

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI****Company Appeal (AT) (Insolvency) No. 112 of 2018**

**(Arising out of Order dated 3<sup>rd</sup> January, 2018 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 Mr. Kumar Sumit, Advocates and Ms. Suhita Mukhopadhyay, PCS.**

**For Respondent: - Mr. Arun Kathpalia and Mr. Rajiv Ranjan, Senior Advocates assisted by Mr. R. Sudhinder, Mr. Soorjya Ganguli, Ms. Nimita Kaul, Ms. Pooja Chakraborty and Mr. Amrita Sarkar, Advocates.**

**J U D G M E N T****SUDHANSU JYOTI MUKHOPADHAYA, J.**

This appeal has been preferred by the Appellant- Mr. Suresh Narayan Singh, Authorised Representative of 284 workers of 'Tayo Rolls Limited'- ('Corporate Debtor') against the order dated 3<sup>rd</sup> January, 2018 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 rejected on the ground that the application under Section 9 has to be filed by the 'Operational Creditor' individually and not jointly. The Adjudicating Authority has also observed that otherwise also it is not practicable for more than one 'Operational Creditor' to file a joint petition as they will have to issue their individual claim notices under Section 8 of the 'I&B Code'.

2. Learned counsel appearing on behalf of the Appellant submitted that the application was preferred by the Authorised Representative of 284 Workers. Even if the individual claim is taken, it is more than one lakh payable to each of the workman. Even an individual workman is entitled to file separate applications under Section 9 of the 'I&B Code'. In case of difficulty, the Adjudicating Authority should have entertained it on behalf of an individual workman.

3. Mr. Arun Kathpalia and Mr. Rajiv Ranjan, learned Senior Counsel appearing on behalf of the Respondent submitted that the 'Tayo Rolls Limited'- ('Corporate Debtor') has no objection to the application preferred by workmen as the Company has also decided to go for 'Corporate Insolvency Resolution Process'. In fact, an application under Section 10 of the 'I&B Code' was filed by 'Tayo Rolls Limited'- ('Corporate Debtor') which has also been dismissed by the Adjudicating Authority without any basis and an appeal against the same order is pending before this Appellate Tribunal.

4. Section 5(20) read with Section 5(21) of the 'I&B Code' makes it clear that the workmen of a Company come within the meaning of 'Operational Creditor'. If Sections 8 & 9 are read with Form-5, it will be clear that the person authorized to act on behalf of the 'Operational Creditor' is entitled to file an application under Section 9. Therefore, where workmen/employees are 'Operational Creditors', the application may be made either by an 'Operational Creditor' in an individual capacity or as a joint capacity by one of them who is duly authorized for such purpose.

5. The basic scheme of the law, as enunciated in Sections 8 and 9, has been explained by the Hon'ble Supreme Court in ***"Innoventive Industries Ltd. v. ICICI Bank and Anr.— (2018) 1 SCC 407"***, wherein the Hon'ble Supreme Court observed:

*"29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or*

*arbitration proceedings, which is pre-existing—i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.”*

6. Therefore, it is clear that if there is a ‘debt’ and there is a ‘default’ which in this case has not been disputed by ‘Tayo Rolls Limited’- (‘Corporate Debtor’), the application being complete, the Adjudicating Authority should have entertained the application, instead of raising a technical ground that it was filed on behalf of 284 workmen.

If the application is maintainable by one of the workmen, in that capacity, it should have been treated to be an application of ‘Operational Creditor’ and others could have been asked to file their respective claim before the ‘Resolution Professional’. Even in a demand notice under Section 8(1), the details of operational debt of each ‘Operational Creditor’ can be shown by the authorized person. Only if in an individual claim of ‘Operational Creditor’ the amount of debt is less than one lakh rupees, it can be rejected being not maintainable.

7. The Appellant along with Form-5 enclosed the wages due from October, 2016 to October, 2017 of different employees, a part of which is as follows:

WAGES DUE FROM OCTOBER 2016 – OCTOBER 2017					
Sl. No.	Name	P. No.	Wage for the month of OCT. 2016	x 13 Months	Total Due till Oct 2017
1	RAMNATH MAHATO	1534	15215.00	X 13	197795.00
2	DINESH MAHATO	1535	15029.00	X 13	195377.00
3	SUDIP SAHU	1539	15394.00	X 13	200122.00
4	SHARAT CHANDRA MAHATO	1545	15215.00	X 13	197795.00
5	SHYAMA SHARMA	1554	14829.00	X 13	192777.00
6	NIRMAL CHANDRA MAHATO	1558	16091.00	X 13	209183.00
7	ANANTO KUMAR BHUIA	1581	17537.00	X 13	227981.00
8	GANESH KUMAR	1594	14756.00	X 13	191828.00
9	ASHISH KUMAR PATTANAYAK	1596	15260.00	X 13	198380.00
10	MANOJ KUMAR	1597	15298.00	X 13	198874.00
11	SUNIL KUMAR MISHRA	1598	14410.00	X 13	187330.00
12	SWAPAN KUMAR BHAGAT	1599	14748.00	X 13	191724.00
13	SAHDEO KUMAR SINGH	1600	15111.00	X 13	196443.00
14	SHARDENDU SEKHAR SINGH	1602	14765.00	X 13	191945.00
15	GANESH MAHATO	1605	14410.00	X 13	187330.00
16	SANJEEV KUMAR SINGH	1606	15458.00	X 13	200954.00
17	ALOK BANNERJEE	1607	15733.00	X 13	204529.00
18	VINAYAK SINGH	1603	14765.00	X 13	191945.00
19	SANTOSH KUMAR GUPTA	1609	15864.00	X 13	206232.00
20	SANTOSH KUMAR SINGH	1610	15864.00	X 13	206232.00
21	SHAIENDRA KUMAR	1612	14410.00	X 13	187330.00
22	AKHILESH KUMAR	1615	15707.00	X 13	204191.00
23	RAJISHOR MINJ	1616	14971.00	X 13	194623.00
24	UTTAM KUMAR	1617	14410.00	X 13	187330.00
25	TULSIDAS MAHATO	1618	15298.00	X 13	198874.00
26	KAMAL KISHOR	1621	15704.00	X 13	204152.00
27	BINOD KUMAR SHARMA	1622	15704.00	X 13	204152.00
28	SHAILESH KUMAR TIWARY	1623	15298.00	X 13	198874.00
29	MANOJ KUMAR CHOURASIA	1630	15298.00	X 13	198874.00
30	Prakash Mahato	1632	15298.00	X 13	198874.00
31	SHAIBU MAHATO	1633	15704.00	X 13	204152.00
32	RUPESH KUMAR	1635	15704.00	X 13	204152.00
33	PRABHAT RANJAN	1637	15298.00	X 13	198874.00
34	RATNESH KUMAR UPADHYAY	1638	14978.00	X 13	194714.00
35	RADHA R. SETH	1641	15298.00	X 13	198874.00
36	RAJENDRA PRASAD MAHATO	1642	15298.00	X 13	198874.00
37	AMRIT PAL SINGH	1644	13903.00	X 13	180739.00
38	MAHATANG TUDU	1647	15298.00	X 13	198874.00
39	AJAY KUMAR SINGH	1658	15203.00	X 13	197639.00
40	UPENDER KUMAR TIWARI	1659	15602.00	X 13	202826.00
41	KRISHNA KUMAR	1661	15602.00	X 13	202826.00
42	NAVIN KUMAR	1662	15077.00	X 13	196001.00
43	SANJEEV KUMAR	1663	15602.00	X 13	202826.00
44	AKHILESH KUMAR RASTOGI	1665	15602.00	X 13	202826.00
45	AJEET KUMAR	1666	15602.00	X 13	202826.00
46	SANJEEV KUMAR JHA	1667	15602.00	X 13	202826.00
47	SANTOSH KUMAR	1678	15602.00	X 13	202826.00
48	PAWAN KUMAR	1681	15038.00	X 13	195494.00
49	RISHI KANT	1684	15602.00	X 13	202826.00
50	Kumar Lalan	1685	15602.00	X 13	202826.00
			<b>Total</b>		<b>9945871.00</b>

AKASH SHARMA  
 Secretary  
 ACS- 41730  
 CR. NO.- 15,542

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8. From the aforesaid chart, it will be evident that each workman's due is more than rupees one lakh and the 'Corporate Debtor' having defaulted to pay the amount, the application was fit to be admitted.

9. The Adjudicating Authority having failed to consider the aforesaid fact, we have no other option but to set aside the impugned order dated 3<sup>rd</sup> January, 2018 and remit the matter to the Adjudicating Authority to admit the application.

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.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansi Lal Bhat)  
Member(Judicial)

NEW DELHI  
26<sup>th</sup> September, 2018

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