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

+ W.P.(C)No.8565/2017

% Date of decision : 25th September, 2017

M/S SHARDA ISPAT LIMITED (SIL) Petitioner

**Through : Mr. Ashok Kr. Jain,
Mr. Pankaj Jain and
Ms. Priyanka Das, Advs.**

versus

UNION OF INDIA & ORS Respondents

**Through : Mr. Dev. P. Bhardwaj, CGSC
for R-1/UOI with Mr. Satya
prakash Singh and Mr.
Surender Kumar, Advs.
Mr. Abhishek Anand and Ms.
Srishti Kapoor, Advs. for R-3**

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. This writ petition has been filed by the petitioner pointing out that by an order dated 21st January, 2010 (page 50), the Board of Industrial & Financial Reconstruction ('BIFR' hereafter) sanctioned a scheme (SS10) for demerger of two companies namely M/s Sharda

Ispat Industries Ltd. (SIIL) and the Sarda Power and Steel Limited (SPSL) which demerger was being worked out.

2. Due to the intervention of the Sick Industries Companies (Special Provisions) Repeal Act, 2003 and Section 252 of the Insolvency and Bankruptcy Code, 2016, the proceedings before the BIFR abated.

3. The petitioner has submitted that the BIFR had passed an order dated 26th March, 2013 (page 90). So far as the provisions before the erstwhile BIFR were concerned, orders dated 26th March, 2013 and 26th May, 2016 specifically issued directions and observations so far as the conduct of the Bombay Stock Exchange vis-a-vis the aforesaid scheme with regards to the two companies were concerned.

4. The petitioner is aggrieved that by virtue of abatement of the proceedings before the BIFR, the petitioner has been rendered remediless so far as the violation by the Bombay Stock Exchange is concerned.

5. Mr. Abhishek Anand, learned counsel appearing for the IDBI has drawn our attention to the notification bearing SO1683(E) dated 24th May, 2017 issued by the Government of India in exercise of powers under sub-section 1 of Section 242 of the Insolvency and Bankruptcy Code, 2016 (page 138) which inter alia provides as under :

“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 4, 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 of 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.”

6. It would, therefore, appear that the scheme which was approved by the BIFR so far as the companies in question are concerned, is deemed to be an approved resolution under sub-section (1) of Section 31 of the Insolvency and Bankruptcy Code, 2016.

7. An examination of the Insolvency and Bankruptcy Code, 2016 would show that the legislature has, in Section 74 thereof, provided for strict punishments for contravention of the resolution under

Section 31(1). Jurisdiction is vested, therefor, on the “*Adjudicating Authority*” (by Section 81) which is defined, by Clause (1) of Section 5, as the National Company Law Tribunal. The petitioner, therefore, has an appropriate remedy available under, Section 74 of the Insolvency and Bankruptcy Code, 2016, before the National Company Law Tribunal exercising jurisdiction therein.

8. In view of the above, learned counsel for the petitioner prays for leave to withdraw this writ petition with liberty to invoke the said remedy in accordance with law.

9. This writ petition is disposed of as withdrawn with liberty as prayed for.

10. We may note that the petitioner has also assailed the constitutional validity of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003. This question is left open.

11. We also make it clear that we have not expressed any opinion on the merits of the petitioner’s case.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

SEPTEMBER 25, 2017/kr