

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9995/2018

M/S. HADA TEXTILE INDUSTRIES LTD.

Appellant(s)

VERSUS

THE SALES TAX OFFICER COMMERCIAL TAXES & ORS.

Respondent(s)

O R D E R

1. This statutory appeal under Section 62 of IBC 2016¹ arises out of the final judgment and order dated 18.09.2018 passed by the National Company Law Appellate Tribunal (hereinafter referred to as "the NCLAT"), New Delhi in Company Appeal (AT) (Insolvency) No.325 of 2017 by.

2. The facts in brief, leading to the filing of the present appeal are as under:-

A] By declaration dated 10.08.2001, the BFIR² had declared the appellant to be a sick company under the provisions of SICA³ and appointed IFCI as the Operating Agency, whereafter a scheme for rehabilitation was formed. The scheme, however, expired sometime in the year 2013 by which time, the net worth of the appellant had not

yet turned positive. Therefore, a modified plan was submitted by the appellant which was under consideration when the Repeal Act⁴ came into force.

B] Thereafter, the appellant filed C.P.No.171/2017 before the National Company Law Tribunal, Kolkata (hereinafter referred to as "the NCLT") seeking extension of the scheme sanctioned by the BIFR. This application came to be dismissed by the NCLT, Kolkata on 13.4.2017.

C] On or about 24.05.2017, Removal of Difficulties Order was passed by the Central Government clarifying that sanctioned schemes currently under implementation would be deemed to be resolution plans under IBC 2016. Another application, therefore, came to be filed by the appellant being C.P. No.406/KB/2017 before the NCLT, Kolkata seeking extension of the period of the scheme.

D] This application was dismissed by the NCLT, Kolkata vide order dated 13.11.2017 which order was confirmed in appeal by the NCLAT by its order dated 18.9.2018.

E] While dismissing the application, the NCLT, Kolkata in its order dated 13.11.2017 had directed:

²⁰. Since the scheme has already been approved and it is

⁴ Sick Industrial Companies (Special Provisions) Repeal Act, 2003

also on record that till date, the company could not turn its net worth into positive within the period of sanctioned scheme, therefore, it will be presumed that corporate applicant has violated the term of the sanctioned scheme. Thus, liquidation proceedings shall follow, in accordance with the provisions of I&B Code, 2016."

The aforesaid direction also came to be confirmed by the NCLAT while dismissing the appeal.

3. While issuing notice in the present appeal, this Court had passed the following order on 1.10.2018:

"Mr. Shyam Divan, learned senior counsel appearing for the appellant, on instructions, submits that the appellant is willing to withdraw the original application [CP (IB) No.406/KB/2017] filed before the National Company Law Tribunal, Kolkata."

4. Thereafter, the respondents have appeared and parties have exchanged their pleadings.

5. Mr. Shyam Divan, learned senior counsel, submits that the appellant had gone before the NCLT seeking extension of the Scheme that was already in existence and the Scheme had worked for a while; however, the net worth of the appellant having not turned positive, the appellant had gone to the NCLT seeking extension of time; and it was never the intent of the appellant to liquidate itself nor was any such plea or prayer made before NCLT. In the circumstances, the directions as aforesaid passed by the NCLT, Kolkata and confirmed by the NCLAT were without any reason. He, therefore, contends that the appellant be permitted to withdraw the

application itself.

As regards the present status of the appellant, it is submitted in the written submissions as under:-

"(i) The net-worth of the Appellant has turned positive in the financial year ending on 31 March 2018.

(ii) In terms of the Sanctioned Scheme under Sick Industrial Companies (Special Provisions) Act, 1985 ("SICA"), SS-04, the Appellant has paid and cleared the following amounts to its financial creditors: (a) Industrial Investment Bank of India - Rs. 70.94 lacs; (b) Rs.72.25 lacs; (c) Industrial Development Bank of India - Rs.177.35 lacs. The Appellant has accordingly received the no-dues certificate from them.

(iii) In addition, United Bank of India and UCO Bank have also issued their no-dues certificate to the Appellant, *Refer No-dues certificate of UCO Bank at Page 462 of the Appeal.*

(iv) The Appellant has also received a no-dues certificate from West Bengal State Electricity Distribution Company, in terms of the Sanctioned Scheme."

6. The learned counsel appearing for the respondents have no objection, if the appellant is permitted to withdraw the original application. However, their apprehension is that there are certain proceedings which are presently pending for recovery of dues and their interest in that behalf is required to be secured.

7. It goes without saying that even if, the application is allowed to be withdrawn, the rights and remedies available to any of the persons, be it a creditor or any other entity including a corporation or any statutory authority, in respect of any statutory dues or otherwise, such rights and remedies will not in any way be

affected by the withdrawal of the original application.

8. We have, therefore, no difficulty in accepting the prayer made by the appellant. Accordingly, we allow the appellant to withdraw CP No.406/KB/2017. Consequently, the orders passed by the NCLT and the NCLAT stand set aside.

9. This appeal is allowed in aforesaid terms. No costs.

.J.
(UDAY UMESH LALIT)

.J.
(ANIRUDDHA BOSE)

New Delhi;
October 18, 2019.

ITEM NO.35

COURT NO.7

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 9995/2018

M/S. HADA TEXTILE INDUSTRIES LTD.

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(IA No. 140107/2018 - EX-PARTE STAY
 IA No. 140913/2018 - PERMISSION TO FILE ADDITIONAL
 DOCUMENTS/FACTS/ANNEXURES)

Date : 18-10-2019 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
 HON'BLE MR. JUSTICE ANIRUDDHA BOSE

For Appellant(s)

Mr. Shyam Divan, Sr. Adv.
 Mr. Shantanu Chaturvedi, Adv.
 Ms. Jasveen Kaur, Adv.
 Ms. Sanam Tripathi, adv.
 Mr. S. S. Shroff, AOR

For Respondent(s)

Ms. Madhumita Bhattacharjee, AOR
 Ms. Srijia Choudhury, Adv.

Mr. Arvind S. Avhad, AOR

Mr. Som Raj Choudhury, AOR
 Ms. Shrutee Aradhana, Adv.

Ms. Arti Singh, AOR
 Mr. Aakashdeep Singh Roda, Adv.
 Ms. Pooja Singh, Adv.

Ms. Pinky Anand, ASG
 Ms. Chinmayee Chandra, Adv.
 Ms. Kanu Agarwal, Adv.
 Ms. Saudamini Sharma, Adv.
 Mr. Arvind Kumar Sharma, AOR

**UPON hearing the counsel the Court made the following
O R D E R**

The appeal is allowed in terms of the signed order.

**(INDU MARWAH)
COURT MASTER**

**(SUMAN JAIN)
BRANCH OFFICER**

(signed order is placed on the file)

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