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

Date of Decision : 6th December, 2017

\+ **W.P.(C) 440/2017 with CM APPL. Nos. 2004/2017 (Stay), 19772/2017, 24080/2017 (Impleadment), 19774/2017, 29721/2017 (Status quo), 24633/2017 (Vacation of order dated 06.07.2017) 24769/2017 (Modification of order 06.07.2017) 29726/2017 (Directions).**

JK JUTE MILL MAZDOOR EKTA UNION ..... Petitioner

Through : Mr. Sanjeev Sen, Senior Advocate with Mr.Ashok Kumar Jain, Mr.Ankit Kohli, Mr. Atishi Dipankar, Advocates.

versus

UOI AND ORS ..... Respondents

Through : Mr. Dev P. Bhardwaj, CGSC for UOI/R1.
Ms. Indrani Mukherjee, Advocate for IDBI/R2.
Mr. Chetan Sharma, Senior Advocate with Ms.Purti Marwaha Gupta, Mr.Arvind Kumar Gupta, Advocates for R3/ M/s J.K.
Mr. Amit S. Chaddha, Senior Advocate with Mr.Atanu Mukherjee, Advocate for R6.
Mr. Sanjeev Sabharwal, Senior Advocate with Mr.Harsh Sharma, Advocate for R7/Thapar Herbs & Spices.
Mr. Sachin Dutta, Senior Advocate with Mr.Shakil Ahmed, Advocate for R21/Libra Retailers Pvt. Ltd.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE PRATHIBA M. SINGH

<u>SANJIV KHANNA, J.</u> (ORAL)

J.K. Jute Mills Mazdoor Ekta Union has invoked writ jurisdiction of this Court under Article 226 of the Constitution of India, challenging Section 4(b) of the Sick Industrial Companies (Special Provision) Repeal Act, 2003 alleging *inter alia* that the provisions of the Insolvency & Bankruptcy Code, 2016 ('Code' for short) do not provide for an efficacious remedy for implementing the directions of the Supreme Court in order dated 13th November, 2014 reported as ***Ghanshyam Sarda v. Shiv Shankar Trading Company (2015) 1 SCC (298)*** and order dated 18th November, 2016 passed in ***Contempt Petition (Civil) No.338/2014***. Another prayer made in the writ petition is for passing appropriate orders or directing the Union of India to remove difficulties and provide for a remedy for implementation of the said orders. Yet another prayer made, is for appointment of a court Receiver.

2. During the course of the hearing, learned Senior counsels for the petitioner and the respondents took us through the provisions of the Code. We need not go into the various factual and legal aspects raised, for the counsels are *ad idem* and have reached a consensus on the ambit and scope of power of the National Company Law Tribunal (NCLT) under the Code.

3. Learned counsels agree that the workmen of M/s J.K. Jute Mills Company Limited/Respondent No. 3 would be '*operational creditors*' as defined in Section 5 (20) of the Code. It is also agreed that they are entitled to invoke the jurisdiction of the NCLT under Sections 6, 8 and 9 of the Code.

4. On the question of the powers of NCLT, learned counsels for the

parties agree and accept that Sections 47 and 49 of the Code, which relate to under-valued transactions, are not etched and seized by a fixed limitation period as to the transactions which can be looked into and examined. The said Sections can be invoked when the conditions stipulated therein are otherwise satisfied.

5. The orders passed by the Supreme Court in ***Ghanshyam Sarda*** (*supra*) in paras 37 to 39 had issued certain directions to the BIFR including:

- To satisfy itself and determine whether the net worth of the company had turned positive or not and upon satisfaction either way, the BIFR was to either de-register the company or consider the scheme for revival of the company. This exercise was to be completed within two months.
- The transfer of Katihar property without express leave or permission of the BIFR was held to be questionable but since the transferee was not before the Supreme Court, the appropriate assessment of the same was to be done by the BIFR. As part of this exercise, BIFR was to consider and assess whether there was any necessity and expedience to sell the property in question and after examining the whole matrix of the sale consideration for the said transaction, the appropriate directions were to be passed as contained in para 38.

Apart from this, in the order on the contempt proceedings dated 18th November 2016, the Supreme Court had made observations.

6. This Court is of the opinion that the directions given by the Supreme Court could be examined and considered under Sections 47 and 49 of the Code, if other conditions for invoking these provisions are otherwise

satisfied. Both these provisions are not, in any manner, restricted in their application by any limitation period of either one year or two years from the `insolvency commencement date'. The directions as given in ***Ghanshyam Sarda*** (*supra*) can be examined and undertaken by the NCLT under the Code.

7. In view of our above observations and the consensus on the ambit and power of the NCLT under the Code, learned Senior counsel for the petitioner submits that the workmen would invoke the jurisdiction of the NCLT under Sections 6, 8 and 9 of the Code and would move applications under Sections 47 and 49 of the Code for appropriate relief and directions before the NCLT. It is obvious that the application so filed would be dealt with in accordance with the provisions of the Code.

8. It will be open to the workmen to allege and assert that there has been a violation of the orders passed by the Supreme Court and by this Court, as well as violation of the restraint orders passed by the Board for Industrial and Financial Reconstruction ('BIFR') under Section 22A of the Sick Industrial Companies (Special Provisions) Act, 1985. Third respondent and others can contest the said submissions.

9. We may note that the learned Senior counsel for the petitioner and the respondent No. 6 have alleged that the respondent No. 3-company has violated the aforementioned orders. Contention of the respondent No. 3 is that they have not violated any orders. Respondent No. 7, on the other hand, states that he is a *bonafide* purchaser for good value. We clarify that we have not expressed any opinion on the said aspect and leave the question open.

10. Whether or not there was/is any violation, and the effect thereof and the consequences following therefrom, would be examined by the NCLT. While dealing with the aforesaid situation, the NCLT would examine the directions given and findings recorded in the order passed by the Supreme Court dated 13th November, 2014 reported as ***(2015) 1 SCC 298***. The workmen and the respondents would be entitled to refer to the subsequent order passed by the Supreme Court in the contempt proceedings dated 18th November, 2016.

11. We would clarify that, in case there is any violation of the orders passed by this Court dated 16th June, 2017, 6th July 2017 and 21st August 2017 in the present writ petition, it will be open to the petitioner to file contempt proceedings.

12. In view of the aforesaid position, learned Senior counsel for the petitioner does not press his prayer challenging vires of Section 4 (b) of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 as modified by the Code. He further submits that the question as to whether Trade Unions can invoke the jurisdiction of NCLT under the Code is sub-judice before the Supreme Court and they would abide by the decision of the Supreme Court. This statement is without prejudice to the rights and contentions of the petitioner-trade union to challenge the *vires* of the Code, if so advised, for it is submitted that the trade unions have been wrongly denied the right to invoke the jurisdiction of the NCLT under the Code.

13. We direct that the interim orders passed on 16th June, 2017, 6th July, 2017 and 21st August, 2017 would continue and would be in operation for a further period of 2 months from today so as to enable the workmen to

approach the NCLT. It will be, thereafter, for the NCLT to decide whether or not to continue with the said interim orders and / or to modify, amend or vacate the same.

14. Similarly in case there is violation of the directions given in the order dated 26th May, 2017, by which it was directed that the Company would keep Rs.2.5 crores in reserve, it will be open to the petitioner to invoke contempt jurisdiction and also for the workmen to highlight the said fact before the NCLT.

15. With the aforesaid observations, the writ petition and all pending applications are disposed of without any order as to costs.

SANJIV KHANNA, J.

PRATHIBA M. SINGH, J.

DECEMBER 06, 2017
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