$~5

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

\+ W.P.(C) 1621/2017 & CM 27025/2017

TWENTY FIRST CENTURY STEELS LTD ..... Petitioner

Through : Ms. Purti Marwaha Gupta, Adv. with Ms. Heena George, Adv.

versus

UNION OF INDIA & ANR ..... Respondents

Through : Mr. Ravi Prakash, CGSC with Mr. Farman Ali, Mr. Sanjay Shorey, Joint Director (Legal), Ms. Yogini Chauhan, Deputy Director, Min. of Corporate Affairs for R-1 & 9.
Mr. Amit Bansal, Adv. for R-8.
Mr. Rajiv Kapur, Adv. for SBI.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

O R D E R

% **06.02.2018**

Respondent No.9 has filed an affidavit clarifying the position on interpretation of Section 4(b) of the Sick Industrial Companies (Special Provision) Repeal Act (Repeal Act) as amended by Section 252 read with the 8th Schedule of Insolvency and Bankruptcy Code, 2016 and the Removal of Difficulty Order, 2017 by which two provisos were added to Section 4(b) of the Repeal Act.

It has been clarified that the fourth proviso to Section 4(b) of the Repeal Act introduced and enacted by the Removal of Difficulty

Order dated 24.05.2017 is applicable only in cases where the scheme was sanctioned by the Board of Industrial and Financial Reconstruction (Board) but the period for filing of the appeal had not expired. In such cases, any person, other than the company, can file an appeal and approach the National Company Law Appellate Tribunal. In all other cases and even in cases where appeals were filed and were pending before Appellate Authority for Industrial and Financial Reconstruction (Appellate Authority), reference would have to be filed before the National Company Law Tribunal.

This also appears to be the mandate of Section 4(b) of the Repeal Act which states that on the date, notified by the Central Government, any appeal preferred before the Appellate Authority or any reference made or inquiry pending to or before the Board or any other proceedings of whatsoever nature pending before the Appellate Authority or the Board under the Sick Industrial Companies (Special Provisions) Act, 1985 shall stand abated.

In ATV Projects (India) Limited vs. Union of India and Others, WP(C) 4340/2017 decided on 05.12.2017, it was held that Section 4(b) is an explicit provision which states that all proceedings under the Repeal Act shall stand abated. Fourth proviso inserted by way of Removal of Difficulty Order, 2017 is applicable only to a limited class of persons, that is, persons aggrieved by the sanctioning of scheme and in whose cases limitation period for filing of the appeal had not expired.

Ninth respondent has affirmed that the fourth proviso would not be applicable to and does not confer a right on the “sick Company” but would be applicable to only third parties, who were aggrieved by the order of the Board sanctioning the scheme, and in whose cases limitation period for filing of the appeal had not expired.

In view of the aforesaid clarification, we would observe that the petitioner has to approach National Company Law Tribunal. The grievance of the petitioner that they have been left without any remedy or forum for redressal of grievance, is, therefore, misconcieved and is rejected.

On the question of abatement and the effect of the Repeal Act, earlier decision of this Court in ***Ashapura Minechem Limited vs. Union of India and Others***, WP(C) 9674/2017 decided on 01.11.2017, had dealt with the challenge and upheld the constitutional validity. The judgment in the case of ***ATV Projects (supra)*** also upholds the validity of the Repeal Act. Ofcourse, odd and extraordinary cases, may require consideration and could be examined.

In view of the reasoning given in the two judgments, we reject the challenge made by the petitioner to the constitutional validity. The petitioner is at liberty to approach the National Company Law Tribunal within a period of 60 days from today. If such an application/reference is made within 60 days, the same would not be dismissed on the ground that it has been preferred beyond the period of 180 days. We are granting this liberty as the writ petition has remained pending in this Court and the respondent-Government of India had also taken time to clarify.

With the aforesaid observations and liberty, the writ petition is disposed of. No costs.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

FEBRUARY 06, 2018

SRwt