

IN THE NATIONAL COMPANY LAW TRIBUNAL : NEW DELHI
SPECIAL BENCH (COURT-I)

BIFR-414/2002
CA-362(PB)/2017

In the matter of :
M/s. Kothari Fermentation & Biochem Ltd.

..PETITIONER

SECTION :
Under Section

Order delivered on 12.10.2017

Coram :
R. VARADHARAJAN,
Hon'ble Member (Judicial)

DEEPA KRISHAN
Hon'ble Member (Technical)

For the Petitioner /Appellant : Ms. Purti Marwaha Gupta, Advocate
Mr. CS Chauhan, Advocate

For the Respondent/Corporate Debtor : -

ORDER

Learned Counsel for the petitioner is present. It is represented that an application in No.CA-362(PB)/2017 has been filed seeking appropriate directions in terms of order dated 24.5.2017 issued by the Ministry of Corporate Affairs along with an affidavit. Perusal of the said application reflects the following prayers :

"In the light of the aforesaid facts & circumstances, it is most respectfully prayed that this Hon'ble Court may be graciously pleased to :

- a) allow the instant application
- b) grant relief and concession as stipulated in Clause 10.3.1 of the

Contd.



sanctioned Scheme and prayers as sought in I.A No.476/2015, which was subjudice before the BIFR when SICA repeal Act, 2003 came into force will be treated as the pending application before this Hon'ble Tribunal.

c) issue appropriate order for reinstating the Clause 10.3.1 (1) & (5) of the sanctioned Scheme dated 26.3.2008,

d) direct that no coercive action of any nature whatsoever can be taken by Income Tax Department against the applicant Company

e) pass such further or other orders as may be deemed fit and proper in the facts and circumstances of the case".

Ld. Counsel for the applicant represents that IDBI was appointed as the Operating Agency (OA) and a Scheme has also been framed, which was challenged by Income Tax Department before Appellate Authority and after orders at the time of repeal of SICA and abolition of BIFR the Scheme was before the BIFR.

In the circumstances, by virtue of the order of MCA dated 24.5.2017, this application.

Perusal of the order dated 24.5.2017 issued by the Ministry of Corporate Affairs and particularly Section 2 of the said order reads as under :

"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 Section (4) or any scheme 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

A

contd-

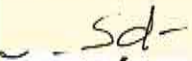
Code.

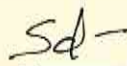
Provided also that in case, the statutory period within an appeal was allowed under the Sick Industrial Companies (Special Provisions) Act, 1985 against an order of the Board had not expired as on the date of notification of this Act, an appeal against any such deemed approved resolution plan may be preferred by any person before National Company Law Appellate Tribunal within ninety days from the date of publication of this order”.

It is further represented by the Ld. Counsel for the petitioner that the Company is now fully operational which is also out of sickness as was prevalent at the initial stage at the time of making reference before the BIFR.

Learned Counsel for the petitioner also points out to an order passed in Appeal No.134/108 by the AAIFR and the order passed by the Hon'ble High Court, Delhi dated 24.12.2015 in Writ Petition (C) No.12183/2015. Taking into consideration all of the above, we deem it appropriate to issue notice to the Income Tax Department. Further, notice shall also be issued to IDBI, being the OA which formulated the Scheme. The petitioner is directed to take notice of application to the Income Tax Department as well as IDBI within a period of 3 weeks from today (12.10.2017).

Post the matter on 20.11.2017.


(DEEPA KRISHAN)
MEMBER (TECHNICAL)


(R. VARADHARAJAN)
MEMBER (JUDICIAL)

Surjit
12.10.2017