

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 218 of 2023

IN THE MATTER OF:

Sadashiv Nomaya Nayak & Ors.

...Appellants

Versus

Gammon Engineers & Contractors Pvt. Ltd.

...Respondent

Present:

For Appellant: Mr. Sumit Kumar, Mr. Hemant Kumar, Mr. Sudhir Chand Srivastava, Mr. Harsh Goyal, Advocates.

For Respondent: Pradnyesh Sabnis, Advocate..

ORDER

07.03.2023: This Appeal is directed against the Order dated 30.11.2022 by which Application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "The Code") by the present Appellants has been dismissed on the ground that the Appellants have not individually crossed the threshold of Rs. 1 Crore as provided under Section 4 of the Code.

2. Shorn of necessary details, the issue involved in this Appeal is as to whether the claim set up by all three appellants, namely, the Appellant No. 1 of an amount of Rs. 87,69,909/-, the Appellant No. 2 of Rs. 9,49,377/- and Appellant No. 3 of Rs. 25,35,830/- together can be taken to cross the threshold

of Rs. 1 Crores as provided under Section 4 of the Code for maintaining the application under Section 9 of the Code?

3. Counsel for the Appellant has vehemently argued that if the amount of Rs. 87,69,909/-, Rs. 9,49,377/- and Rs. 25,35,830/- is added then it would come to Rs. 1,22,55,116/- which is more than the amount Rs. 1 Crore and thus the petition filed by one of them as representative of the others is maintainable.

4. In this regard, he has relied upon a decision of the Hon'ble Supreme Court rendered in the case of **JK Jute Mill Mazdoor Morcha Vs. Juggilal Kamlapat Jute Mills Company Ltd. through its Director, (2019) 11 SCC 332**. He has argued that the Application under Section 9 is to be filed in terms of Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 which prescribes Form 5 for the purpose of filing the application. He has referred to the note appended to Form 5 which read thus:

“Note.-Where workmen/employees are operational creditors, the application may be made either in an individual capacity or in a joint capacity by one of them who is duly authorized for the purpose.”

5. He has then referred to the Application which has been filed in Form-5, attached as Annexure A3, as per which, all the three applicants who have their own separate claim as Operational Creditors against the Respondent (Corporate

Debtor) had given authority to Applicant No. 1 (Sadashiv Nomaya Nayak) for presenting the Application before the National Company Law Tribunal.

6. On the basis of the aforesaid facts and circumstances, it is submitted that the Application, having been filed, by all the three applicants together, through an authorized representative, satisfies the requirement of note (supra). He has then referred to the decision of the Hon'ble Supreme Court in **JK Jute Mill** (supra) where Hon'ble Supreme Court has held in paragraph 17:

“...Equally, to state that for each workman there will be a separate cause of action, a separate claim, and a separate date of default would ignore the fact that a joint petition could be filed under Rule 6 read with Form 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 with authority from several workmen to one of them to file such petition on behalf of all.”

7. On the other hand, Counsel for the Respondent has submitted that the issue involved in the case of **JK Jute Mill** (supra) was “as to whether a trade union could be said to be an operational creditor for the purpose of the Insolvency and Bankruptcy Code, 2016.”

8. It is submitted that the said question has been answered in paragraph 12 of the said Judgment and there was no such issue before the Hon'ble Supreme Court as to whether the application filed by the workmen together for crossing

the threshold provided under Section 4 of the Code. It is further submitted that the note which has been referred to by the Appellant is for administrative purpose of filing an application through one of the authorized representative by the workmen or employees but in no manner, it is an exception created for the purpose of filing the application by adding amount of all the applicants to cross the threshold.

9. In support of his submissions, he has relied upon a decision of this Tribunal in the case of **Mr. Suresh Narayan Singh Vs. Tayo Rolls Limited, Company Appeal (AT) Ins. No. 112 of 2018**, to contend that issue involved in the present case has been answered in manner that “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”. It is further submitted that in that case, all the employees/workmen had the claim of Rs. 1 lakh which was the threshold amount at that time therefore the application was held to be maintainable.

10. We have heard Counsel for the parties and after perusal of the record are of the considered view that there is no merit in the present appeal because the Judgment relied upon by Counsel for the Appellant in the case of **JK Jute Mill** (supra) does not apply to the facts and circumstances of the present case because the question which has been answered in the **JK Jute Mill** is altogether different from the issue involved in the present appeal because the issue here in

this case is as to whether all the workmen can together by adding their amount which is being claimed against the Corporate Debtor can cross the threshold set up under Section 4 of the Code. In our considered opinion, the Judgement relied upon by Counsel for the Respondent in the case of **Mr. Suresh Narayan Singh** (supra) answers the question.

11. In view of the above facts and circumstances, we do not find any merit in this Appeal and the same is dismissed. No costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Dr. Alok Srivastava]
Member (Technical)

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