

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 325 of 2017

IN THE MATTER OF:

Hada Textile Industries Ltd.

...Appellant

Vs

Commercial Taxes, Kolkata & Ors.

....Respondents

Present:

For Appellant: Ms. Misha, Mr. Vaijayant Paliwal, Mr. Surjendu Das, Ms. Srishti Khare, Ms. Shanchi Purari, Advocates. Mr. Amrish Hada in person.

For Respondents: Ms. Madhumita Bhattacharjee, Advocate for Commercial Taxes Department, Govt. of West Bengal.

Mr. Sanjay Shorey, JD(Legal) alongwith Ms. Yagini D. Chauhan, DD for Ministry of Corporate Affairs. Mr. Saurabh Mishra, Advocate for R-8.

ORDER

07.03.2018: Prima Facie we are of the view that the Central Government has no jurisdiction to amend an act passed by the Parliament including Insolvency and Bankruptcy Code, 2016. Such power cannot be exercised under Section 242 of I&B Code, 2016 on the ground of removal of difficulties.

Pursuant to Section 252 of the I&B Code provisions of Sick Industrial Companies (Special Provision) Repeal Act, 2003 have been amended by 8th Schedule which reads as follows:

“THE EIGHTH SCHEDULE

(See section 252)

*AMENDMENT TO THE SICK INDUSTRIAL COMPANIES
(SPECIAL PROVISIONS) REPEAL ACT, 2003*

(1 of 2004)

In section 4, for sub-clause (b), the following sub-clause shall be substituted, namely : -

“(b) On such date as may be notified by the Central Government in this behalf, any appeal preferred to the Appellate Authority or any reference made or inquiry pending to or before the Board or any proceeding of whatever nature pending before the Appellate Authority or the Board under the Sick Industrial Companies (Special Provisions) Act, 1985 shall stand abated:

Provided that a company in respect of which such appeal or reference or inquiry stands abated under this clause may make reference to the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016 within one hundred and eighty days from the commencement of the Insolvency and Bankruptcy Code, 2016 in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016:

Provided further that no fees shall be payable for making such reference under Insolvency and Bankruptcy Code, 2016 by a company whose appeal or reference or inquiry stands abated under this clause.”

¹Provided also that any scheme sanctioned under sub-section (4) or any scheme under implementation under sub-section (12) of section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall be deemed to be an approved resolution plan under sub-section (1) of section 31 of the Insolvency and Bankruptcy Code, 2016 and the same shall be dealt with, in accordance with the provisions of Part II of the said Code:

Provided also that in case, the statutory period within which an appeal was allowed under the Sick Industrial Companies (Special Provisions) Act, 1985 against an order of the Board had not expired as on

the date of notification of this Act, an appeal against any such deemed approved resolution plan may be preferred by any person before National Company Law Appellate Tribunal within ninety days from the date of publication of this order.]”

In terms of the aforesaid Proviso, the application which was pending before the BIFR wherein the scheme was approved stood abated in absence of reference sought for by the company under proviso to Section 4 (b) of the SICA (Repeal) Act, 2003.

In similar matter we have already directed the Central Government to engage an eminent lawyer having knowledge of constitution to assist the Appellate Tribunal. We feel that the Central Government should assist the Appellate Tribunal with respect to issue aforesaid.

Post the case ‘for admission’ on **23rd March, 2018**.

In the meantime, the impugned order dated 13th November, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench initiating Liquidation Proceeding shall remain stayed.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

am/uk