

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**Company Appeal (AT) (Ins.) No. 289 of 2019**

**IN THE MATTER OF:**

**Agarpara Company Ltd.**

**...Appellant**

**Versus**

**Agarpara Jute Mills Company Ltd.  
& Ors.**

**...Respondents**

**Present:**

**For Appellant :**

**Ms. Geeta Luthra, Senior Counsel with  
Mr. Sidhartha Barua, Ms. Shivani Luthra Lohiya,  
Ms. Asmita Narula, Mr. Gaurav Kejriwal and  
Ms. Indrani Mukherjee, Advocates**

**For 1<sup>st</sup> Respondent:**

**Mr. Gopal Jain, Senior Advocate with  
Ms. Atanu Mukherjee and Mr. Divyank Tyagi,  
Advocates**

**For 2<sup>nd</sup> Respondent :**

**Mr. Avnish Garg and Mr. Arjun Aggarwal, Advocates**

**O R D E R**

**27.03.2019** 'M/s. Agarpara Jute Mills Company Limited' (for short, 'the Company') being a sick company moved before the 'Board for Industrial and Financial Reconstruction' (**BIFR**) which sanctioned the scheme. 'M/s. Agarpara Company Limited', which is a shareholder of 'M/s. Agarpara Jute Mills Company Limited' moved before the 'Appellate Authority for Industrial and Financial Reconstruction' (**AAIFR**). While the matter was pending, the Appellate Authority was dissolved pursuant to 'SICA Repeal Act, 2003'.

2. As there being no remedy, by Notification No. S.O. 3569 (E) dated 25<sup>th</sup> November, 2016, Section 4(b) of the 'SICA Repeal Act, 2003' was amended/modified, which reads as follows:

**“AFTER AMENDMENT OF SICA (REPEAL) ACT, 2003,  
W.E.F. 1<sup>ST</sup> NOVEMBER, 2016:**

**4. Consequential provisions** - *On the dissolution of the Appellate Authority and the Board –*

*(a)XXXX*

*(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 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]*”

3. In the meantime, the appellant moved before the Hon’ble High Court of Delhi, who directed the appellant – ‘M/s. Agarpara Company Limited’ to move before the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata. One of the respondent challenged the same before the Hon’ble Supreme Court by filing a ‘Special Leave to Appeal (Civil) No. 3302/2019’ – **‘Rabindra Kumar Walia vs. Union of India & Ors.’**. However, on 4<sup>th</sup> February, 2019 when the matter was taken up, the counsel for petitioner before the Hon’ble Supreme Court sought permission to withdraw the ‘special leave petition’, which was allowed and dismissed as withdrawn.

4. In view of the aforesaid fact, the appellant – ‘M/s. Agarpara Company Limited’ moved before the NCLT, Kolkata Bench, who has dismissed the application by the impugned order dated 5<sup>th</sup> February, 2019 as not maintainable referring to the decision of this Appellate Tribunal in **‘Pr. Director General of Income Tax (Admn. & TPS) vs. M/s. Spartek Ceramics India Ltd. & Anr. – Company Appeal (AT)(Insolvency) No. 160 of 2017 etc.’** decided on 28<sup>th</sup> May, 2018 and the decision of the Hon’ble Supreme Court in **‘M/s. Spartek Ceramics India Ltd. vs. Union of India & Ors.’ – Civil Appeal Nos. 7291-7292 of 2018’** disposed of on 25<sup>th</sup> October, 2018.

5. In **‘Pr. Director General of Income Tax (Admn. & TPS) (Supra)**, this Appellate Tribunal held that the amendment made by the Central Government vide

Notification dated 25<sup>th</sup> November, 2018 substituting Section 4(b) of the ‘SICA Repeal Act, 2003’ was without jurisdiction and on that basis the application before the Adjudicating Authority was not maintainable under the ‘Insolvency and Bankruptcy Code, 2016’ (for short, the ‘I&B Code’). The aforesaid decision was challenged before the Hon’ble Supreme court in ‘*M/s. Spartek Ceramics India Ltd.*’ (Supra) wherein the Hon’ble Supreme while upheld the decision of this Appellate Tribunal passed on 28<sup>th</sup> May, 2018, on the ground that the appeal was not maintainable. In view of the fact that the Notification dated 24<sup>th</sup> May, 2017 travels beyond the scope of the removal of the difficulties, set aside the part of the decision on merit as was decided by this Appellate Tribunal. Hon’ble Supreme Court held :

*“4. As the impugned judgment dated 28.05.2018 has set aside this Notification, and which has been upheld by us, the NCLAT, in both these cases, has dismissed the two appeals so filed, following the main judgment of 28.05.2018. This being the case, we revive the two writ petitions that had been before the High Court of Delhi in both the appeals before us with liberty to the appellants to amend the aforesaid writ petitions within a period of four weeks from today.”*

6. In view of the specific finding of the Hon’ble Supreme Court in ‘*M/s. Spartek Ceramics India Ltd.*’ (Supra), we are not inclined to interfere with the

impugned judgment dated 5<sup>th</sup> February, 2019 whereby the Adjudicating Authority held that petition filed by the appellant – ‘M/s Agarpara Company Limited’ is not maintainable.

7. Learned counsel for the parties submit that the appellant cannot move before the Hon’ble High Court of Delhi in view of the decision of the ‘Special Leave Petition (Civil) No. 3302/2019’. However, from the order dated 4<sup>th</sup> February, 2019, we find that the learned counsel for the petitioner sought permission to withdraw the ‘special leave petition’. So the ‘SLP’ was dismissed as withdrawn in the aforesaid background, the order passed being not binding on any of the party, following the decision in ‘M/s. Spartek Ceramics India Ltd.’ (Supra) we are of the view that the Writ Petition preferred by the appellant stands revived before the Hon’ble High Court of Delhi and in terms of the liberty given by the Hon’ble Supreme Court in the case of ‘M/s. Spartek Ceramics India Ltd.’ (Supra), the appellant may also seek to amend the aforesaid Writ Petition within four weeks.

8. In view of the aforesaid finding, we are not deciding the question of maintainability as raised by some of the advocates for the respondents as the matter can be decided by the Hon’ble High Court of Delhi.

9. The appeal stands disposed of with aforesaid observation.

[Justice S.J. Mukhopadhaya]  
Chairperson

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

/ns/gc/