

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 325 of 2017
[arising out of Order dated 13th November, 2017 passed by NCLT, Kolkata Bench, Kolkata in C.P.(IB) No. 406/KB/2017]

IN THE MATTER OF:

**M/s. Hada Textile Industries Limited,
Delta House,
4, Govt. Place North,
Kolkata – 700 001.**

...Appellant

Vs.

- 1. The Sales Tax Officer,
Commercial Taxes,
Bureau of Investigation Unit – 1,
Govt. of West Bengal,
10, Madan Street,
Kolkata – 700 072**

- 2. The Additional Commissioner,
Commercial Taxes,
Bureau of Investigation Unit – I
Govt. of West Bengal,
10, Madan Street,
Kolkata – 700 072.**

- 3. The Dy. Commissioner,
Commercial Taxes,
Budge Budge Charge,
62, D.H. Road,
Behala,
Kolkata – 700 034
West Bengal.**

- 4. Official Liquidator,
Associated Pulp & Paper Mills Ltd.,
Registrar of Companies,**

**Jivabhai Chambers,
Ashram Road,
Ahmedabad – 380 089.**

5. **Mangaldas & Co,
109, Gays Building,
4th Floor, Room No. 41,
Yusuf Meherali Road,
Mumbai – 400 023**
6. **Cotton Corporation of India,
Kapas Bhavan, Plot 3A, Sector -10,
CBD Belapur,
Navi Mumbai – 400 614.**
7. **Shaktigarh Textile Industries Ltd.
Shaktigarh Barsul,
Burdwan,
West Bengal.**
8. **West Bengal State Electricity
Distribution Co. Ltd.,
Office of the Chief Engineer,
Central Commercial Department,
DJ Block, Sector – II,
Salt Lake,
Kolkata – 700 091.**
9. **The Chairman & Managing Director,
IFCI Tower,
10th Floor, 61, Nehru Place,
P.B. No. 4499,
New Delhi – 110 019.**
10. **The General Manager,
IFCI Limited,
Kolkata Regional Office,
Chatterji International Court,
J.L. Nehru Road,
Post Box No. 2905,
Kolkata – 700 007.**

11. **The Chairman & Managing Director,
West Bengal State Electricity
Distribution Co. Ltd.,
Bidyut Bhawan,
7th Floor, Block D, Sector 11,
Salt Lake City,
Kolkata – 700 091.**

12. **The Chairman & Managing Director,
UCO Bank,
10, Biplabi Trailakya Maharaj Sarani,
Brabourne Road,
Kolkata – 700 001.**

13. **The Chairman and Managing Director,
United Bank of India,
Head Office,
10, Old Court House,
Kolkata – 700 001.**

14. **The Principal Secretary,
Industrial Reconstruction Department,
Government of West Bengal,
5, Council House Street,
Kolkata – 700 001.**

15. **The Additional Commissioner,
Commercial Taxes,
14, Beliaghata Main Road,
Kolkata – 700 015
West Bengal.**

16. **Union of India,
Ministry of Corporate Affairs,
Through Mr. Amandeep Singh Bhatia,
Joint Secretary,
5th Floor, 'A' Wing, Shastri Bhawan,
Dr. R.P. Road,
New Delhi – 110 001.**

...Respondents

Present:

For Appellant : Mr. Arun Kathpalia, Senior Advocate assisted by Ms. Misha, Mr. Vaijayant Paliwal, Ms. Shanchi Punani, Advocates

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

Mr. Sanjay Shorey, JD(Legal) along with Ms. Yagini D. Chauhan, DD for Ministry of Corporate Affairs

Mr. Saurabh Mishra, Advocate for 8th Respondent

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

This appeal has been preferred by ‘M/s. Hada Textile Industries Ltd.’ ‘Corporate Applicant’ under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the ‘**I&B Code**’) against the order dated 13th November, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata whereby and whereunder the Adjudicating Authority refused to extend the period of scheme for further five years which was prepared by the Board for Industrial & financial Reconstruction (in short, ‘**BIFR**’) under the provisions of Sick Industrial Companies (Special Provisions), Act, 1985.

2. The application under the Insolvency and Bankruptcy Code was preferred by the appellant referring to a Government of India’s Notification dated 24th May, 2017 and not under any of the provisions of the I&B Code. Prayer was made to

extend the scheme period prescribed by the BIFR for five years, so that the scheme can be implemented and net worth of the 'Corporate Applicant' will become positive and during such period to direct the Additional Commissioner, Commercial Taxes, Government of West Bengal, Kolkata not to initiate any recovery proceedings against the 'Corporate Applicant' in respect of demand for the period from 2010-11 to 2014-15.

3. Brief facts of the case is that the scheme was earlier sanctioned by BIFR vide its order dated 16th January, 2004 in case No. 336/2000. In the approved scheme, a cutoff date of 31st December, 2002 was fixed. By subsequent order dated 12th December, 2013, the BIFR ordered as follows:

“Having considered the submissions made, materials on record, the Bench observed that the company could not be able to turn its net worth positive within the period of Sanctioned Scheme (SS-04). Therefore, the said scheme has expired, and the company has to submit MDRS for extension of time of SS-04 along with detailed reasons and justifications.

(a) The Government of West Bengal to expedite the decision of reschedule meant for soft loan and submit a report to the Board within four weeks.

(b) The company to submit MDRS for extension of SS-04 along with detailed reasons/justifications.

(c) Next date of hearing is fixed on 7/4/2014.”

4. According to the appellant a 'modified draft rehabilitation scheme' (MDRS) vide letter No. 309/2013-14 dated 24th March, 2014 was forwarded to the BIFR with a copy to the Government of West Bengal and the IFCI monitoring agency. The scheme came to an end on 31st March, 2017 and the net worth of the 'Corporate Applicant' being still negative for the financial year ended on 31st March, 2016, the application for extension of scheme was filed.

5. It was also submitted that as per sub-section (b) of Section 4 of Sick Industrial Companies (Special Provisions) Repeal Act, 2003 (for short, '**the SICA Repeal Act**') as amended by Notification dated 28th May, 2016, all the BIFR matters stood abated except the sanctioned scheme which has been saved in terms of Section 5 of the Repeal Act. Therefore, the approved scheme continued and is binding.

6. According to the appellant that Notification dated 25th November, 2016 came into force from 1st December, 2016 i.e. the date the provisions of the 'I&B Code' came into force. The Ministry of Corporate Affairs in exercise of power conferred under Section 252 by order dated 24th May, 2017 amended the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 in the manner specified in the Eighth Schedule of the I&B Code. The second proviso to clause (b) of Section 4 of the 'SICA Repeal Act, 2003 provided 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 a scheme under implementation in

terms of Section 424D of the Companies Act, 1956 and shall be dealt with as per the provisions contained in Part VI-A of the Companies Act, 1956 which provided for review or monitoring of scheme that are sanctioned or are under implementation.

7. According to the learned counsel for the appellant the above clarification in regard to the proviso regarding any scheme sanctioned under sub-section (4) or any scheme under implementation under sub-section (12) of Section 18 of the SICA Repeal Act, 1985 shall be deemed to be approved 'resolution plan' under sub-section (1) of Section 31 of the I&B Code.

8. The Adjudicating Authority has noticed the aforesaid fact and observed that even if it is deemed to be a 'resolution plan' under sub-section (1) of Section 31 of the I&B Code, the said plan can be dealt with in terms of the provisions of Part II of the I&B Code. In absence of any provision to review the scheme already sanctioned under sub-section (1) of Section 31 of the I&B Code, the Adjudicating Authority held that the scheme having already approved and as the company failed to turn its net worth positive within the period of sanctioned scheme, it will be presumed that the 'corporate applicant' has violated the sanctioned scheme, which will result in liquidation proceedings.

9. Having heard the learned counsel for the parties, we also agree with the finding of the Adjudicating Authority that if the scheme sanctioned under sub-section (4) of Section 18 of SICA Act, 1985 is treated to be a scheme sanctioned under sub-section (1) of Section 31 of the I&B Code, which otherwise we do not accept, in such case also in absence of any provision of review of the scheme

sanctioned under sub-section (1) of Section 31 of the I&B Code, no relief can be granted to the appellant.

We find no merit in this appeal. It is accordingly dismissed. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

New Delhi

18th September, 2018

/ns/