

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) Insolvency No. 294 of 2018

IN THE MATTER OF:

Gail (India) Ltd.

...Appellant

Versus

M/s. Neycer India Ltd.

...Respondent

Present:

**For Appellant: Mr. Sudhir K. Makkar, Senior Advocate assisted
by Mr. Anurag Kishore, Ms. Saumya Gupta, Ms.
Niharika Sharma, Advocates.**

For Respondent 1: Mr. Neeraj Chaudhry, Advocate.

O R D E R

29.01.2019— The Respondent- ‘M/s. Neycer India Ltd.’ filed a petition bearing C.P. No. 664 of 2007 before the ‘Board for Industrial and Financial Reconstruction’ (“BIFR” for short), Chennai, who vide its order dated 6th October, 2008 sanctioned the ‘Modified Draft Revival Scheme’ for the Respondent Company- ‘M/s. Neycer India Ltd.’.

2. Before repeal of ‘Sick Industrial Companies (Special Provisions) Act, 1985, the Appellant filed a Writ Petition (Civil) No. 7776 of 2011 before the Hon’ble High Court of Delhi against the scheme wherein certain order was

passed by the Hon'ble High Court of Delhi. The petition was disposed of with the following directions to BIFR:-

“Learned Counsels for the parties agree that the BIFR would have to hear the Petitioner and Respondent No.1 limited to the issues specified in our order dated 2.11.2011 in respect of directions given in clause 10L of the scheme. Ordered accordingly.

Needless to say we have not examined any other part of the sanctioned scheme which may continue to be implemented qua the other parties.

The petition and the application stand disposed of.”

3. However, 'BIFR' being abolished by the 'Sick Industrial Companies (Special Provisions) Repeal Act, 2003, the matter remained pending. The Central Government issued Notification dated 24th May, 2017 titled 'The Insolvency and Bankruptcy Code (Removal of Difficulties) Order, 2017'. The first proviso to Section 2 of the Order reads as follows:

“.....Provided also 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 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 Code.”

4. Thereby, giving the opportunity to the Respondent ‘M/s Neycer India Ltd.’ to move before the Adjudicating Authority (National Company Law Tribunal), Chennai. The Appellant- ‘M/s. Gail (India) Ltd.’ took plea before the Adjudicating Authority that the application was not maintainable, which was accordingly rejected by the impugned order dated 13th April, 2018.

5. The aforesaid Notification dated 24th May, 2017 issued by the Central Government was referred before this Appellate Tribunal in ***M/s. Spartek Ceramics India Ltd. Vs. Union of India & Ors- Company Appeal (AT) (Insolvency) No. 160 of 2017 etc.*** wherein this Appellate Tribunal held that the case before the Adjudicating Authority was not maintainable and the Notification dated 24th May, 2017 was illegal as it travels beyond the

scope of the removal of difficulties provisions under the Insolvency & Bankruptcy Code. The decision of this Appellate Tribunal dated 28th May, 2018 in “**M/s. Spartek Ceramics India Ltd.**” (Supra) was challenged before the Hon’ble Supreme Court in Civil Appeal Nos.7291-7292 of 2018. The Hon’ble Supreme Court vide its order dated 25th October, 2018 upheld the decision of this Appellate Tribunal and held that the Notification dated 24th May, 2017 was illegal as it travels beyond the scope of the removal of difficulties provisions under the Insolvency & Bankruptcy Code.

6. The case of the Appellant being covered by “**Spartek Ceramics India Ltd. Vs. Union of India & Ors.**” (Supra), we set aside the impugned order dated 13th April, 2018 passed by the Adjudicating Authority, Single Bench, Chennai, being without jurisdiction. The application is not maintainable. However, it will be open to the Respondent to move before the appropriate forum for appropriate relief which may decide the same uninfluenced by the decision of this Appellate Tribunal.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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