

In the National Company Law Tribunal,
Kolkata Bench, Kolkata

CP (IB) No.406/KB/2017

In the matter of:

M/s Hada Textile Industries Ltd.

..... Corporate Applicant

Order Delivered on November 2017

Coram:

V. P. Singh, Member (J)

Jinan K.R., Member (J)

For the Applicant: 1. Mr Rajesh Bohra, Advocate
2. Mr Paras Kumar Jha, Advocate

For the Respondent No.6: 1. Mr P.D. Mukherjee, Advocate
2. Mr B.D. Ghosh, Advocate

For the Respondent No.8: Mr Sujit Sankar Koley, Advocate

ORDER

Per V.P. Singh, Member (J)

Petitioner, under the Insolvency and Bankruptcy Code, 2016 (from now on referred to I & B Code, 2016) has filed this application with a prayer to extend the scheme period further for five years, so the sanctioned scheme can be implemented, and net worth of the corporate applicant will become positive and during such period further direct to the Additional Commissioner, Commercial Taxes, Govt. of West Bengal, Kolkata not to initiate any recovery proceedings against the corporate application for the demands of the period from 2010-11 to 2014-15. In addition to this, the petitioner sought relief to settle the Suit

No.7436/1983 in Bombay City Civil Court in regard to Mangaldas & Co. vs. Associated Pulp & Paper Mill Ltd. and Hada Textile Industries Ltd. A further prayer has been made granting stay/settle the Suit No.1325/1980, 1337/1980, 1338/1980 and 322/1981 pending before the Hon'ble High Court, Bombay regarding Cotton Corp. of India vs Hada Textile Industries Ltd. & Anr. Petitioner has sought further relief to give direction to WBSEDCL previously known as WBSEB to supply power without any additional bank guarantee against the bank guarantee demand of Rs.1,09,45,000/-.

2. The brief facts of the case, as stated in the application, are that the scheme was earlier sanctioned by Board for Industrial & Financial Reconstruction (in short, BIFR), vide order dated 16/1/2004 in Case No.336/2000. An approved scheme is annexed at pages 32 to 57 of the petition. In the said scheme cutoff date is given as 31/12/2002.

3. It is pertinent to mention that BIFR appointed IFCI as the monitoring agency to monitor the progress of implementation of the Sanctioned Scheme (SS-04).

4. It is also pertinent to point out that by order dated 12/12/2013 the BIFR passed an order that

"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 the time of SS-04 along with detailed reasons and justifications.

(a) The Government of West Bengal to expedite the decision of re-schedule 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."

5. Petitioner has further stated that corporate applicant has submitted MDRS vide letter no.309/2013-14 dated 24/3/2014 to the BIFR and the copy of the letter was sent to Gov. of West Bengal and IFCI monitoring agency. Copy of the letter dated 24/3/2014 along with MDRS is annexed with the petition as Annexure-4.

6. It is further stated in the application that the scheme above will be ending on 31/3/2017 and the net worth of the corporate applicant is still negative which is the audited accounts for the financial year ended as on 31/3/2016. Copy of the verified statement as on 31/3/2016 is annexed with the application as Annexure - 5.

7. Petitioner has further stated that the Sick Industrial Companies (Special Provisions) Repeal Act, 2003, hereinafter referred to as SICA Repeal Act, 2003 under Sec.4(b) as amended by notification dated 28/5/2016, all the BIFR matters have been abated except for the sanctioned scheme which has been saved in terms of Sec.5 of Repeal Act and, as such, the approved scheme is continued to be binding. Petitioner has annexed a copy of the notification dated 28/5/2016 which is added as Annexure - 6.

8. Petitioner has further stated that vide notification dated 25/11/2016 has enforced the SICA Repeal Act 2013 with effect from 1/12/2016 and accordingly BIFR has been dissolved. Copy of notification dated 25/11/2016 is Annexure - 7 attached to the petition. The relevant paragraph of the notification is given below:-

"In Section 4, for sub-clause (b), the following sub-clause shall be substituted, namely -

(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 (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."

By the above notification, it is clear that all the BIFR matters stand abated by notification dated 28/5/2016 except the scheme sanction which has been saved regarding Sec.5 of the SICA Repeal Act, 2003 and, as such, the sanction schemes are continued to be binding.

It is further contended vide notification dated 25/11/2016 has enforced the SICA Repeal Act, 2003 with effect from 1/12/2016 and accordingly, BIFR has been dissolved.

Notification dated 25/11/2016 provides that SICA Repeal Act, 2003 in the exercise of the power conferred under subsection (2) of Sec.1, the Central Govt. at this moment appoints 1st December 2016 as the date on which the provision of the said Act shall come into force. Copy of the said notice is Annexure - 7 and attached to the petition.

Petitioner has also contended that Central Govt. vide notification dated 30/11/2016 has already commenced the provisions of Insolvency and Bankruptcy Code, 2016 with effect from 1/12/2016. Copy of the said notification is Annexure - 8 annexed with the petition.

It is further contended that in exercise of power conferred by subsection (1) of Sec.242 of I & B Code, 2016, the Central Govt. vide notification no.1490 dated 24/5/2017 has made the following order to remove the difficulties which may

arise in implementation of the sanctioned scheme, which is given below for ready reference: -

Copy of the said notification is provided below for ready reference: -

"Ministry of Corporate Affairs order New Delhi, the 24th May 2017 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 (1 of 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 sanction or are under implementation."

9. By the above clarification, proviso to Sec.4 has been inserted which provides that any scheme sanctioned under subsection (4) or any scheme under implementation under subsection (12) of Sec.18 of SICA, 1985 shall be deemed to be an approval resolution plan under subsection (1) of Sec.31 of the I & B Code, 2016.

10. It is undisputed that in this case a scheme was sanctioned by BIFR by order dated 16/1/2004 in case no.336/2000 and cut-off date 31/12/2002 was fixed. It is also to be pointed out that BIFR appointed IFCI as the monitory agency to monitor the progress of implementation of sanction scheme.

11. It is on record that BIFR vide order dated 12/12/2013 has passed order that the said scheme has expired, and the company could not be able to turn its net worth positive within a period of sanction scheme. Therefore, it was directed by the BIFR that the company has to submit MDRS for extension of the period of SS-04 along with the detailed reasons and justifications. The petitioner has claimed in compliance with the said order of BIFR; the petitioner submitted MDRS for extension of the term of sanction scheme SS-04 along with detailed reasons and justification.

12. Corporate applicant has submitted that MDRS vide letter dated 24/3/2014 annexed copy of the petition which is Annexure – 4. Petitioner has applied to the National Company Law Tribunal on 9/8/2017. It is further stated that the petitioner has earlier filed the said CP No.171/2017 before ending the term of the scheme, but that petition was dismissed as not maintainable vide order of the Tribunal dated 13/4/2017.

13. After issuing of government notification removal of difficulties dated 24/5/2017 petitioner again filed this petition for extending the term of sanction scheme SS-04. Petitioner has laid emphasis on the fact that Sick Industrial Companies (Special Provisions) Act, 1985, Sec.18 sub-clause 9 was relating to the Boards power to review the scheme of any difficulties arises in giving effect to the provision of sanction of the scheme.

14. Petitioner has further contended that under Sec.262 sub-clause 6 of the Companies Act, 2013 also provides that *"The Tribunal may review any sanctioned scheme and make such modifications, as it may deem fit, or may by order in writing direct company administrator, to prepare a fresh scheme providing for such measures as the company administrator may consider necessary."*

15. It has also been amended by the I & B Code, 2016 and the provision has been omitted. It is pertinent to mention that by SICA Repeal Act, 2003, all the proceedings before the BIFR abated and 180 days was provided to the corporate

applicant for modifying the application before the National Company Law Tribunal. In this case, the applicant has filed earlier application for extension of time period of the sanctioned scheme of the BIFR but it was earlier rejected but, there was no provision of I & B Code whereby term of the sanctioned scheme of BIFR could have been extended.

16. It is pertinent to mention by issuing further notification by the Government dated 24/5/2017 that *"whereas the Companies Act, 1956 has been repealed and 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 for the implementation of scheme under Secs.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."*

17. Therefore, government has inserted the proviso in Sec.4(b) of the SICA Repeal Act, 2003 and by the said proviso Government has provided that no scheme sanctioned under sub-section (4) or any scheme under implementation under sub-section (12) of Sec.18 of the SICA Repeal Act, 2003 shall be deemed to be an approved resolution plan under sub-section (1) of section 31 of the I & B Code, 2016.

18. The scheme sanctioned by the BIFR shall be deemed to be approved resolution plan under Sec.31(1) of I & B Code. But it is specifically mentioned in the said proviso that the scheme shall be dealt with the proviso of part 2 of the I & B Code.

19. It is pertinent to mention that part 2 of the I & B Code 2016 there is no such power which empowers adjudicating authority to review the already sanction scheme under sub-section (1) of Sec.31 of the I & B Code. Since the petitioner has sought an extension of the sanctioned scheme, given the modification of MDRS already submitted before the BIFR. It is also to be pointed out that this power was earlier vested under sec.262(6) of the Companies Act, 1956 and after that

Companies Act, 2013. The said section has been omitted from I & B Code, and further I & B Code has not made any provision which empowers adjudicating authority to review the sanctioned scheme under the Code because there is no specific provision which authorises the Tribunal to review the scheme. So, we are not authorized to extend the term of scheme even though the matter is pending before the BIFR and under Sec.262(6) of the Companies Act. Tribunal was empowered to do so but now coming into force of the I & B Code and without any statutory provision to the effect we cannot extend the term of sanctioned scheme.

20. Since the scheme has already been approved and it is also on record that till date sanctioned scheme, the company could not turn its net worth within the period of sanction scheme, therefore, it will presume that corporate applicant has violated the term of the sanctioned scheme and liquidation proceedings shall stand in accordance with the provisions of I & B Code, 2016.



Jinān K.R.
Member (J)



V. P. Singh,
Member (J)

Signed on 8/11/17 November 2017