

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 561 of 2019

[Arising out of Order dated 5th April, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in Company Petition (IB) No. 701/KB/2017]

IN THE MATTER OF:

Mr. Suresh Narayan Singh

...Appellant

Vs.

Tayo Rolls Limited

...Respondent

Present: For Appellant: - Mr. A.K. Shrivastava and Ms. Sumana Raychaudhuri, Advocates and Ms. Suhita Mukhopadhyay, PCS.

For Respondent: - Mr. Arun Kathpalia, Senior Advocate assisted by Mr. R. Sudhinder, Ms. Nimita Kaul and Mr. Amrita Sarkar, Advocates.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

The Appellant- Mr. Suresh Narayan Singh, Authorised Representative of 284 workers of 'Tayo Rolls Limited'- ('Corporate Debtor') has challenged the order dated 5th April, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata,

whereby and whereunder, the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “I&B Code”) preferred by the Appellant has been admitted.

2. Before going into the merit of the appeal, it is necessary to notice certain relevant facts as stated below.

3. ‘Tayo Rolls Limited’- (‘Corporate Debtor’) along with Mr. Suresh Padmanabhan Singh, the Deputy Chief Financial Officer of ‘Tayo Rolls Limited’- (‘Corporate Debtor’) filed an application under Section 10(1) of the ‘I&B Code’ for initiation of the ‘Corporate Insolvency Resolution Process’ against it. The Adjudicating Authority by an order dated 22nd December, 2017 rejected the application on one of the grounds that the matter has been referred within 180 days from the date of abatement of reference in terms of sub-clause (b) of Section 4 of the ‘Sick Industrial Companies (Special Provisions) Repeal Act, 2003’, as substituted by the ‘Eighth Schedule’ of the ‘I&B Code’.

4. The aforesaid order passed by the Adjudicating Authority was challenged by Mr. Suresh Padmanabhan and Tayo Rolls Limited’- (‘Corporate Debtor’) before this Appellate Tribunal in Company Appeal (AT) (Insolvency) No. 29 of 2018.

5. Mr. Suresh Narayan Singh, Authorised Representative of 284 workers of ‘Tayo Rolls Limited’- (‘Corporate Debtor’) (Appellant herein) also

filed an application under Section 9 of the 'I&B Code' before the Adjudicating Authority, Kolkata Bench. The said application preferred by the Appellant- Mr. Suresh Narayan Singh under Section 9 was rejected by the Adjudicating Authority by order dated 3rd January, 2018 on the ground that the application under Section 9 has to be filed by the 'Operational Creditor' individually and not jointly.

6. The Appellant- Mr. Suresh Narayan Singh also challenged the said order of rejection dated 3rd January, 2018 before this Appellate Tribunal by filing Company Appeal (AT) (Insolvency) No.112 of 2018.

7. When Company Appeal (AT) (Insolvency) No. 29 of 2018 filed by the 'Corporate Debtor' ('Tayo Rolls Limited') was initially taken up by this Appellate Tribunal, learned counsel appearing on behalf of Mr. Suresh Narayan Singh ('Appellant' herein) opposed the said appeal. The appeal was adjourned.

8. Subsequently the Company Appeal (AT) (Insolvency) No.112 of 2018 preferred by the Appellant- Mr. Suresh Narayan Singh was heard by this Appellate Tribunal and by judgment dated 26th September, 2018, this Appellate Tribunal held that the application filed under Section 9 by Appellant- Mr. Suresh Narayan Singh, Authorised Representative of 284 workers of 'Tayo Rolls Limited'- ('Corporate Debtor') is maintainable and passed the following orders: -

“10. In the result, the Adjudicating Authority is directed to admit the application filed by the Appellant- Mr. Suresh Narayan Singh and pass appropriate order of ‘Moratorium’ and appointment of ‘Insolvency Resolution Professional’ in accordance with law after notice to the ‘Corporate Debtor’. The application under Section 10 of the ‘I&B Code’, filed by the ‘Corporate Debtor’ as is under consideration before this Appellate Tribunal in an appeal and if the said appeal is allowed, the ‘Interim Resolution Professional suggested by the ‘Corporate Debtor’, may be appointed. The appeal is allowed with aforesaid observations and directions. However, in the facts and circumstances of the case, there shall be no order as to cost.”

9. Subsequently, when Company Appeal (AT) (Insolvency) No. 29 of 2018 preferred by Appellant- Mr. Suresh Padmanabhan and ‘Tayo Rolls Limited’- (‘Corporate Debtor’) was taken up, this Appellate Tribunal by judgment dated 4th October, 2018 declared the judgment dated 26th September, 2018, as illegal, and set it aside, but did not remit the case to the Adjudicating Authority, having already ordered to initiate ‘Corporate

Insolvency Resolution Professional’ against the ‘Corporate Debtor’ in the appeal preferred by Mr. Suresh Narayan Singh (‘Appellant’ herein).

10. In view of the order passed by this Appellate Tribunal in the appeal preferred by Mr. Suresh Narayan Singh (‘Appellant’ herein), the Adjudicating Authority by impugned order dated 5th April, 2019 admitted the application under Section 9 preferred by the Appellant- Mr. Suresh Narayan Singh and accepting the prayer of the Appellant initiated ‘Corporate Insolvency Resolution Process’ against the ‘Corporate Debtor’.

11. After admission, curiously the same Appellant- Mr. Suresh Narayan Singh has again preferred this appeal against the order of admission of application under Section 9 on the ground that the application by the ‘Corporate Debtor’ was unwarranted and not tenable in law.

12. Learned counsel for the Appellant submitted that the ‘Corporate Debtor’ omitted to show in its Audited Balance Sheet of F.Y. 2016-17 different lands and that ‘Tata Steel’ is claiming its lease right having been granted by the State Government grant in the year 1969. It was submitted that the ‘Operational Creditor’ also filed an application being C.A. (IB) No. 960/KB/2018 with prayer to implead ‘Adityapur Industrial Area Development Authority, Adityapur’ and State of Jharkhand to declare the status of 350 acres of land legally belonging to the ‘Corporate Debtor’ and if required also to cancel the lease granted in favour of ‘Tata Steel’ and to revert back the land to the ‘Corporate Debtor’ under the Government

Grants Act, 1895 by giving retrospective effect. It was submitted that no 'Resolution Plan' will succeed without vesting 350 acres of land in favour of the 'Corporate Debtor'. However, such submissions cannot be accepted, nor such ground can be noticed to admit or reject the application under Section 9.

13. The Appellant- Mr. Suresh Narayan Singh having filed application under Section 9 and being successful, on the basis of direction of this Appellate Tribunal his application under Section 9 was admitted. Now, it is not open to the Appellant to challenge the order of admission of application filed by him. Whatever the submissions have been made can be noticed by the Adjudicating Authority, if so raised by the 'Resolution Professional' or any aggrieved person, but no such ground can be taken to challenge the order of admission.

14. The Respondent (Board of Directors), now under suspension has rightly taken plea that the present appeal is, in fact, in contravention to the directions of this Appellate Tribunal dated 26th September, 2019 passed in Company Appeal (AT) (Insolvency) No. 112 of 2018 as was preferred by the Appellant.

15. In fact, the present appeal is not maintainable under Section 61, as Appellant- Mr. Suresh Narayan Singh is not an aggrieved person, the application under Section 9 preferred by him having been admitted.

16. For the reasons aforesaid, no interference is called for against the order of admission which has been passed in the light of the direction of this Appellate Tribunal. The appeal is dismissed. Though, we are of the opinion that this is a frivolous appeal for which cost should be imposed, but in view of the fact that Mr. Suresh Narayan Singh is representing 284 workers, we are not imposing any cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

NEW DELHI
18th July, 2019

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