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

\+ W.P.(C) 1578/2019

FEDERATION OF INDIA ..... Petitioner

Through: Mr. Salman Khurshid, Sr. Adv. with Mr. Muhammad Ali Khan, Mr. Abir Roy, Mr. Gaurav Gupta, Mr. Omar Hoda, Ms Namrah Nasir, Mr. Jaspal Singh, Mr. Sparsh Prasad & Ms. Azra Rehman, Advs.

versus

UNION OF INDIA & ORS ..... Respondents

Through:

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

<u>O R D E R</u>

% **15.02.2019**

CM APPL. 7304/2019 (Exemption)

Allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) 1578/2019

Petitioner by this writ petition has made the following prayer:

"(a) Issue a writ of mandamus in public interest or any other appropriate writ, order, direction, declaring Section 240A of the Insolvency and Bankruptcy Code, 2016 to be unconstitutional for being violative of Article 14 and 19 of the Constitution of India;

(b) *Issue a writ of mandamus in public interest or any other appropriate writ, order, direction, directing the Respondents to amend Section 240A of the Insolvency and Bankruptcy Code, 2016 in order to prevent arbitrary and unfair treatment being accorded to Micro, Medium & Small Enterprises under the Insolvency & Bankruptcy Code, 2016;*

(c) *Issue a writ of mandamus in public interest or any other appropriate writ, order, direction, directing the Respondents to amend Section 240A of the Insolvency and Bankruptcy Code, 2016 in order to ensure that all beneficial rights guaranteed to MSMEs under the MSMED Act are not abrogated by the CIRP or Liquidation proceedings;*

(d) *Pass such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."*

In fact, the aforesaid indicates that the petitioner wants declaration of Section 240A of the Insolvency and Bankruptcy Code, 2016 as unconstitutional and violative of Article 14 and 16 of the Constitution. Recently, Hon'ble Supreme Court had occasion to consider the constitutional validity of various provisions of the said Code and in the Writ petition (Civil) No.99/2018 "***Swiss Ribbons Pvt. Ltd. vs. Union of India & Ors.***" decided on 25.01.2019 has upheld the constitutional validity of the Code and in para 85 and 86 made the following observations:

"85. The Insolvency Code is a legislation which deals with economic matters and, in the larger sense, deals with the economy of the country as a whole. Earlier experiments, as we have seen, in terms of legislations having failed, 'trial' having led to repeated 'errors', ultimately led to the enactment of the

Code. The experiment contained in the Code, judged by the generality of its provisions and not by so called crudities and inequities that have been pointed out by the petitioners, passes constitutional muster. To stay experimentation in things economic is a grave responsibility, and denial of the right to experiment is fraught with serious consequences to the nation. We have also seen that the working of the Code is being monitored by the Central Government by Expert Committees that have been set up in this behalf. Amendments have been made in the short period in which the Code has operated, both to the Code itself as well as to subordinate legislation made under it. This process is an ongoing process which involves all stakeholders, including the petitioners.

86. We are happy to note that in the working of the Code, the flow of financial resource to the commercial sector in India has increased exponentially as a result of financial debts being repaid. Approximately 3300 cases have been disposed of by the Adjudicating Authority based on out-of-court settlements between corporate debtors and creditors which themselves involved claims amounting to over INR 1,20,390 crores. Eighty cases have since been resolved by resolution plans being accepted. Of these eighty cases, the liquidation value of sixty three such cases is INR 29,788.07 crores. However, the amount realized from the resolution process is in the region of INR 60,000 crores, which is over 202% of the liquidation value. As a result of this, the Reserve Bank of India has come out with figures which reflect these results. Thus, credit that has been given by banks and financial institutions to the commercial sector (other than food) has jumped up from INR 4952.24 crores in 2016-2017, to INR 9161.09 crores in 2017- 150 2018, and to INR 13195.20 crores for the first six months of 2018-2019. Equally, credit flow from non-banks has gone up from INR 6819.93 crores in 2016-2017, to INR 4718 crores for the first six months of 2018-2019. Ultimately, the total flow of resources to the commercial sector in India, both bank and non-

bank, and domestic and foreign (relatable to the non-food sector) has gone up from a total of INR 14530.47 crores in 2016-2017, to INR 18469.25 crores in 2017- 2018, and to INR 18798.20 crores in the first six months of 2018-2019. These figures show that the experiment conducted in enacting the Code is proving to be largely successful. The defaulter's paradise is lost. In its place, the economy's rightful position has been regained. The result is that all the petitions will now be disposed of in terms of this judgment. There will be no order as to costs."

In our considered view, once the provisions of the entire Code has been upheld by Hon'ble Supreme Court, it is not proper for us to go into any aspect of the matter. The petitioner, if advised, may move to the Hon'ble Supreme Court with regard to the issue in question.

During the course of hearing, Mr. Salman Khurshid, learned Senior Advocate has also indicated that he would be satisfied if the petition be treated as representation and the Union of India is directed to decide the same.

In the light of the judgment of the Hon'ble Supreme Court as indicted hereinabove, it would not be proper on our part to do so.

With the aforesaid observations, the writ petition stands disposed of.

CHIEF JUSTICE

V. KAMESWAR RAO, J

FEBRUARY 15, 2019*/ns*