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

\+ W.P.(C) 5567/2015

M/S MOI ENGINEERING LTD. ..... Petitioner

Through: Mr. Kunal Sinha with Mr. Sahil Mongia, Advs.

versus

DIRECTOR GENERAL OF INCOME TAX (ADMIN.) ..... Respondent

Through: Mr. Ruchir Bhatia, Sr. Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

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

% **12.03.2019**

The petitioner has assailed the order dated 20.01.2015, passed by the Appellate Authority for Industrial and Financial Reconstruction (AAIFR) in Appeal No. 179/10. By the impugned order the said appeal preferred by the respondent i.e. D.G. of Income Tax (A), has been allowed by the AAIFR and the AAIFR has held that the reliefs and concessions pertaining to Income Tax granted to the petitioner company in paragraph 11.3.2 of the sanctioned scheme prepared by BIFR, cannot be enforced in view of the fact that the D.G. of Income Tax (A) – which was the nodal agency notified by the Central Board of Direct Taxes, had not been put to notice of the Draft Rehabilitation Scheme by the BIFR. Following waivers/ concessions were granted to the petitioner company by the BIFR in the finalised

Scheme.

"11.3.2 – Income Tax/ Central Excise

a) Waiver of all penalties, interest and surcharges, if any in respect of income tax dues, levied/ leviable pertaining to the period upto the date of sanction of scheme by BIFR.

b) The company be allowed to file revised returns.

c) To fund the income tax dues of Rs. 31.13 lacs carrying NIL interest with a moratorium of one year to be repaid in annual instalment of Rs. 6.23 lacs spread over a period of 5 years from date of sanction of scheme by BIFR.

d) To allow carry forward and set off business losses beyond period of 8 years i.e. to give relief under section 72A of the Income Tax Act, 1961.

e) To allow relief from provisions of Section 32A(3), 4191), 43B, 72(3), 115JB and 139 of the Income Tax Act.levy tax on remissions/ concessions granted/ accepted as per scheme sanctioned by BIFR.

f) To allow relief under Samadhan Scheme of Central Excise.

g) To allow exemption towards capital gain, if any, sale of surplus land building and funds utilized for revival of the unit."

After some arguments, learned counsel for the petitioner submits that the only aspect which remains to be considered is with regard to the concession (a) quoted hereinabove. Learned counsel submits that even if the impugned order were to be accepted, the concerned and competent authority in the Income Tax Department would be obliged to consider the aspect of waiver of penalties, interest and surcharge, if any, in respect of Income Tax dues levied/ leviable pertaining to the period upto the date of sanction of scheme by BIFR. He submits that this aspect is pending before Chief Commissioner of Income Tax, Kolkata and no decision, as yet, been taken thereon. Learned counsel for the petitioner states that he would be satisfied if directions are issued to the Chief Commissioner of Income Tax, Kolkata to examine the aforesaid aspect set out in clause (a) hereinabove, and to pass a reasoned order after hearing the petitioner.

In our view, the aforesaid request of the petitioner is justified. Even if the D.G. of Income Tax (A) had been served with a notice on the Draft Scheme by BIFR, the competent authority would have had to take a call on the proposed concession sought to be granted to the petitioner company.

That exercise has not yet been undertaken in view of the fact that the D.G. of Income Tax (A) was never served with the Draft Scheme before its finalisation. That process, therefore, remains incomplete and, now be completed. We, therefore, direct the Chief Commissioner of Income Tax, Kolkata to dispassionately examine the issue of waiver of penalties, interest and surcharges, if any, in respect of income tax dues, levied/ leviable pertaining to the period upto the date of sanction of scheme by BIFR.

Decision on the said aspect should be taken after hearing the petitioner and preferably within the next six months.

The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

REKHA PALLI, J

MARCH 12, 2019
N.Khanna