authority due to lack of

minimum personnel forum and eventually, the Repeal Act came into force w.e.f 01.12.2016. As difficulties with respect to the pending appeals and

other questions arose, which became the subject matter of litigations in various Courts including a judgment of the Supreme Court and the Removal of

Difficulties Order 2017, an addition of Section 4(b) to the Repeal Act was enacted to apply retrospectively. The petitioner contends that in the light of

further developments (by way of the orderof this Courtin Twenty First Century Steels Ltd. vs. Union of India, W.P.(C) 1621/2017 decided on

06.02.2018) a similar order enabling the petitioner, an aggrieved party, to approach the National Company Law Tribunal, be made.

4. This Court had occasion to deal with the various facets pertaining to the repeal of SICA as well as the Repeal Act, 2017 â?" notably in Ashapura

Minechem Limited vs. Union of India, 2017 SCC Online 11784 and ATV Projects (India) Limited vs. Union of India, 2017 SCC Online Delhi 12136 as

well as in Twenty First Century Steels Ltd. (supra). Â

In Twenty First Century Steels Ltd. (supra) this Court observed as follows:-

â??It has been clarified that the fourth proviso to Section 4(b) of the Repeal Act introduced and enacted by the Removal of Difficulty Order dated

24.05.2017 is applicable only in cases where the scheme was sanctioned by the Board of Industrial and Financial Reconstruction (Board) but the

period for filing of the appeal had not expired. In such cases, any person, other than the company, can file an appeal and approach the National

Company Law Appellate Tribunal. In all other cases and even in cases where appeals were filed and were pending before Appellate Authority for

Industrial and Financial Reconstruction (Appellate Authority), reference would have to be filed before the National Company Law Tribunal. This also

appears to be the mandate of Section 4(b) of the Repeal Act which states that on the date, notified by the Central Government, any appeal preferred

before the Appellate Authority or any reference made or inquiry pending to or before the Board or any other proceedings of whatsoever nature

pending before the Appellate Authority or the Board under the Sick Industrial Companies (Special Provisions) Act, 1985 shall stand abated. In ATV

Projects (India) Limited vs. Union of India and Others, WP(C) 4340/2017 decided on 05.12.2017, it was held that Section 4(b) is an explicit provision

which states that all proceedings under the Repeal Act shall stand abated. Fourth proviso inserted by way of Removal of Difficulty Order, 2017 is

applicable only to a limited class of persons, that is, persons aggrieved by the sanctioning of scheme and in whose cases limitation period for filing of

the appeal had not expired. Ninth respondent has affirmed that the fourth proviso would not be applicable to and does not confer a right on the

â??sick Companyâ? but would be applicable to only third parties, who were aggrieved by the order of the Board sanctioning the scheme, and in

whose cases limitation period for filing of the appeal had not expired. In view of the aforesaid clarification, we would observe that the petitioner has to

approach National Company Law Tribunal. The grievance of the petitioner that they have been left without any remedy or forum for redressal of

grievance, is, therefore, misconcieved and is rejected. On the question of abatement and the effect of the Repeal Act, earlier decision of this Court in

Ashapura Minechem Limited vs. Union of India and Others, WP(C) 9674/2017 decided on 01.11.2017, had dealt with the challenge and upheld the

constitutional validity. The judgment in the case of ATV Projects (supra) also upholds the validity of the Repeal Act. Of course, odd and extraordinary

cases, may require consideration and could be examined. In view of the reasoning given in the two judgments, we reject the challenge made by the

petitioner to the constitutional validity. The petitioner is at liberty to approach the National Company Law Tribunal within a period of 60 days from

today. If such an application/reference is made within 60 days, the same would not be dismissed on the ground that it has been preferred beyond the period of 180 days. We are granting this liberty as the writ petition has remained pending in this Court and the respondent-Government of India had

also taken time to clarify. With the aforesaid observations and liberty, the writ petition is disposed of. No costs.â??

5. Since this Court had clarified that in somewhat analogous situation, those aggrieved by the Repealed Act or perceived difficulties on account of the

Repeal Act, are at liberty to approach the National Company Law Tribunal, this Court is of the opinion that a similar approach is to be adopted in this

case as well. It is therefore directed that in case, the petitioner approaches the National Company Law Tribunal within 60 days from today, the

Tribunal should consider it on its merits and not reject it on the ground that it was preferred beyond the period of 180 days prescribed by the Act (on

account of the pendency of these proceedings). We also clarify that if there is any dispute as to the locus standi of the present petitioner (Mahindra

Sharma Group) with respect to the maintainability of the appeal, the same would be subject to the contentions of the parties and the decision of the

NCLT on its own merits â?" in the light of the observations of this Court made on 14.09.2017.

The writ petition is disposed of in the above terms along with pending application.

Dasti.