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

\+ **W.P.(C) 9674/2017**

% **Date of Decision: 1st November, 2017**

ASHAPURA MINECHEM LTD. ..... Petitioner

Through : Mr. Rajashekhar Rao, Ms.Meghna Mishra, Mr. M.S. Bdhanwalla, Mr. Dheeraj P. Deo, Advocates.

versus

UNION OF INDIA AND ORS. ..... Respondents

Through : Mr. Dev P. Bhardwaj, CGSC for UOI/R1 with Mr. Satya Prakash Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE PRATHIBA M. SINGH

SANJIV KHANNA, J. (ORAL)

CM APPL. 39391/2017 (Exemption)

Allowed, subject to all just exceptions. The application accordingly stands disposed of.

W.P.(C) 9674/2017 & CM APPL. 39390/2017 (STAY)

Learned counsel for the petitioner/Ashapura Minichem Limited (*hereafter 'Ashapura')* has given up the prayer challenging constitutional validity of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 (Repeal Act, for short) and restricts his challenge to the amended

provisions of Section 4(b) and Section 5(1)(d) of the Repeal Act as being violative of Article 14 of the Constitution of India.

2. The petitioner also prays for quashing of Notification No. S.O. 3568 (E) dated 25th November, 2016, Notification No. S.O. 3569 (E) dated 25th November, 2016 and Notification No. S.O. 1683 (E) dated 24th May, 2017.

3. The Petitioner is a company engaged in mining, processing, sale, and export of minerals.

4. On 2nd June, 2011, the petitioner company made a reference before the Board of Industrial and Financial Reconstruction (BIFR or Board, for short), which, vide order dated 12th March, 2012 declared it to be a sick company under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (SIC Act for short).

5. The petitioner had submitted a Draft Rehabilitation Scheme, which was pending when vide Notification No. S.O. 3568(E) dated 25th November, 2016 the Repeal Act was enforced with effect from 1st December, 2016. Consequently, the SIC Act was repealed and ceased to be operative and proceedings under the SIC Act before the BIFR abated.

6. Repeal Act was enacted by the Parliament in 2004, but was not notified under Section 1(2), till Notification No. S.O. 3568(E) dated 25th November, 2016.

7. Section 4(b) of the Repeal Act as originally enacted was as under:-

> ***"4. Consequential provisions**.—On the dissolution of the Appellate Authority and the Board,—*
>
> *(a) XXXX*

(b) any appeal preferred to the Appellate Authority or any reference made to the Board or any inquiry pending before the Board or any other authority or any proceeding of whatever nature pending before the Appellate Authority or the Board immediately before the commencement of this Act shall stand abated :

Provided that a company:—

(i) in respect of which such appeal or reference or inquiry stand abated under this clause may make a reference under Part VI-A of the Companies Act, 1956 (1 of 1956) within one hundred and eighty days from the commencement of this Act in accordance with the provisions of the Companies Act, 1956;

(ii) which had become a sick industrial company as defined in clause (46-AA) of Section 2 of the Companies Act, 1956 (1 of 1956), before the commencement of the Companies (Second Amendment) Act, 2002 (11 of 2003) may make a reference under Part VI-A of the Companies Act, 1956 within one hundred and eighty days from the commencement of the Companies (Second Amendment) Act, 2002 or within sixty days of final adoption of accounts after such commencement, whichever is earlier,

and reference so made shall be dealt with in accordance with the provisions of the Companies Act, 1956 (1 of 1956) :

Provided further that no fee shall be payable for making such reference under Part VI-A of the Companies Act, 1956 (1 of 1956) by a company whose appeal or reference or inquiry stand abated under this clause :

Provided also that any scheme sanctioned under sub-section (4) or any scheme under implementation under sub-

section (12) of Section 18 of the repealed enactment shall be deemed to be a scheme sanctioned or under implementation under Section 424-D of the Companies Act, 1956 (1 of 1956) and shall be dealt with in accordance with the provisions contained in Part VI-A of that Act;"

However, the said sub-section was never enforced.

8. By another Notification No. S.O.3569(E) also dated 25th November, 2016, Section 4(b) of Repeal Act was amended/modified - w.e.f. 1st November 2016, to read as under:

*"**AFTER AMENDMENT OF SICA (REPEAL) ACT, 2003, W.E.F. 1ST NOVEMBER, 2016:***

***4. Consequential provisions** - On the dissolution of the Appellate Authority and the Board –*

(a)XXXX

(b) on such date as my 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 Sick Industrial Companies (special provisions) Act, 1985 (1 of 1986) 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]"

The aforesaid amendment was made prior to 1st December, 2016 i.e. the date on which the Repeal Act was enforced.

9. Thereafter, vide Notification No. S.O. 1683 (E) dated 24th May, 2017, two provisos were added to Section 4(b) of the Repeal Act. Said Notification, also referred to as 'The Removal of Difficulty Order', 2017, reads as under:-

S.O. 1683(E).- Whereas, the Insolvency and Bankruptcy Code, 2016 (31 of 2016 (hereinafter referred to as the said Code) received the assent of the President on 28th May, 2016 and was published in the official Gazette on the same date;

And, whereas, section 252 of the said Code amended the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 (1of 2004) in the manner specified in the Eighth Schedule to the said Code;

And, whereas, the un-amended second proviso to clause (b) of section 4 of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 provides that any scheme sanctioned under sub-section (4) or any scheme under implementation under sub-section (12) of section 18 of the repealed enactment i.e., the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) shall be deemed to be a scheme under implementation under section 424D of the Companies Act, 1956, (1 of 1956) and shall be dealt with in accordance with the provisions contained in Part VIA of the Companies Act, 1956;

And, whereas, section 424D of the Companies Act, 1956 provided for review or monitoring of schemes that are sanctioned or are under implementation;

And, whereas the Companies Act, 1956 has been repealed are re-enacted as the Companies Act, 2013 (18 of 2013) which, inter alia, provides for scheme of revival and rehabilitation, sanction of scheme, scheme to be binding and for the implementation of scheme under section 261 to 264 of the Companies Act, 2013;

And, whereas, sections 253 to 269 of the Companies Act, 2013 have been omitted by Eleventh Schedule to the Insolvency and Bankruptcy Code, 2016;

And, whereas, clause (b) of section 4 of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 has been substituted by the Eighth Schedule to the Code, which provides that 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. Further, it was provided that a company in respect of which such appeal or reference or inquiry stands abated under this clause may make a reference to the NCLT under the Code within one hundred and eighty days from the date of commencement of the Code;

And, whereas, difficulties have arisen regarding review or monitoring of the schemes 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 (1 of 1986) in view of the repeal of the Sick Industrial Companies (Special Provisions) Repeal Act,

2003 and omission of sections 253 to 269 of the Companies Act, 2013;

Now, therefore, in exercise of the powers conferred by the sub-section (1) of the section 242 of the insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby makes the following Order to remove the above said difficulties, namely:-

1. Short title and commencement. – (1) This Order may be called the Insolvency and Bankruptcy Code (Removal of Difficulties) Order, 2017.

2. In the Insolvency and Bankruptcy Code, 2016, in the Eighth Schedule, relating to amendment to the Sick Industrial Companies (Special Provisions) Repeal Act, 2003, in section 4, in clause (b), after the second proviso, the following provisos shall be inserted, namely:-

"Provided 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."

10. We deem it appropriate to reproduce Section 5(1)(d) of the Repeal Act, which reads as under:

> *"....Saving.-(1) The repeal by this Act of the repealed enactment shall not-*
>
> *..... (d) affect any order made by the Board for sanction of schemes;...."*

11. The primary contention of the petitioner is that the aforesaid provisions, Section 4(b) and Section 5(1)(d) of the Repeal Act, are unconstitutional as they draw a distinction between sick companies where schemes have been sanctioned under Section 18 of the SIC Act and cases where draft schemes were pending consideration before the BIFR and had not been sanctioned. This classification, it is submitted, violates Article 14 and is discriminatory. Our attention is drawn to the power of the BIFR under sub-Section (3) of Section 17 of the SIC Act. It is submitted that a similar or analogous provision with wide powers do not exist under the newly enacted Insolvency and Bankruptcy Code, 2016, (the Code, for short) and no such powers are being conferred on the National Company Law Tribunal (NCLT, for short) under the Code.

12. Counsel for the petitioner has referred to certain illustrative examples to make the point that there are several contingencies which have not been considered by the amendments brought about. It is stated that the Repeal Act and the Code do not deal with a situation where orders were reserved by the BIFR on the question whether or not the Draft Scheme should be adopted, and were pending pronouncement on the date of enforcement of the Repeal Act, w.e.f. 1st December, 2016.

13. It is further submitted that the Government had made a commitment on the question of revival and rehabilitation of sick companies and has now resiled from the same. Reliance is placed on the judgment of the Constitution Bench of the Supreme Court dated 14th May, 2015 in ***Madras Bar Association v. Union of India and others (2015) 8 SCC 583***, where challenge to the constitutional validity of creation of NCLT and the National Company Law Appellate Tribunal (NCLAT, for short) was rejected, yet in paragraph 31 it was observed that the draft rules regarding the manner of functioning of the NCLT and the NCLAT were being prepared.

14. We have considered the said contentions but do not find any merit in the same and are therefore not inclined to issue notice in the present writ petition.

15. The Parliament has enacted the Code. The object and purpose for enacting the Code was that the existing laws relating to insolvency and bankruptcy of companies, including SIC Act, 1985, Recovery of Debts Due to Banks and Financial Institutions Act, 1993, Violation and Reconstruction of Financial Provision and Security Interest Act, 2002, etc. had, as per the Legislature, proved to be ineffective and inefficacious, and were considered to be inadequate. Despite the aforesaid enactments there was a spiral increase and jump in the quantum of loans falling in the category of non-performing assets, adversely impacting financial institutions and banking sector with negative fiscal repercussions on the economy. Delays and failure of the existing quasi-judicial mechanism in dealing with the aforesaid problem was a cause of grave concern and anxiety. This was adversely impacting India's rating on ease of doing business and investments. Need

was felt to replace the said enactments with the Code, having dissimilar and distinct provisions with strict and fixed time limits. The objective of the Code is to consolidate and amend the laws relating to insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interest of stakeholders including alteration in the order of priority of payment of government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith and incidental thereto.

16. Recently, the Supreme Court had the occasion to deal with the provisions of the Code in ***M/s Innoventive Industries Ltd. v. ICICI Bank & Anr., 2017 (11) SCALE 4,*** and has observed as under:

> ***"12.*** *The Insolvency and Bankruptcy Code, 2016 has been passed after great deliberation and pursuant to various committee reports, the most important of which is the report of the Bankruptcy Law Reforms Committee of November, 2015. The Statement of Objects and Reasons of the Code reads as under:*
>
> ***"STATEMENT OF OBJECTS AND REASONS***
>
> *There is no single law in India that deals with insolvency and bankruptcy. Provisions relating to insolvency and bankruptcy for companies can be found in the Sick Industrial Companies (Special Provisions) Act, 1985, the Recovery of Debt Due to Banks and Financial Institutions Act, 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Companies Act, 2013. These statutes provide for creation of multiple fora such as Board of Industrial and Financial Reconstruction (BIFR), Debt Recovery Tribunal (DRT) and National Company Law Tribunal (NCLT) and their respective Appellate Tribunals. Liquidation of companies is handled by the High Courts. Individual*

bankruptcy and insolvency is dealt with under the Presidency Towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920 and is dealt with by the Courts. The existing framework for insolvency and bankruptcy is inadequate, ineffective and results in undue delays in resolution, therefore, the proposed legislation.

2. The objective of the Insolvency and Bankruptcy Code, 2015 is to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the priority of payment of government dues and to establish an Insolvency and Bankruptcy Fund, and matters connected therewith or incidental thereto. An effective legal framework for timely resolution of insolvency and bankruptcy would support development of credit markets and encourage entrepreneurship. It would also improve Ease of Doing Business, and facilitate more investments leading to higher economic growth and development.

3. The Code seeks to provide for designating the NCLT and DRT as the Adjudicating Authorities for corporate persons and firms and individuals, respectively, for resolution of insolvency, liquidation and bankruptcy. The Code separates commercial aspects of insolvency and bankruptcy proceedings from judicial aspects. The Code also seeks to provide for establishment of the Insolvency and Bankruptcy Board of India (Board) for regulation of insolvency professionals, insolvency professional agencies and information utilities. Till the Board is established, the Central Government shall exercise all powers of the Board or designate any financial sector regulator to exercise the powers and functions of the Board. Insolvency professionals will assist in completion of insolvency resolution, liquidation and bankruptcy proceedings envisaged in the Code. Information Utilities would collect, collate, authenticate and disseminate financial information to facilitate such proceedings. The Code also proposes to establish a fund to be

called the Insolvency and Bankruptcy Fund of India for the purposes specified in the Code.

4. The Code seeks to provide for amendments in the Indian Partnership Act, 1932, the Central Excise Act, 1944, Customs Act, 1962, Income-Tax Act, 1961, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Finance Act, 1994, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Sick Industrial Companies (Special Provisions) Repeal Act, 2003, the Payment and Settlement Systems Act, 2007, the Limited Liability Partnership Act, 2008, and the Companies Act, 2013.

5. The Code seeks to achieve the above objectives."

(Emphasis Supplied)

***13.** One of the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the object of speeding up of the insolvency process. As per the data available with the World Bank in 2016, insolvency resolution in India took 4.3 years on an average, which was much higher when compared with the United Kingdom (1 year), USA (1.5 years) and South Africa (2 years). The World Bank's Ease of Doing Business Index, 2015, ranked India as country number 135 out of 190 countries on the ease of resolving insolvency based on various indicia....."*

(Emphasis Supplied)"

17. It cannot be denied that Parliament has the right to enact the aforesaid Code and repeal the earlier enactments. To this extent, the petitioner has not challenged and questioned the Code or for that matter, Section 4(b) and 5(1)(d) of the Repeal Act. The Code has been enacted to replace the SIC Act. The enactment of the Code and its provisions reflect and relate to the realm of policy and legislative supremacy on such matters. The government in exercise of its legislative and executive functions and after due consideration, has enforced the provisions of the Repeal Act and has also

made them applicable to sick companies where draft schemes were pending consideration before BIFR and had not been approved.

18. Section 4(b) of the Repeal Act in clear and categorical terms states that on dissolution of the BIFR/Board or the Appellate Authority under SIC Act, any appeal or reference made or inquiry pending under SIC Act shall abate on such date as notified by the Central Government in this behalf. Thus, all proceedings under SIC Act pending before the Appellate Authority or the BIFR/Board on the date notified by the Central Government in this behalf, after the dissolution of the aforesaid authorities, stood abated. This dictum applies uniformly. There are no exceptions.

19. Section 5(1)(d) of the Repeal Act, which incorporates the saving clause, provides that the repeal would not affect any order where schemes have already been sanctioned. Section 4(b) and Section 5(1)(d) have to be read harmoniously. The effect of Section 5(1)(d) is that any order made by the Board/BIFR sanctioning the schemes before the date of abatement, as notified under Section 4(b), such schemes would not get affected. Read in this manner, the two provisions draw a distinction between cases where draft schemes have been approved by the Board before enforcement of the Repeal Act and cases where inquiry or draft scheme was pending consideration before the Board. In the latter case, the proceedings pending before the Board abate and come to an end. In fact, proceedings pending before the Appellate Authority under SIC Act also abate.

20. We would now refer to the provisos to Section 4(b) of the Repeal Act, including third and fourth provisos, enacted vide notification dated 24th May, 2017. The first proviso to Section 4(b) of the Repeal Act postulates

that a company in respect of which appeal, reference or inquiry was pending and stands abated, is at a liberty to make reference to NCLT under the Code within 180 days from the commencement of the said Code in accordance with the provisions of the Code. The petitioner, therefore, has a remedy to move to the NCLT under this provision. Necessarily, the petitioner would be governed by the Code and cannot rely upon the provisions of the SIC Act which are no longer enforceable and applicable law.

21. The second proviso to Section 4(b) of the Repeal Act stipulates that no fee shall be payable under the Code by a company whose appeal, reference, or inquiry stands abated under the said clause.

22. Notification dated 24th May, 2017 states that certain difficulties had been noticed with regard to reviewing and monitoring of the Schemes sanctioned under the SIC Act after enforcement of the Repeal Act and omission of Sections 253 to 269 of the Companies Act, 2013. In order to remove the said difficulties, the Central Government, in exercise of powers conferred by sub-section (1) of Section 242 of the Code, had issued the said order inserting the third proviso to clause (b) of Section 4 of the Repeal Act. As a result thereof, where any scheme which has been sanctioned under sub-section (4) or is under implementation under sub-section (12) of Section 18 of the SIC Act, it shall be deemed to be an approved resolution plan under sub-section (1) of Section 31 of the Code and shall be dealt with in accordance with the provisions of Part II of the Code. The fourth proviso added to clause (b) to Section 4 of the Repeal Act by the same notification provides that in cases where the statutory period within which an appeal was allowed under the SIC Act against an order of the BIFR had not expired, an

appeal against any such deemed approved resolution plan can be preferred before NCLAT within 90 days of publication of the order. The expression 'deemed approved resolution plan' used in the fourth proviso added to Clause (b) of Section 4 of the Repeal Act has to be understood by making reference to the third proviso and provisions of Section 31 (1) of the Code, which related to the resolution plan and its approval. By virtue of the third proviso to Section 4(b) of the Repeal Act a Scheme sanctioned under sub-section (4) or (12) of Section 18 of SIC Act is deemed to be an approved resolution plan under sub-section (1) to Section 31 of the Code. Henceforth, the Code and its provisions would apply. Fourth proviso would come into operation where statutory period for filing of appeal under SIC Act against approval or an order relating its implementation under sub-section (12) of Section 18 of SIC Act has not expired. In such cases a party aggrieved against an order sanctioning the scheme or under Section 18(12) of the SIC Act, can file an appeal before NCLAT. Deemed approved resolution plan used in fourth proviso, refers to the sanctioned Scheme. It has limited operation and gives a limited right in specified cases.

23. Having interpreted the said sections and provisos, we would now deal with the issue whether or not Section 4(b) of the Repeal Act as substituted by the Code which differentiates between sick companies where draft schemes have been approved, or which are treated as deemed approved resolution plans, and the sick companies where draft schemes have not been approved by the BIFR and thus are covered under the Code, violates and/or falls foul of Article 14 of the Constitution of India.

24. Article 14 of the Constitution requires equal treatment in equal and

like circumstances, for there cannot be any discrimination between one person and another with respect to the subject matter of legislation when their position is identical. It is a latter part of the said dictum, which often arises for consideration as uniform applicability of law can at times, by itself lead to discrimination and arbitrariness, violating Article 14. Article 14, therefore, does not *per se* conflict with the Government's right to classify for legislative purposes; be it principal legislation or delegated legislation. Article 14 accepts and does not negate or prohibit the Legislature or the Executive from determining categories which would be embraced within the scope of legislation. Perceptibly, legislations, including delegated legislations, often deal with complex areas where several alternatives exist. Legislation cannot be rendered to be invalid or violative of Article 14 on general principles of equality. As long as the Government supposedly acts in just, fair and equitable manner, after taking all relevant options into consideration in a manner reasonable, it would satisfy the test of equality because the Government acts to effectuate the purpose of public good and is supposed to act in general public interest. There is always a presumption in favour of constitutionality of an enactment, for it is assumed that the Legislature, as well as Executive, in case of a delegated legislation, understands and correctly appreciates the needs of its own people and enacts laws based upon experience and the distinction drawn thereunder. Discrimination made is based on adequate grounds. (see ***State of Bombay and Anr. Vs. F.N. Balsara***, 1951 SCR 682 and ***R.K. Garg Vs. Union of India***, AIR 1981 SC 2138.)

25. Article 14 does not empower the Court to don the role of Legislature or the Executive and decide which is the best alternative or the most

equitable criteria. Thus, a better classification is not a ground to reject and quash the classification made by the Government, unless the classification is palpably arbitrary and results in hostile discrimination. Courts recognise that it is difficult to perceive a perfect classification for there could always be varied situations where defects could arise.

26. Equally, the court decisions have recognized that when classification deals with persons belonging to a well defined class, the said classification is not open to challenge and cannot be called to question on the ground that it does not apply to others. Thus, so long as the classification is based upon a rational basis and so long as the persons falling in the same class are treated alike, there is no question of violating the equality norm. If there is equality and uniformity in each group, law cannot be condemned as discriminatory, though due to some fortuitous circumstances arising out of a peculiar situation, some included in the class gets advantage over others so long as they are not singled out for special treatment (see ***K.R. Lakshman & Ors. Vs. State of Karnataka Electricity Board & Ors.***, (2001) 1 SCC 442).

27. Therefore, whenever violation of Article 14 is alleged, it is necessary to ascertain the policy underlying the statute and the object sought to be achieved by it. Then the court has to apply the dual test, namely, whether the classification is rational and based upon intelligible differentia which distinguished persons or things that are grouped together from others that are left out of the group, and secondly, whether the basis of differentiation has any rational nexus or relation with the avowed policy and object.

28. We have referred to the objects and purposes of the Code in some detail, for whenever a challenge is made to legislation that it offends the

guarantee under Article 14, it is the duty of the courts to see purpose and policy of the Act and then discover whether the classification made has a reasonable relation to the object of the legislation. The purpose and object of the Act is ascertained from title, preamble and other provisions. [see ***Kedar Nath Bajoria Vs. State of West Bengal***, AIR 1953 SC 404 ***P.B. Roy Vs. Union of India***, (1972) 3 SCC 432]. In the context of the present case, there is no doubt and debate that the Code has been enacted as the earlier legislation i.e the SIC Act, was found to be ineffective and flawed in operation and practice. It had failed to achieve its objective and was prone to abuse. The problems and ill effects caused and created were sought to be rectified by repealing the SIC Act and creating rights and enforcing obligations under the Code. The Code enacts provisions which seek to rectify and remove the anomalies and defects in the earlier legislation. It is a reforming act. The object and purpose of the legislation is to apply the Code and its provisions to all and not to leave any exception. This is the reason why it applies even to companies declared 'sick'. However, an exception has been carved out in cases where draft schemes of rehabilitation were sanctioned or approved under Section 18 (4) or (12) of the SIC Act. The reason to carve the exception is obvious and does not require much elucidation. The sick companies where schemes had been sanctioned and approved, would obviously form a separate and different class. Any provision of the Code or the Repeal Act, nullifying sanctioned rehabilitation scheme could have fallen foul on the ground of arbitrariness, especially, when there was no challenge to the sanction or approval of the rehabilitation scheme had attained finality. The Code is made applicable even in such cases for future, with the sanctioned schemes being deemed to be approved

resolution plans under Section 31(1) of the Code.

29. Resultantly, it has to be held that the classification made, differentiating between cases where schemes stand sanctioned under Section 18(4) and (12) of the SIC Act and where the draft scheme for rehabilitation were pending consideration, is a valid, germane and realistic classification. These cases form a well defined class by themselves.

30. The subsequent Notification S.O. 1683(E) dated 24th May, 2017, which has also been described as "Removal of Difficulty Order, 2017", enacts two more provisos under clause (b) to Section 4 of the repealed Act to clarify that the schemes sanctioned under Section 18(4) or (12) of the SIC Act shall be deemed to be approved resolution plan under Section 31(1) of the Act. The fourth proviso protects and gives limited right to specified parties in situations stipulated, to file an appeal before NCLAT within 90 days of publication of the order against the deemed approved resolution plan. The aforesaid classification is rational and certainly not discriminatory.

31. We would now refer to some judgments in support of our findings. In ***F.N. Balsara*** (*supra*), validity of specific provisions of the Bombay Prohibition Act, 1949 as well as the entire Act was challenged and partially accepted by the High Court on the ground that definition of 'liquor' was too wide and beyond the power vested with the Legislature under the relevant entry of List-II by declaring various sections as invalid. On the question of Article 14 of the Constitution and its meaning and scope, the following principles were summarized:-

> *"(1) The presumption is always in favour of the constitutionality of an enactment, since it must be assumed that*

the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and its discriminations are based on adequate grounds.

(2) The presumption may be rebutted in certain cases by showing that on the face of the statute, there is no classification at all and no difference peculiar to any individual or class and not applicable to any other individual or class, and yet the law hits only a particular individual or class.

(3) The principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position, and the varying needs of different classes of persons often require separate treatment.

(4) The principle does not take away from the State the power of classifying persons for legitimate purposes.

(5) Every classification is in some degree likely to produce some inequality, and mere production of inequality is not enough.

(6) If a law deals equally with members of a well defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons.

(7) While reasonable classification is permissible, such classification must be based upon some real and substantial distinction bearing a reasonable and just relation to the object sought to be attained, and the classification cannot be made arbitrarily and without any substantial basis."

It was further held that Article 14, which guarantees equal protection, does not prohibit classification but prohibits classification, that does not rest upon

the reasonable grounds of distinction with reference to the objects to which it is directed. It does not take away the Government's power to classify but they should do so on reasonable basis. Similarity and not identity of treatment is enough and meet the requirements of Equality. Mathematical nicety and perfect equality is not required. The said discussion was necessary in view of the exemptions provided in the Repeal Act.

32. In ***State of West Bengal Vs. Anwar Ali Sarkar***, AIR 1952 SC 75, Patanjali Sastri, C.J., on the question of challenge to constitution of Special Courts on the ground of discrimination and inequality violating Article 14, has held that the State in exercise of its governmental power necessarily has to make laws operating differently on different groups or class to attain particular ends to giving effect to its policies, and possesses large powers of distinguishing and classifying persons or things to be subjected to such laws. Thus, every classification makes a distinction and differentiates the two groups but this inequality in no manner determines the matter of constitutionality. The Government must encounter and deal with problems which come in infinite varieties of relations and classification is recognition of those circumstances and, therefore, the Government has wide latitude or discretion. (see paragraph 8).

33. In ***T.M.A. Pai Foundation Vs. State of Karnataka***, (2002) 8 SCC 481, Ruma Pal, J. on the question of Article 14 and non-discrimination has observed that classification for the purpose of deciding differential treatment must be intelligible and reasonable; reasonable being determined with reference to the object for which action is taken. Paradoxically, equality permits rational or discriminating discrimination.

34. In ***Mardia Chemicals Ltd. & Ors. Vs. Union of India & Ors.*** (2004) 4 SCC 311, constitutional validity of provisions of Securitization of Financial Assets and Enforcement of Security Interest Act, 2002 was challenged. It was observed that while dealing with economic legislations, the courts while not jettisoning their jurisdiction to curb arbitrary action or unconstitutional legislation, should interfere only in those cases where the view reflected in the legislation is not possible to be taken at all. The courts have to exercise caution for these are legislations relating to economic policies and such legislations have to be judged by the generality of the provisions and not by its crudities or equities or by possibility of abuse of any of the provisions. In such matters of fiscal and economic policies resorted to in public interest, there is presumption of constitutionality in favour of the validity of the legislation. It is, however, necessary to see that the person aggrieved gets a fair deal at the hands of those vested with power under the legislation.

35. In ***Suraj Mall Mohta and Co. Vs. A.V. Visvanatha Sastri and Anr.***, AIR 1954 SC 545, it was observed:-

> *"It is well settled that in its application to legal proceedings Article 14 assures to everyone the same rules of evidence and modes of procedure; in other words, the same rule must exist for all in similar circumstances. It is also well settled that this principle does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstance, in the same position. The State can by classification determine who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject, but the classification permissible must be based on some real and substantial distinction bearing a just*

and reasonable relation to the objects sought to be attained and cannot be made arbitrarily and without any substantial basis. Classification means segregation in classes which have a systematic relation, usually found in common properties and characteristics."

36. In the ***Special Courts Bill, 1978, In Re*** (1979) 1 SCC 380 the majority judgment adverted to a large number of judicial decisions interpreting Article 14 and after referring to the exercise of the Government power to differentiate, distinguish and classify persons or things on the question of Article 14 and the principle underlying, observed as under:

> *"**72.** As long back as in 1960, it was said by this Court in Kangsari Haldar that the propositions applicable to cases arising under Article 14 "have been repeated so many times during the past few years that they now sound almost platitudinous". What was considered to be platitudinous some 18 years ago has, in the natural course of events, become even more platitudinous today, especially in view of the avalanche of cases which have flooded this Court. Many a learned Judge of this Court has said that it is not in the formulation of principles under Article 14 but in their application to concrete cases that difficulties generally arise. But, considering that we are sitting in a larger Bench than some which decided similar cases under Article 14, and in view of the peculiar importance of the questions arising in this reference, though the questions themselves are not without a precedent, we propose, though undoubtedly at the cost of some repetition, to state the propositions which emerge from the judgments of this Court insofar as they are relevant to the decision of the points which arise for our consideration. Those propositions may be stated thus:*

"(1) The first part of Article 14, which was adopted from the Irish Constitution, is a declaration of equality of the civil rights of all persons within the territories of India. It enshrines a basic principle of republicanism. The second part, which is a corollary of the first and is based on the last clause of the first section of the Fourteenth Amendment of the American Constitution, enjoins that equal protection shall be secured to all such persons in the enjoyment of their rights and liberties without discrimination of favouritism. It is a pledge of the protection of equal laws, that is, laws that operate alike on all persons under like circumstances.

(2) The State, in the exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of distinguishing and classifying persons or things to be subjected to such laws.

(3) The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

(4) The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be

applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

(5) By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties of a number of well defined classes, it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. Classification thus means segregation in classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily.

(6) The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

(7) The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act.

(8) The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while Article 14 forbids class discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense abovementioned.

(9) If the legislative policy is clear and definite and as an effective method of carrying out that policy a discretion is vested by the statute upon a body of administrators or officers to make selective application of the law to certain classes or groups of persons, the statute itself cannot be condemned as a piece of discriminatory legislation. In such cases, the power given to the executive body would import a duty on it to classify the subject-matter of legislation in accordance with the objective indicated in the statute. If the administrative body proceeds to classify persons or things on a basis which has no rational relation to the objective of the legislature, its action can be annulled as offending against the equal protection clause. On the other hand, if the statute itself does not disclose a definite policy or objective and it confers authority on another to make selection at its pleasure, the statute would be held on the face of it to be discriminatory, irrespective of the way in which it is applied.

(10) Whether a law conferring discretionary powers on an administrative authority is constitutionally valid or not should not be determined on the assumption that such authority will act in an arbitrary manner in exercising the discretion committed to it. Abuse of power given by law does occur; but

the validity of the law cannot be contested because of such an apprehension. Discretionary power is not necessarily a discriminatory power.

(11) Classification necessarily implies the making of a distinction or discrimination between persons classified and those who are not members of that class. It is the essence of a classification that upon the class are cast duties and burdens different from those resting upon the general public. Indeed, the very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality.

(12) Whether an enactment providing for special procedure for the trial of certain offences is or is not discriminatory and violative of Article 14 must be determined in each case as it arises, for, no general rule applicable to all cases can safely be laid down. A practical assessment of the operation of the law in the particular circumstances is necessary.

(13) A rule of procedure laid down by law comes as much within the purview of Article 14 as any rule of substantive law and it is necessary that all litigants, who are similarly situated, are able to avail themselves of the same procedural rights for relief and for defence with like protection and without discrimination."

37. In ***Babua Ram and Ors. Vs. State of U.P. & Anr.*** (1995) 2 SCC 689 and other connected cases, reference was made to the decision of Constitution Bench in ***D.S. Nakara Vs. Union of India*** (1983) 1 SCC 305 as followed in ***Delhi Cloth & General Mills Co. Ltd. Vs. Union of India*** (1983) 4 SCC 166 to observe that a statute is not properly called retroactive statute because a part of its requisites for its action is drawn from a time

antecedent to its passing. A statute is not retroactive merely because it affects existing right nor is it retroactive because a part of its requisites for its action is drawn from its antecedent to its passing. Then, referring to Article 14, it was observed that class of similar persons who had availed of right and remedy but were unsuccessful can be treated as a distinct class, and this by no means can be said to be an arbitrary classification in the context of Section 28A of the Land Acquisition Act, 1898.

38. In the light of the aforesaid dictum and principles when we refer to the provisions under challenge, it is palpable that the Government wanted to enforce the provisions of the Code to all sick companies and upon deliberation has decided in principle to withdraw and repeal SIC Act for it had not the desired effect and consequences, which were envisaged. The draw-back and failure in application and enforcement had outweighed the miniscule benefits secured by some. Adverse impact was apparent and therefore, legislature in its wisdom felt that in all cases where the draft schemes had not been sanctioned could apply under the Code and would be governed by the provisions of the Code. For this purpose they have differentiated between the classes of cases where draft schemes had been sanctioned and other cases where draft schemes had not been sanctioned. There is a clear differentiation between the two sets of cases. The difference between the two sets is too apparent and not blurred or make belief. Withdrawal or nullification of a sanctioned draft scheme would have created innumerable and monstrous difficulties and problems. Thus sanctioned rehabilitation schemes have been treated as schemes deemed to have been sanctioned under Section 31(1) of the Code. Their implementation is to be dealt with under the provisions of the Code and not as per the mandate of the

repealed legislation i.e. SIC Act. This is a mandate of the third proviso to clause (b) of Section 4 of the Repealed Act, enacted as a consequence of power conferred under Section 252 of the Code. The intent and object of Clause (b) to Section 4 of the Repeal Act including provisos is to ensure effective implementation of the Code, yet at the same time not cancel the rehabilitative schemes which have been sanctioned and were under implementation. Of course, the Code would be applicable as the aforesaid provisions of the Repeal Act postulates that implementation would be done as per and in terms of the provisions of the Code.

39. Though not admitted, it is palpable that the petitioner, like other companies who were declared sick companies are disturbed in view of withdrawal of the protection under the umbrella of Section 22 of SIC Act, which we were aware had received adverse comments from several quarters. There were allegations of misuse and abuse of the said provision.

40. We must also reject the argument that it must be assumed in some case there would be discrimination for in some cases there would be lapses on the part of the BIFR or the Appellate Authority under the SIC Act. Validity and legality of an enactment on the ground of violation of Article 14 cannot be contested on the basis of such assumptions or apprehension. It is normally presumed that the public authorities have acted reasonably in exercise of statutory powers. State in exercise of its Government powers has to enact laws which would operate differently in different groups and classes to attain particular comments in giving effect to its policies. For this purpose it has wide and extensive power of distinguishing and classifying persons or things to be subjected to such powers. It will be difficult and

rather impossible to find a precise and a perfect formula for classification when an executive enacts dedicated legislation. Classification need not be exact or strict. Courts do not insist on legislation delusive exactness nor it apply doctrinaire test for determining validity of classification. Classification is justified where it is not palpably arbitrary.

41. Notification S.O. 1683(E) dated 24th May, 2017 under third proviso to clause (b) of Section 4, draws a distinction between cases where a scheme was sanctioned or was under implementation of the SIC Act and where it was not sanctioned. Former cases have to be dealt with in accordance with the provisions of Part II of the Code. In effect thereof, a cut-off date was prescribed for the purpose of Section 4(b) to determine which proceedings were to abate and which were to continue before the NCLT. The petitioner cannot submit that it should be treated at par with those whose schemes were sanctioned.

42. Whenever any enactment is to be enforced, a cut-off date has to be prescribed. This is true also when an enactment which repeals an earlier enactment or when a section is omitted and replaced by a new provision. Sometimes, the legislature leaves it to the executive to prescribe the cut-off date. Fixing a cut off date for enforcement of an act or provision is an exercise of government function and power, be it legislative or executive. These would be largely matters relating to administration and policy. Fixing of cut-off date is normally not interfered and interjected with by the courts unless the date so fixed is blatantly discriminatory or arbitrary. Particular cut-off date is fixed keeping in mind the administrative and other conditions i.e. when alternative institutions and authorities and infrastructure are in

place. Economic and financial considerations etc. also have a role to play. The government must be given free play in the joints and judicial restraint is well advised and must be adhered to.

43. Thus whether legislature fixes a cut-off date or leaves it to the executive to prescribe a cut-off date and same is prescribed, the legislative or the executive action *per se* is not violative of Article 14 or arbitrary. If it is to be held to be contrary then no cut-off date can be ever prescribed. Judicial interference on validity of cut-off date is therefore, rare and only when the cut-off date is *per se* absurd and is apparently discloses arbitrariness in the said fixation.

44. In ***Government of Andhra Pradesh v. N. Subbarayudu & Ors. (2008) 14 SCC 702***, the Supreme Court held that unless the cut-off date leads to some blatantly capricious or outrageous results the Court should not interfere. The Supreme Court observed:

> *"5. In a catena of judgments of this Court it has been held that cut-off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing of cut-off date is within the domain of the executive authority and the court should not normally interfere with the fixation of cut-off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary.*
>
> *6. No doubt in D.S. Nakara v. Union of India this Court had struck down the cut-off date in connection with the demand of pension. However, in subsequent decisions this court has considerably watered down the rigid view taken in Nakara case*

as observed in para 29 of the decision of this Court in State of Punjab v. Amar Nath Goyal.

7. There may be various considerations in the mind of the executive authorities due to which a particular cut-off date has been fixed. These considerations can be financial, administrative or other considerations. The court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut-off date. The Government must be left with some leeway and free play at the joints in this connection.

8. In fact several decisions of this Court have gone to the extent of saying that the choice of cut-off date cannot be dubbed as arbitrary even if no particular reason is given for the same in the counter-affidavit filed by the Government (unless it is shown to be totally capricious or whimsical), vide State of Bihar v. Ramjee Prasad, Union of India v. Sudhir Kumar Jaiswal, Ramrao v. All India Backward Class Bank Employees Welfare Association, University Grants Commission v. Sadhana Choudhary, etc. It follows, therefore, that even if no reason has been given in the counter-affidavit of the Government or the executive authority as to why a particular cut-off date has been chosen, the court must still not declare that date to be arbitrary and violative of Article 14 unless the said cut-off date leads to some blatantly capricious or outrageous result."

45. In ***Ramrao v. All India Backward Class Bank Employees Welfare Association 2004 2SCC 76,*** the Supreme Court held the fixation of a cut-off date would be valid so long as it had a nexus with the object it sought to achieve. Even if a section of society were to face hardship, that by itself would not be a ground to hold the fixation of a cut-off date as *ultra vires*. The settled principle, therefore, is that the fixation of a cut-off date by itself

is not arbitrary or whimsical so long as the classification is based on intelligible differentia.

46. Earlier in ***Union of India & Anr. Vs. Parameswaran Match Works & Ors.*** 1975 (1) SCC 305, the Supreme Court upheld the date specified for purpose of classification observing:

> *"10. In the matter of granting concession or exemption from tax, the Government has a wide latitude of discretion. It need not give exemption or concession to everyone in order that it may grant the same to some. As we said, the object of granting the concessional rate of duty was to protect the smaller units in the industry from the competition by the larger ones and that object would have been frustrated, if, by adopting the device of fragmentation, the larger units could become the ultimate beneficiaries of the bounty. That a classification can be founded on a particular date and yet be reasonable, has been held by this Court in several decisions. The choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. When it is seen that a line or a point there must be and there is no mathematical or logical way of fixing it precisely, the decision of the legislature or its delegate must be accepted unless we can say that it is very wide off the reasonable mark."*
>
> *(emphasis supplied)*

47. As held by the Supreme Court in ***Parmeshwaran Match Works (supra)*** it is a settled position in law that no person can claim an entitlement to a benefit or an exemption as a matter of right. Consequently, there is no right to have a reconstruction of a company when a company becomes sick. The provision to apply for reconstruction or to have a scheme sanctioned

for reconstruction is to be only provided by law and does not exist outside it. Thus, in the present case, it is from the date of incorporation of the Eighth Schedule into the Code and substitution of section 4(b) of the Repeal Act, that the Code becomes operational and all rights and remedies have to be availed as per the Code. The contention of the petitioner that the petitioner should still be governed by provisions of the SIC Act, if accepted would violate and negate the very object of the Code.

48. Counsel for the petitioner has further challenged the vires of the aforesaid Removal of Difficulties Order 2017/Notification S.O. 1683(E) dated 24th May, 2017 on the ground that the same could not have been passed in exercise of power under Section 242 of the Code. It is submitted that Section 242 is a provision which merely confers the powers to *'remove difficulties'* in the Code and cannot be extended to amend the extant provisions of the Repeal Act, or other enactments like Recovery of Debts Due to Banks and Financial Institutions Act, 1993, Violation and Reconstruction of Financial Provision and Security Interest Act, 2002 and Companies Act, 201*3*.

49. We have considered the said contention limited and confined to the two provisions enacted vide S.O. No. 1683(E) but do not find any merit in the contention. As noticed above, the aforesaid notification has been issued by the Central Government in exercise of power conferred under sub-Section (1) of Section 242 and 252 of the Code. A perusal of the impugned notification, extracted above, and Section 252 of the Code extracted below, clearly shows that the Eighth Schedule is a part of the Code and Section

4(b) of the Repeal Act as amended was incorporated in the Code vide the Schedule. Section 252 of the Code reads:-

> *"252. Amendments of Act 1 of 2004. – The Sick Industrial Companies (Special Provisions) Repeal Act, 2003 shall be amended in the manner specified in the Eighth Schedule."*

As per Section 252 of the Code, the Repeal Act was amended in the manner specified in the Eighth Schedule. The Eighth Schedule of the Code as originally enacted had amended Section 4(b) of the Repeal Act, and has been already reproduced above. Thus amended clause (b) to Section 4 of the Repeal Act was specifically incorporated and included in the Eighth Schedule. In this manner, Section 4 clause (b) of the Repeal Act became part and parcel of the Code. Thus, the said order is not *ultra vires* as what has been done, in effect, is under the Code itself. This being the position, we do not think that the petitioner is correct in contending that the Central Government could not have issued the Removal of Difficulties Order, to rectify and correct anomalies noticed while implementing the Code.

50. Reference can be made to the judgment of the Constitution Bench of the Supreme Court in ***Madeva Upendra Sinai and others v. Union of India and others (1975) 3 SCC 765***, wherein, it has been held as under:

> *36. This raises two questions: (1) Is this a 'difficulty' within the contemplation of clause (7) of the Regulation? (2) Is the Central Government in the exercise of its power under that clause competent to supply of deficiency or casus omissus of this nature?*
>
> *38. For a proper appreciation of the points involved, it is necessary to have a general idea of the nature and purpose of a "removal of difficulty clause" and the power conferred by it on the Government.*

> *39. To keep pace with the rapidly increasing responsibilities of a welfare democratic State, the Legislature has to turn out a plethora of hurried legislation, the volume of which is often matched with its complexity. Under conditions of extreme pressure, with heavy demands on the time of the Legislature and endurance and skill of the draftsman, it is well nigh impossible to foresee all the circumstances to deal with which a statute is enacted or to anticipate all the difficulties that might arise in its working due to peculiar local conditions or even a local law. This is particularly true when Parliament undertakes legislation which gives a new dimension to socio-economic activities of the State or extends the existing Indian laws to new territories or areas freshly merged in the Union of India. In order to obviate the necessity of approaching the Legislature for removal of every difficulty, however trivial, encountered in the enforcement of a statute, by going through the time-consuming amendatory process, the Legislature sometimes thinks it expedient to invest the Executive with a very limited power to make minor adaptations and peripheral adjustments in the statute, for making its implementation effective, without touching its substance. That is why the "removal of difficulty clause", once frowned upon and nick-named as "Henry VIII clause" in scornful commemoration of the absolutist ways in which that English King got the "difficulties" in enforcing his autocratic will removed through the instrumentality of a servile Parliament, now finds acceptance as a practical necessity, in several Indian statutes of post-independence era."*

51. The petitioner, we may notice, has not challenged Section 252 of the Code which had the effect of amending, in the manner as specified in the Eighth Schedule, the provisions of the Repeal Act.

52. In view of the above discussion, it is held that the Central Government, in exercise of power conferred under Section 242 of the Code

could have removed the difficulties which came to its notice upon enforcement of the Code and its implementation. Clause (b) to Section 4 of the Repeal Act, in fact, was substituted in terms of Eighth Schedule inserted by Section 252 of the Code.

53. To summarise -

(i) the classification of cases where draft schemes for reconstruction have been sanctioned and those cases where schemes are pending is non-discriminatory and is based on intelligible differentia as also has nexus to the object sought to be achieved by enacting the Code;

(ii) the inclusion of the Eighth Schedule to the Code is in exercise of powers under Section 242 and Section 252 and is thus not *ultra vires*;

(iii) the prescribing of a cut-off date by way of notifications i.e. 1st December, 2016 is not contrary to law;

54. The Petitioner, if it is so advised may avail of the remedy provided under the Code. As the time period of 180 days has already lapsed, if the Petitioner approaches the NCLT, the request for condonation of delay, if any, be considered if permissible in law.

55. The writ petition is accordingly dismissed with no order as to costs.

SANJIV KHANNA, J

PRATHIBA M. SINGH, J

NOVEMBER 01, 2017
j/r