

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 312 of 2017

IN THE MATTER OF:

M/s. Lease Pal India Pvt. Ltd.

...Appellant

Versus

ACPL HR Services Pvt. Ltd.

...Respondent

Present:

**For Appellant : Shri Sanchit Guru and Shri Janmesh Kumar,
 Advocates**

O R D E R

12.12.2017 The appellant – M/s. Lease Pal India Pvt. Ltd. (Operational Creditor) filed an application under Section 433(e) of the Companies Act, 1956 before the Hon'ble High Court of Delhi. It was transferred pursuant to Rule 5 of "The Companies (Transfer of Pending Proceedings) Rules, 2016".

2. On transfer, the appellant prayed to treat the petition as an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "I&B Code"). The application not being in order and requisite information in terms of Rule 5 having not being compiled with the said application has been rejected by the Adjudicating Authority by the impugned order dated 17th October, 2017.

3. Learned counsel for the Appellant has brought to our notice the Central Government notification dated 7th December, 2016 issued from the Ministry of

Corporate Affairs. By the said notification, in exercise of the powers conferred under sub-sections (1) and (2) of Section 434 of the Companies Act, 2013 read with sub-section (1) of Section 239 of the 'I&B Code', the Central Government framed "The Companies (Transfer of Pending Proceedings) Rules, 2016".

4. Rule 5 relates to transfer of pending proceedings of winding up on the ground of inability to pay debts which are to be transferred from the Hon'ble High Court's to the respective Tribunal and reads as follows: -

"5. Transfer of pending proceedings of Winding up on the ground of inability to pay debts.- (1) All petitions relating to winding up under clause (e) of section 433 of the Act on the ground of inability to pay its debts pending before a High Court, and where the petition has not been served on the respondent as required under rule 26 of the Companies (Court) Rules, 1959 shall be transferred to the Bench of the Tribunal established under sub-section (4) of section 419 of the Act, exercising territorial jurisdiction and such petitions shall be treated as applications under sections 7, 8 or 9 of the Code, as the case may be, and dealt with in accordance with Part II of the Code:

Provided that the petitioner shall submit all information, other than information forming part of the records transferred in accordance with Rule 7,

required for admission of the petition under sections 7, 8 or 9 of the Code, as the case may be, including details of the proposed insolvency professional to the Tribunal within sixty days from date of this notification, failing which the petition shall abate.

2. All cases where opinion has been forwarded by Board for Industrial and Financial Reconstruction, for winding up of a company to a High Court and where no appeal is pending, the proceedings for winding up initiated under the Act, pursuant to section 20 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall continue to be dealt with by such High Court in accordance with the provisions of the Act.”

5. Learned counsel for the appellant submits that a statutory notice under Section 433(e) and 434(1)(A) and 439 of the Companies Act, 1956 was earlier issued by the appellant for payment of outstanding amount of Rs. 15 lakhs approximately. The said amount having not been paid, the appellant preferred the petition for winding up under section 433(3), 434(1)(A) and 439 of the Companies Act, 1956. In view of the fact that the case was subsequently transferred, a lawyer notice was issued on the respondent (Corporate Debtor) with request to pay the outstanding dues of Rs.17,26,667/-. Thereafter, according to appellant no further notice was required to be given.

6. We have heard the learned counsel for the appellant and perused the record.

7. Apart from the fact that an Advocate's notice was given to the Corporate Debtor under sub-section(1) of Section 8, who was not authorised nor holding any post or position with the Operational Creditor, as we find that the application prepared by appellant was defective in absence of Bank's certificate from the 'Financial Institution' which was not enclosed and is mandatory under Section 9(3) of the I & B Code, the application was not maintainable.

8. For the reasons aforesaid, we dismiss the appeal. The application preferred by the appellant under Section 433, 433 and 439 of the Companies Act, 1956 stands abated. However, the impugned order dated 17th October, 2017 passed by the Adjudicating Authority will not come in the way of the appellant to issue fresh notice under sub-section (1) of Section 8 in accordance with the provisions of I &B Code and in case of debt and default, the appellant may prefer fresh application in accordance with law.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member(Judicial)

/ns/uk