

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

(IB)-278(PB)/2017

IN THE MATTER OF:

M/s. MS Shoes East Ltd. (Tomorrow Land Technologies Applicant
Exports Limited)

v.

Union of India

.... Respondent

Order under Section 31 of IBC, 2016

Order delivered on 13.06.2018

Coram:

CHIEF JUSTICE (RTD.) M.M. KUMAR
Hon'ble President

Sh. S. K. MOHAPATRA,
Hon'ble Member (Technical)

PRESENTS:

For the Applicant:

Mr. Atanu Mukherjee and Mr. K.K.R. Das,
Advocates

For the Respondent:

Mr. Sanjib K. Mohanty, Senior Panel lawyer for
Central Govt. Counsel, Registrar of Companies
& Union of India

Mr. Rajive R. Raj, Advocate for IDBI Bank

ORDER

By virtue of notification dated 24.05.2017 [Notification S.O. 1683(E)] concerning the removal of difficulty to give effect to the provisions of Section 242 of the Insolvency and Bankruptcy Code, 2016, this Tribunal (National Company Law Tribunal) was clothed with the power to implement the scheme finalized by BIFR/ AAIFR or to continue the implementation thereof. The legality of the aforesaid notification came up for consideration and it was the subject matter of challenge by Hon'ble National Company Law Appellate Tribunal in the case of ***Principal Director General of Income Tax (Admn. & TPS) v. M/s. Spartek Ceramics India Ltd. & Anr.*** Concededly it has now been held by the Hon'ble Appellate Tribunal that the Government through Ministry of Corporate Affairs was not competent to issue any such notification and it has setaside the same. It has also been opined that under



Section 242 of the Insolvency and Bankruptcy Code, 2016 the Central Government was empowered to issue notification under the Insolvency and Bankruptcy Code, 2016 not under SICA. The decision has been rendered in Company Appeal (AT) (Insolvency) No. 160 of 2017 titled as **Principal Director General of Income Tax (Admn. & TPS) v. M/s. Spartek Ceramics India Ltd. & Anr.** decided on 28.05.2018.

In view of the above learned counsel for the petitioner states that the petition may be dismissed as this Tribunal will not have any jurisdiction to carry on the implementation of the scheme even if finalized by the BIFR/AAIFR. We order accordingly. However, it is made clear that the present order will not bar the petitioner to move competent authority for implementation of the scheme if so advised.

Consequently, the petition is dismissed.

- Sd/-

(M.M.KUMAR)
PRESIDENT

- Sd/-

(S. K. MOHAPATRA)
MEMBER (TECHNICAL)

13.06.2018
VINEET