

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

NEW DELHI

COMPANY APPEAL (AT) NO.126 OF 2017

In the matter of:

Hindustan Motors Ltd

Appellant

Present: Mr. Rajiv Nayar, Sr. Advocate with Mr. Arun Kathpalia, Sr. Advocate with Mr. Ajay Bhargava, Ms Vanita Bhargava, Mr. Rohan Jaitley, Advocates for the appellant.

ORDER

25.04.2017- The appellant, M/s Hindustan Motors Ltd, filed an application before the Board for Industrial and Financial Reconstruction (BIFR) under Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). It was registered as Case No.28/2014 and an order of injunction was passed on 1st October, 2015. When the matter was pending, the National Company Law Tribunal was constituted with effect from 1.6.2016 and under Section 434(1)(a) the matter which were pending before erstwhile Company Law Board stood transferred to National Company Law Tribunal.

With regard to the cases pending before AAIFR and BIFR, by virtue of 8th Schedule of Insolvency and Bankruptcy Code, 2016 amendment to Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) has been made and in Section 4, for sub clause (b), the following sub clause was substituted:-

“(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:

2.

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 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.”

In view of substituted sub clause (b) of Section 4, proceedings of AAIFR and BIFR including the Case No.28/2014 preferred by the appellant stood abated. In that view of the matter the appellant preferred the company petition No.83/2017 before the National Company Law Tribunal, Kolkata Bench with following prayer:

“a) clarifications be issued by reason of abatement of proceedings before BIFR in terms of the reference under Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 by reason of the commencement of The Sick Industrial Companies (Special Provisions) Repeal Act, 2003, all orders passed by the Board under the previous enactment stands abated and are no longer in force; and

(b) In the alternative, permission be granted to effect sale of its “Ambassador Brand” to Peugeot Citroen Automobiles S.A. in terms of the Transfer Agreement or to sell the “Ambassador Brand” to any third party if the sale of the Brand does not occur pursuant to the Transfer Agreement.”

The Tribunal having noticed the provisions including Section 5(1)(c) of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 observed

“After the abatement of the proceedings in BIFR the petitioner company is at liberty to move a petition under IBC Code, 2016 within 180 days from the date of notification but till date no petition has been moved under the IBC Code, 2016. The petitioner company has moved an application for clarification under Section 5(1)(c) of the Sick Industrial

3.

Companies (Special Provisions) Repeal Act, 2003, which is not maintainable. It is to be made clear that by virtue of above mentioned Repeal Act, 2003, which came into force on 1st December, 2016, the petitioner may file, after the abatement of the proceedings, under the IBC Code, 2016, for initiation of corporate insolvency proceeding, then only it can be taken cognizance of. Proceedings in the nature of clarification is not maintainable under Section 5(1)(c) of the Repeal Act, 2003 before the Tribunal. Therefore, the petition is to be dismissed as not maintainable.”

Having heard Learned Counsel for the parties, we find no ground to interfere in the impugned judgement. The declaration as was sought for stands explained by amendment to SICA, as made by Insolvency and Bankruptcy Code, 2016 and noticed above. With the aforesaid observation, the appeal stands disposed of.

(Justice S. J. Mukhopadhaya)
Chairperson

(Mr. Balvinder Singh)
Member (Technical)

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