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

\+ W.P.(C) 2681/2017 & CM APPL. No. 11621/2017

M/S GMB CERAMICS LTD. ..... Petitioner

Through: Mr. Abhimanyu Bhandari, Mr. Pulkit Deora and Mr. Lucky Palta, Advocates

versus

UNION OF INDIA & ORS ..... Respondents

Through: Mr. Sankalp Jain, proxy counsel for Ms. Namisha Gupta, Advocate for R1 Mr. Neeraj Chaudhry, Advocate for R-2 and 3.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R

% **14.09.2017**

1. The present petition has been filed by the petitioner praying *inter alia* for quashing the order dated 20.10.2016, passed by the BIFR.

2. Mr. Bhandari, learned counsel for the petitioner submits that vide order dated 20.10.2016, the BIFR had sanctioned a Draft Restructuring Scheme in respect of the respondent no.2/Company. The petitioner is an unsecured creditor of the respondent no.3/Company and had sought to intervene in the proceedings pending before the BIFR, but no such permission was granted and the said application was dismissed on 18.07.2016. In the hearing held before the BIFR on 20.10.2016, the authorized representative of the

petitioner was directed to leave the court room.

3. Aggrieved thereby, the petitioner had filed two appeals against the orders dated 18.07.2016 and 20.10.2016 before the AAIFR on 30.11.2016. Before the said appeals could be listed before the AAIFR, AAIFR and BIFR were dissolved under the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 that took effect on 01.11.2016.

4. After expiry of over three months, the petitioner filed the present petition praying *inter alia* for quashing the Scheme sanctioned by BIFR on 25.10.2016. Notice was issued on the said petition on 4.5.2017, returnable on 1.9.2017. Within three weeks reckoned from 4.5.2017, a Gazette Notification dated 24.5.2017 was published by the Union of India issuing certain clarifications in respect of the Insolvency and Bankruptcy Code, 2016. The relevant extract of the aforesaid Notification is as follows:-

> *"Now, therefore, in exercise of the powers conferred by the sub-section (1) of the section 242 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby makes the following Order to remove the above said difficulties, namely :-*
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> 1. *Short title and commencement.- (1) This Order may be called the Insolvency and Bankruptcy Code (Removal of Difficulties), Order, 2017.*
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> 2. *In the Insolvency and Bankruptcy Code, 2016, in the Eighth Schedule, relating to amendment to the Sick Industrial Companies (Special Provisions) Repeal Act, 2003, in section, in clause (b), after the second proviso, the following*

provisos shall be inserted, namely :-

> *"Provided also that any scheme sanctioned under sub-section (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 or 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".*
>
> *{F.No.30/7/2016-Insolvency-Part II}*
> *AMARDEEP SINGH BHATIA, Jt. Secy."*

5. While it is the submission of the learned counsel for the respondents no. 2 and 3 that in view of the clarification given in the aforesaid Notification, the petitioner ought to have approached the NCLAT, under the Code within a period of 90 days from the date of the publication of the order, it is the stand of learned counsel for the petitioner that there is still no clarity in the said Notification, as to whether it would cover the present case or not.

6. In view of the clarification issued aforesaid Notification, we do not propose to entertain the present petition. It is now for the petitioner to

seek legal recourse in terms of the captioned Notification. Only if the NCALT declines to entertain the petitioner's appeal, would it have the option of approaching the Competent Court for relief.

7. The present petition is accordingly disposed of with liberty granted to the petitioner as above.

8. The date fixed before the Joint Registrar stands cancelled.

HIMA KOHLI, J.

DEEPA SHARMA, J.

SEPTEMBER 14, 2017/P