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

\+ W.P.(C) 47/2016 & CM Nos. 260/2016, 44713/2016, 3795/2017

M/S PERCISION FASTENERS LTD ..... Petitioner

Through: Mr. Vivek Sibal with Mr. Rahul Sharma & Mr. Jitender Ratta, Advocates.

versus

I D B I & ORS ..... Respondents

Through: Mr. Chinmay Kanojia with Mr. Jawahar Raja, Advocates for R-3.
Mr. Abhishek Khanna, Advocate for Mr. Abhimanyu Singh Khatri, Advocate for R-5.
Ms. Ramni Taneja with Mr. Peeyush Vaish, Advocates for R-8.
Mr. Sahil with Ms. Shibani, Advocates for R-9/ASREC.
Mr. D.R. Jain, Standing Counsel with Mrs. Sapna Jain, Advocate for R-11.
Mr. Sanjay Bhatt with Mr. Abhishek Anand, Advocates for R-13/SASF.
Mr. Dinkar Singh, Advocate for respondent/ARCIL.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

O R D E R

% **16.05.2017**

1. The present petition has been filed by the petitioner praying *inter alia* for setting aside the order dated 12.10.2015, passed by the Appellate Authority for Industrial & Financial Reconstruction (AAIFR) and the order dated 16.03.2011 passed by the Board for Industrial & Financial

Reconstruction (BIFR) and further, for directions that the Scheme that was originally sanctioned by the BIFR, be implemented by all the parties.

2. Learned counsel for the respondent states that in view of Section 4 of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 (in short, Repeal Act) read with Section 252 of the Insolvency and Bankruptcy Code, 2016, the present petition has been rendered infructuous.

3. Learned counsel for the petitioner, however, argues that irrespective of the aforesaid provisions, Section 5 of the Repeal Act, would still come to the aid of the petitioner for it to continue pursuing the present petition.

4. Section 5 (1)(b) of the Repeal Act, which is the saving clause, prescribes that the repeal by the Act of the SICA shall not affect the previous operation of the repealed enactment or anything done or suffered thereunder. Section 5 (1)(d) of the Repeal Act clarifies that the repealed enactment shall not affect any order made by the BIFR for sanction of the schemes.

5. It is submitted by learned counsel for the petitioner that initially, BIFR had sanctioned a scheme which order was later on set aside. In the appeal preferred by the petitioner before AAIFR, the subsequent order of setting aside the scheme passed by BIFR was upheld. He submits that if the orders passed by AAIFR and BIFR are set aside in the present proceedings, the scheme, would stand revived, to the benefit of the petitioner.

6. We are of the opinion that there is an inherent flaw in the submissions made by learned counsel for the petitioner for the reason that

once SICA, 1985 stands repealed and AAIFR and BIFR stand dissolved, there is no question of reviving the scheme as there would be no Agency available for operating/implementing the same. If the petitioner has a grievance, it must seek legal recourse before the National Company Law Tribunal, under the Insolvency and Bankruptcy Code, 2016, as prescribed in the Eighth Schedule of the said enactment.

7. Accordingly, the present petition is disposed of, with liberty granted to the petitioner to seek legal recourse before the appropriate forum, as may be advised.

HIMA KOHLI, J

SANGITA DHINGRA SEHGAL, J

MAY 16, 2017
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