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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 1159/2016**

TWILIGHT LITAKA PHARMA PVT LTD Petitioner
Represented by: Ms.Neela Gokhale,
Mr.Devanshu Sharma, Advs.
versus

UNION OF INDIA AND ORS Respondent
Represented by: Ms.Monika Arora, Mr.Harsh
Ahuja, Mr.Kavindra Gill,
Advs. for UOI/R-1.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER
11.02.2016

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CM 5119/2016

Exemption allowed subject to just exceptions.

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1. The order dated September 21, 2015 challenged in the writ petition evinces that the Registrar of BIFR has passed the impugned order.
2. No pleadings on facts being warranted we dispose of the petition today itself since learned counsel as above appears for R-1.
3. R-2 and R-3 would be proforma parties.
4. The issue is squarely covered in favour of the petitioner as per a decision dated December 23, 2014 allowing W.P.(C) No.3437/2014 M/s.Zenith Infotech Ltd. Vs. Union of India. In paragraph 22 of the decision it was held as under:

“22. Keeping in view the aforesaid legal position, we are of

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the view that when the Registrar or the Secretary is of the opinion or view that the company making the reference is not a sick industrial company and therefore reference should not be registered, they need not register the reference but refer the matter to the Board. The Board, thereafter, would decide whether the reference should be registered. This would ensure that the Registrar or the Secretary do not become adjudicating authorities, but their power is restricted in terms of sub-regulation (5) to Regular 19 to scrutiny alone and not to decision making or adjudication. Right to appeal conferred under Regulation 19(8)(2) before the Chairman is limited to scrutiny. In case the Chairman finds that there is a dispute or debate whether reference should be registered, which requires adjudication on merits, the said objection should be taken on record and the matter should be referred to the Board for appropriate decision. Similarly, if the reference is erroneously registered, contrary to the provisions of the Act, an objection can certainly be raised, whether jurisdictional pre-requisites are satisfied, which can be decided by the Board notwithstanding earlier registration by the Registrar, Secretary or the Chairman of BIFR. Therefore, as in this case, they went beyond the scope of scrutiny, we direct the matter be placed before the duly constituted Board, to decide, whether the petitioner is an industrial company, which has become Sick and therefore, reference need to be registered. The Board will not be bound by the reasons and findings recorded in the impugned orders and would independently apply their mind without being influenced by the earlier orders. We are not expressing any opinion whether, the caveator herein need to be heard at this stage. The order of the Registrar, BIFR dated August 12, 2013 and the consequential orders of the Secretary, BIFR dated September 13, 2013 and the order dated April 03, 2014 of Chairman, BIFR are set aside.”

5. The impugned order shows that the Secretary BIFR has acted as an adjudicatory authority, which he is not. As held by the Division Bench the power of the Registrar or the Secretary of BIFR is restricted in terms of sub-

regulation (5) of Regulation 19 of the BIFR Regulations, 1987.

6. The writ petition is disposed of quashing the order dated September 21, 2015 passed by the Secretary BIFR.

7. The Registry of BIFR shall place the reference sought by the petitioner for being declared a sick undertaking before BIFR.

8. No cost.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

FEBRUARY 11, 2016

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