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

\+ W.P.(C) 4935/2018 & CM Nos.19056-57/2018

UNILEC ENGINEERS LIMITED ..... Petitioner
Through: Mr. Pallav Mongia & Mr. Pankaj Singh, Advocates

versus

UNION OF INDIA & ORS ..... Respondents
Through: Mr. Jasmeet Singh, CGSC

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

O R D E R

% **08.05.2018**

The present writ petition impugns the constitutional validity of Section 3(8) of the Insolvency & Bankruptcy Code, 2016 ('Code' for short) on account of alleged repugnancy and conflict between the provisions of the Code and Micro, Small and Medium Enterprises Development Act, 2006 ('Act' for short).

The writ petition, as drafted, does not refer to and is bereft of facts, except para 3, which reads as under:

> "3.1 Petitioner is a Limited Company having its Registered Office at the address given in the Memo of Parties. Petitioner is a small Enterprise &is dealing with supply of Switchgears &Bus Panels. Petitioner is registered with the Respondent No.2 Ministry of Micro, Small & Medium Enterprises.
> 3.2 On 08.03.2016, the Petitioner &Respondent No.3 entered into a Vendor Finance Facility Agreement.

> 3.3 On 09.11.2017, a purported Demand Notice was issued by the Respondent No.3 through its Advocates.
> 3.4 Respondent. No.3 invoked the provisions of the Insolvency & Bankruptcy Code, 2016 & filed a Company Petition under Section 7 of the Code before the National Company Law Tribunal.
> 3.1 The Company Petition, filed by Respondent No. 3 against Petitioner, is pending adjudication before the National Company Law Tribunal, New Delhi."

The petitioner, a company, it is stated is a small enterprise dealing with supply of switchgear and bus panels etc. It is registered with the Ministry of Micro, Small & Medium Enterprises. The petitioner accepts having availed of financial services from L&T Finance Ltd., the third respondent, who has invoked provisions of the Code against the petitioner.

Learned counsel for the petitioner has drawn our attention to the objects and purpose behind the enactment, i.e. the Act, which includes provision for ensuring timely and smooth flow of credit to small and medium enterprises, minimise incidence of sickness and to enhance competitiveness of such enterprises in accordance with the guidelines or instructions by the Reserve Bank of India ('RBI').

Petitioner has not relied upon and referred to any specific guidelines of RBI, of which violation is alleged. Petitioner primarily relies on Section 18 of the Act, which forms part and parcel of Chapter-V relating to delayed payment to Micro and Small Enterprises. Section 18 of the Act relates to compulsory conciliation and/or arbitration, but would come into play only in respect of amounts due under Section 17 of the Act. Section 17 of the Act would apply when goods are supplied or services are rendered by the supplier. In such an event, the buyer would be liable to pay the amount with interest thereon, as provided under Section 16 of the Act.

In the facts and circumstances of the present case, it is extremely doubtful whether Section 18 can be invoked, as the petitioner has not supplied the goods or rendered any services. The petitioner has availed of the services rendered by the third respondent. Pertinently, the petitioner has not invoked and made any petition under Section 18 of the Act. Thus, there is no alleged repugnancy or conflict between the Section 18 of the Act and the provisions of the Code.

The petitioner has also relied on Section 10 of the Act, which reads as under:

> "10. The policies and practices in respect of credit to the micro, small and medium enterprises shall be progressive and such as may be specified in the guidelines or instructions issued by the Reserve Bank, from time to time, to ensure timely and smooth flow of credit to such enterprises, minimize the incidence of sickness among and enhance the competitiveness of such enterprises."

Learned counsel submits that the petitioner would raise its pleas, based upon Section 10 of the Act and the RBI guidelines before the National Company Law Tribunal. We do not make any comments on the said aspect, as it would be for the Tribunal to examine and decide. If aggrieved, the petitioner would be at liberty to take recourse to appropriate remedies.

We clarify that we have not made any comments on merits of *inter se* disputes between the petitioner and the third respondent. All issues and questions, on merits or otherwise, are left open. We have recorded the said concession, as learned counsel for the petitioner has stated that the petitioner may be advised to challenge certain provisions of the Code on the ground and issues, which are pending before the High Courts and the Supreme Court, but not raised in the present petition.

The writ petition is disposed of. All the pending applications are also disposed of.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

MAY 08, 2018
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