IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL

Company Appeal (AT) (Insolvency) No. 29 of 2018

(Arising out of Order dated 22nd December, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in C.P. (IB) No. 398/KB/2017)

IN THE MATTER OF:

Mr. Suresh Padmanabhan & Anr. ...Appellants

Vs.

Tata Steel Ltd. & Ors. ...Respondents

Present: For Appellants:- Dr. Abhishek Manu Singhvi, Mr. Arun Kathpalia and Mr. Rajiv Ranjan, Senior Advocates assisted by Mr. R. Sudhinder, Mr. Soorjya Ganguli, Mr. Amit Bhandari, Ms. Nimita Kaul and Ms. Amrita, Advocates.

For Respondents:- Mr. Rohan Thawani, Advocate for R-1.

Mr. Ashish Rana, Advocate for R-2.

Mr. Himanshu Shekhar, Mr. Aabhas Parimal and Mr. Janesh Kumar, Advocates for R-4.

Mr. Jayesh Gaurav and Mr. Krishnanad Pandey, Advocates for R-5.

Mr. Akhilesh Srivastava, Advocate.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

'Tayo Rolls Limited'- ('Corporate Debtor') alongwith Mr. Suresh Padmanabhan, Deputy Chief Financial Officer of 'Tayo Rolls Limited' filed

an application under Section 10(1) of the Insolvency and Bankruptcy Code, 2016 ('I&B Code' for short) for initiation of 'Corporate Insolvency Resolution Process' against it. The Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata, by impugned order dated 22nd December, 2017 rejected the application on one of the ground that the matter has not 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' ('SICA Repeal Act, 2003' for short) as substituted by the 'Eighth Schedule' of the 'I&B Code'.

2. The 'I&B Code' came into effect from 1st December, 2016, whereby provisions of different Acts were amended. The 'SICA Repeal Act, 2003' was amended by Section 252 of the 'I&B Code', which is as follows:

"THE EIGHTH SCHEDULE

(See section 252)

AMENDMENT TO SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) REPEAL ACT, 2003

(1 OF 2004)

In section 4, for sub-clause (b), the following sub-clause shall be substituted, namely —

"(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 the Sick Industrial Companies (Special Provisions) Act,1985 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. The case of the Appellant is that the 'Corporate Debtor'- 'Tayo Rolls Limited' having become sick, a reference case no. 48/2016 was instituted and pending before the 'Board of Industrial and Financial Reconstruction' ('BIFR' for short). On account of 'SICA Repeal Act, 2003' w.e.f. 1st December, 2016, the reference aforesaid pending before the 'BIFR' abated. As per sub-clause (b) of Section 4 of the 'SICA Repeal Act, 2003' as amended by Eighth Schedule, if a petition under Section 10 of the 'I&B Code' is preferred within 180 days by the Company from the commencement of the 'I&B Code' in respect of which such appeal or

reference or enquiry stood abated, 'no fees is payable' for making reference under the 'I&B Code'.

4. In the present case, the 'I&B Code' came into force on 1st December, 2016 and a reference case no. 48/2016 pending before the 'BIFR' stood abated. The 'Tayo Rolls Limited'- ('Corporate Debtor') along with the 'Corporate Applicant' filed application under Section 10 of the 'I&B Code' on 13th July, 2017. In this background, the Adjudicating Authority held that after expiry of the statutory time limit of 180 days prescribed under the 'SICA Repeal Act, 2003', the application under Section 10 was not maintainable.

5. The aforesaid issue fell for consideration before 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.,"***. In the said case, this Appellate Tribunal by judgment dated 28th May, 2018 observed and held:

> *"40. In view of clause (b) of Section 4 of the 'SICA Repeal Act, 2003', the appeal preferred to the Appellate Authority or any reference made or any inquiry pending before the Board or any other authority or any proceeding of*

whatever nature pending before the Appellate Authority or the Board, including the powers of the Board to give effect to the Scheme or to monitor periodically for its implementation under sub-section (4) read with sub-section (12) of Section 18 of the 'SICA Act, 1985' stood abated. However, by virtue of the amendment under the Eighth Schedule, the Company in respect of which such appeal or reference or inquiry stands abated, have been allowed to make reference to the NCLAT within 180 days of commence of 'I&B Code' and in accordance with the provisions of the 'I&B Code'. In such case, no fees is payable.

42. The time period of 180 days given therein is for making a reference to the National Company Law Tribunal to treat the application under 'I&B Code' without payment of fees, only in respect to cases, where appeal or reference stands abated. It does not mean that the Company cannot file application under Section 10 of the 'I&B Code'

after 180 days. If the Company prefers any application under Section 10 beyond 180 days, it is required to pay the requisite fee."

6. On plain reading of the provision aforesaid and decision of this Appellate Tribunal, it is clear that 180 days' time period provided in sub-clause (b) of Section 4 of the 'SICA Repeal Act, 2003' (by Eighth Schedule) relates to reference if made to the National Company Law Tribunal (Adjudicating Authority) to treat application under Section 10 of the 'I&B Code' without payment of fees. It does not mean that the 'Corporate Applicant' cannot file an independent application under Section 10 of the 'I&B Code' even after 180 days of abatement of the reference under the 'SICA Repeal Act, 2003' on payment of requisite fee.

7. In the present case, we find that the case of the Appellant is covered by this Appellate Tribunal in ***"Pr. Director General of Income Tax (Admn. & TPS) (Supra)"***. The impugned order, therefore, cannot be upheld.

8. Mr. A.K. Srivastava, learned counsel appearing on behalf of Mr. Suresh Narayan Singh, one Ex-employee raised certain objections but it is not required to be noticed or referred to, ex-employee having no right

to oppose an application under Section 10 and for the reasons stated below.

9. Mr. Suresh Narayan Singh, as an Authorised Representative of 284 workers of 'Tayo Rolls Limited'- ('Corporate Debtor'), also filed an application under Section 9 of the 'I&B Code' before the Adjudicating Authority against "Tayo Rolls Limited". It was also dismissed by the Adjudicating Authority by an order dated 3rd January, 2018. The order of rejection was challenged by Mr. Suresh Narayan Singh in Company Appeal (AT) (Insolvency) No. 112 of 2018. In the said case, this Appellate Tribunal by its judgment dated 26th September, 2018 set aside the order dated 3rd January, 2018 and remitted the matter to the Adjudicating Authority with following observations and directions:

> *"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."

10. In view of the decision in "***Mr. Suresh Narayan Singh (Supra)"***, a 'Corporate Insolvency Resolution Process' is required to be initiated against 'Tayo Rolls Limited', for the said reason, while we declare the impugned judgment dated 26th September, 2018 as illegal and set aside the said order but do not remit the case for admission of application under Section 10. The 'Corporate Debtor' having already suggested the name of the 'Interim Resolution Professional', in terms of the decision of this Appellate Tribunal in "***Mr. Suresh Narayan Singh (Supra)"***, the Adjudicating Authority will appoint 'Interim Resolution Professional', as proposed by the 'Corporate Debtor', if no proceeding is pending against him.

11. 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.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

NEW DELHI
4th October, 2018
AR