

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 250 of 2017

IN THE MATTER OF :

Prowess International Pvt. Ltd.

... Appellant

Versus

Jaybalaji Industries Ltd.

... Respondent

**Present: For Appellant : Shri Akhilesh Shrivastava, Advocate with
Ms. Suhita Mukhopadhyay, PCS**

O R D E R

02.11.2017 This appeal has been filed by the appellant under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') against order dated 31st August, 2017 passed by the National Company Law Tribunal, Kolkata Bench, Kolkata (hereinafter referred to as 'Tribunal') in C.P. No. 29/KB/2017. By the impugned order, the Tribunal rejected the petition preferred by the appellant for winding-up under Sections 433, 434 and 439 of the Companies Act, 1956.

A petition for condonation of 13 days' delay has also been preferred along with this appeal.

At this stage, before condonation of delay, it is desirable to decide whether the appeal under Section 61 of the I&B Code is maintainable or not.

Admittedly, the appellant initially filed one winding-up petition against the respondent-Jaybalaji Industries Ltd., under Sections 433, 434

and 439 of the Companies Act, 1956 before the Hon'ble Calcutta High Court, which was dismissed on 21st September, 2016. Thereafter, the appellant filed another Company Petition under Sections 433, 434 and 439 of the Companies Act, 1956 before the Tribunal on 5th January, 2017. The Tribunal, having noticed different facts including the provisions of Section 9 of the I&B Code, held that the petition under Sections 433, 434 and 439 of the Companies Act, 1956 preferred on 5th January, 2017 was not maintainable.

In view of the fact that the petition was filed under Sections 433, 434 and 439 of the Companies Act, 1956, which is held to be not maintainable by the Tribunal, we hold that the appeal under Section 61 of the I&B Code is not maintainable.

The appeal is accordingly dismissed. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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