

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 219 of 2017

IN THE MATTER OF

Sudhir Sales & Services Limited ... Appellant

Vs.

Comfort Net Traders Pvt. Ltd. ... Respondent

Present: For Appellant:- Mr Y. Sarat Chandra, Advocate.

For Respondent:- Mr Kanwal Chaudhary, Advocate.

ORDER

20.09.2017 — The Appellant preferred an application under Section 433 (e) and (f) and Section 434 of the Companies Act, 1956 before the Hon'ble Delhi High Court pursuant to a notification dated 7th December 2016 issued by the Central Government from the Ministry of Corporate Affairs in exercise of powers conferred under sub-section (1) and (2) of Section 434 of the Companies Act, 2013 read with sub-section (1) of Section 239 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as I&B Code) framing "The Companies (Transfer of Pending Proceedings) Rules, 2016". The case was transferred to the National Company Law Tribunal, Principal Bench, New Delhi (hereinafter referred to as Tribunal). The aforesaid Rules was amended by subsequent notification dated 28.2.2017 extending the period of 60 days to 6 months after taking steps in terms of Rule 5. By subsequent second amendment to the aforesaid Rule, by notification dated 29th June 2017, allowed time upto 15th July 2017 to convert the application either under Section 7 or 8 read with Section 9 of the I&B Code. It was mentioned thereafter that the application under Section 433 (e) transferred from High Court will stand abated. However, it was made clear that thereafter it will be open to the concerned person to move an application individually under Section 7 or 9 of the I&B Code, as the case may be.

2. In the present case, the time of 60 days which was extended to 6 months having lapsed, the Tribunal by order dated 25th April 2017

dismissed the petition giving liberty to the Appellant to file a fresh petition under the I&B Code. The Appellant thereafter filed an application for recall of the said order dated 2nd March 2017 passed in C.P. No. 926 of 2016 and C.P. No. 908 of 2015 in their original form. The Tribunal by order dated 25th April 2017 refused to modify the said order. The aforesaid order dated 25th April 2017 is under challenge in this appeal.

3. On notice the Respondent has appeared. We have heard Ld. Counsel for the Appellant and the Respondent.

4. Even if the argument of the Appellant is accepted that the Tribunal ought to have allowed the Appellant to convert the application under Section 433 (e) as an application under I&B Code, thereafter the time having not lapsed in view of the fact that after the second amendment of Rule 5 vide notification dated 29th June 2017, the last date of 15th July 2017 having lapsed, we cannot allow the Appellant to convert the application under Section 433 (e) and (f) as an application under I&B Code.

5. Similar issue came up for consideration before this Appellate Tribunal in "*Sudhir Power Projects Limited v. M.B. Malls Pvt. Limited & Ors.*" in CA (AT) No. 218 of 2017. The Appellate Tribunal by order dated 14th September 2017 having noticed that under Rule 5 of The Companies (Transfer of Pending Proceedings) Rules, 2016, published vide notification dated 7th December 2016 and The Companies (Transfer of Pending Proceedings) Second Amendment Rules, 2017 notified on 29th June 2017, disposed of the said appeal with following observation: -

"7. As the cut-off date of 15th July 2017 has already crossed, for the said reason we are not deciding the question on merit whether the Tribunal had jurisdiction to review or not.

8. We allow the Appellant to file appropriate application for corporate insolvency resolution process under section 7 or 9 of the I&B Code, as the case may be, if it claims itself to be 'financial creditor' or 'operational creditor' and there is a debt and default. However, if no case is made out under the aforesaid provisions, it will be open to the Appellant to move before an appropriate forum for appropriate relief. The appeal stands disposed of with aforesaid observation.

Sd/-
(Justice S.J. Mukhopadhaya)
Chairperson

Sd/-
(Justice A.I.S. Cheema)
Member (Judicial)

sd/-
(Balvinder Singh)
Member (Technical)

6. The case of the Appellant being covered by the decision in "*Sudhir Power Projects Limited v. M.B. Malls Pvt. Limited & Ors.*" (supra), we dispose of this appeal with same and similar order and observation as quoted above.

7. The appeal stands disposed of with aforesaid observations. No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice A.I.S. Cheema)
Member (Judicial)

(Balvinder Singh)
Member (Technical)

rc