NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 506 of 2022

In the matter of:

Rolta India Ltd. ....Appellant

Vs.

Mr. Anant Sadekar & Ors. ....Respondents

Present

For Appellant: **Mr. Mahesh Agarwal, Mr. Shivam Shukla, Mr. Shadab Jan, Mr. Sandeep Khairwal, Mr. Yash Tambe & Ms. Prerna Wagh, Advocates.**

For Respondents:

With
Company Appeal (AT) (Ins.) No. 873 of 2021

In the matter of:

Rolta Defence Technology Systems Pvt Ltd. ....Appellant

Vs.

Jayesh Anant Bhusane ....Respondent

Present

For Appellant: **Mr. Mahesh Agarwal, Mr. Shivam Shukla, Mr. Shadab Jan, Mr. Sandeep Khairwal, Mr. Yash Tambe & Ms. Prerna Wagh, Advocates.**

For Respondent: **Mr. Udayasankar Samudrala & Mr. Rajdeep Samudrala, Advocates.**

With
Company Appeal (AT) (Ins.) No. 874 of 2021

In the matter of:

Rolta Bi & Big Data Analytics Pvt. Ltd ....Appellant

Vs.

Rajesh Madhukar Sawant ....Respondent

<u>Present</u>

For Appellant:	**Mr. Mahesh Agarwal, Mr. Shivam Shukla, Mr. Shadab Jan, Mr. Sandeep Khairwal, Mr. Yash Tambe & Ms. Prerna Wagh, Advocates.**
For Respondent:	**Mr. Udayasankar Samudrala & Mr. Rajdeep Samudrala, Advocates.**

<u>With</u>

<u>Company Appeal (AT) (Ins.) No. 875 of 2021</u>

<u>In the matter of:</u>

Rolta India Ltd. ....Appellant

Vs.

Vipin Dayaram Yadav ....Respondent

<u>Present</u>

For Appellant:	**Mr. Mahesh Agarwal, Mr. Shivam Shukla, Mr. Shadab Jan, Mr. Sandeep Khairwal, Mr. Yash Tambe & Ms. Prerna Wagh, Advocates.**
For Respondent:	**Mr. Udayasankar Samudrala & Mr. Rajdeep Samudrala, Advocates.**

<u>J U D G M E N T</u>
(03rd June, 2022)

<u>Ashok Bhushan, J.</u>

1. These Appeals by the same Appellant have been filed against the orders of the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, by which the Appellant has been directed to deposit the unpaid TDS amount within the period of 15 days. Company Appeal (AT) (Ins.) No. 506 of 2022 is against the order dated 25.03.2022 passed in C.P.(IB) No. 566(MB) 2021 filed by the Respondent- Operational Creditor. Company Appeal (AT) (Ins.) No. 873 of 2021 is filed against the order dated 24.09.2021 passed in C.P.(IB) No. 1321(MB)/2020 by the Respondent- Operational Creditor under Section 9. Company Appeal (AT) (Ins.) No. 874 of 2021 is against the order dated 24.09.2021 passed in C.P.(IB) No. 1373(MB) 2020 filed by the Respondent- Operational Creditor. Company Appeal (AT) (Ins.) No. 875 of 2021 has been filed against the order dated 24.09.2021 passed in C.P.(IB) No. 1371(MB) 2020 filed by the Respondent- Operational Creditor. By all orders impugned in this Appeal direction has been issued to deposit the TDS amount deducted from the employees. Aggrieved against the order, these Appeals have been filed by the Appellant- Corporate Debtor.

2. Section 9 Applications were filed by the Operational Creditors, the ex-employees of the Appellant, before the Adjudicating Authority. This Tribunal while entertaining the Appeals have passed interim order in all the above Appeals staying the impugned direction passed by the Adjudicating Authority for depositing the TDS amount. All the Appeals raising common question of facts and law and it is sufficient to notice the facts in Company Appeal (AT) (Ins.) No. 506 of 2022 for deciding all these Appeals.

The Respondents-ex employees of the Appellant had filed C.P.(IB) No.566(MB)/2021 before the Adjudicating Authority claiming an amount of Rs.5,36,72,736/- towards various heads. It is to be noted that apart from the above Company Petition, various other insolvency applications under Section 9 were filed by the other ex-employees of the Appellant. C.P. No. 1069 of 2020 filed by one Shri Dinesh Gupta was admitted on 13.05.2021 against which order Appellant preferred Company Appeal (AT) (Ins.) No.384 of 2021 where this Tribunal directed the Adjudicating Authority to grant stay on the formation of the Committee of Creditors (CoC). On 23.06.2021, the Appellant entered into a Settlement Agreement with ex-employees who had filed a Petitions including the Respondents, wherein it was agreed that on receipt of Settlement Amount, ex-employees would withdraw their respective Petitions. The Joint Settlement Agreement also provided that the Appellant shall make payment of the settlement amount by way of demand drafts and that the payment of statutory dues such as the payment of TDS would be made directly to the relevant authorities subject to outcome of the pending proceedings before the relevant income tax authorities. The Adjudicating Authority had rejected the Application for withdrawal filed by Shri Dinesh Gupta which order was challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court had set aside the order of Adjudicating Authority vide its judgment dated 25.08.2021 in Civil Appeal No.4993 of 2021- ***"Kamal K. Singh vs. Dinesh Gupta & Anr."*** and allowed the withdrawal Application. After Settlement Agreement dated 23.06.2021, the settlement amount towards the Respondents were paid by the Corporate Debtor and when C.P.(IB) No.566(MB)/2021 was taken for consideration where Counsel for the Operational Creditors submitted that the Corporate Debtor has paid the dues of employees. However, the Counsel for the Operational Creditors further stated that the TDS deducted by the Corporate Debtor has not been deposited with the Income Tax Authority. The Adjudicating Authority passed an order on 25.03.2022 granted time to the Operational Creditor to file details with respect to the amount settled with the employees Provident Fund amount and amount of TDS and the Corporate Debtor, in the meantime, directed to deposit unpaid TDS amount within a period of 15 days. Aggrieved against the said order, this Appeal has been filed.

3. We may further notice the facts in one Appeal being Company Appeal (AT) (Ins.) No. 873 of 2021 whereby impugned order dated 24.09.2021, the Adjudicating Authority allowed the Application CP(IB)- 1321(MB)/2020 to be withdrawn. However, while permitting withdrawal directing the Corporate Debtor to deposit TDS amounts deducted from the employee, if not already paid to the Central Government Account within a period of 15 days.

4. Learned Counsel for the Appellant challenging the impugned orders contends that the Adjudicating Authority ought not to have directed to deposit the TDS amounts by the Corporate Debtor although Corporate Debtor in the Settlement Agreement has agreed to deposit the amount but the Income Tax Department shall take its own course for recovery of the TDS amount. It is further submitted that when the Settlement entered between the Operational Creditor and the Corporate Debtor in other three Appeals except in Company Appeal (AT) (Ins.) No. 506 of 2022, the Adjudicating Authority has allowed the Application for withdrawal. There was no occasion for further issuing direction to deposit TDS amounts within 15 days.

5. Learned Counsel appearing for the Respondents refuting the submissions of the Learned Counsel for the Appellant contends that the TDS amounts was deducted several years ago and on Application of the Corporate Debtor, the Income Tax Department itself has stayed the recovery till 30.06.2021 and after that there is no interim order. Further, due to non-deposit of the TDS amounts which was already deducted by the Corporate Debtor in the Income Tax Department, Appellant had not been able to receive the tax benefit in the Income Tax which was to be paid by the Appellant.

6. We have considered the submissions of the Learned Counsel for the parties and perused the record.

7. The Settlement Agreement as is brought on the record in Company Appeal (AT) (Ins.) No. 506 of 2022 contains following conditions in Clause 8:-

> *"8. It is agreed between the Parties that the Settlement Amounts set out herein in Schedule I to the present Joint Settlement does not include the claim of the Operational Creditors towards the unpaid Tax Deducted at Source and Provident Fund contributions of employees and employers (together referred to as "the Statutory Dues"), as applicable. Mr. Kamal Singh Krishan will ensure that the Corporate Debtors will make payments towards the Statutory Dues of each of the Operational Creditors, directly to the concerned statutory authorities on or before 20th July 2021, subject to the proceedings*

> *pending before the Commissioner of Income Tax and the Orders passed therein."*

8. In the other Appeal, for example Company Appeal (AT) (Ins.) No. 873 of 2021, similar Settlement Agreement was entered where the Corporate Debtor undertook to deposit the TDS amounts before 10.07.2021. In paragraph 7 of the Settlement Agreement dated 10.06.2021, following has been stated:-

> *"7. It is agreed between the Parties that the Settlement Amount set out herein in Schedule I to the present Settlement Agreement does not include the claim of the Operational Creditors towards the unpaid Tax Deducted at Source and Provident Fund contributions of employees and employers (together referred to as "the Statutory Dues"), if applicable. Mr. Kamal Singh Krishan will ensure that the Corporate Debtors will make the payment of the Statutory Dues (if any) directly to the statutory authorities on or before 10th June 2021, subject to the proceedings pending before the Commissioner of Income Tax and the Orders passed therein. In case of any penalties levied upon the Operational Creditors by the Income Tax Department, the same shall be paid to the specific employees upon furnishing the original demand notice. On payment of the Statutory Dues, the necessary intimation will be sent to the respective authorities."*

9. There is no dispute that the Corporate Debtor had agreed in the Settlement Agreement with the ex-employees to deposit the TDS amount. Further, there is no dispute that the dues of the ex-employees including the Respondents in these Appeals were paid by the Corporate Debtor. When the dues under the Settlement Agreement was paid by the Corporate Debtor and the CoC had not been constituted, the Adjudicating Authority has rightly permitted the withdrawal of the Application under Section 9 in three Appeals.

10. The question to be considered in these Appeals is as to whether direction of the Adjudicating Authority to deposit the unpaid TDS amount within the period of 15 days ought to have been issued by the Adjudicating Authority.

11. We have already extracted the relevant clause of Joint Settlement Agreement where the Appellant undertook to make the payment of TDS amount to the concerned authorities on or before 20.07.2021. In Company Appeal (AT) (Ins.) No. 506 of 2022, the Appellant has brought on record a notice issued by the Income Tax Authority dated 20.10.2021 to the Principal Controller of Defence Accounts, Ministry of Defence, G-Block, Krishna Menon Marg, New Delhi on the subject recovery proceedings in the case of M/s. Rolta India Ltd.

12. From the aforesaid, it is clear that the steps are being taken by the Income Tax Department for recovery of TDS amount. Present is a case where deposit of TDS amount deducted from the salary of the employees was not deposited by the Corporate Debtor inspite of specific clause entered into the Joint Settlement Agreement that the amount shall be deposited by the Appellant on or before 20.07.2021. The submission of the Counsel for the Appellant is that when Application under Section 9 was to be withdrawn by virtue of payment of all dues to employees under the Settlement Agreement, there was no occasion or jurisdiction of the Adjudicating Authority to issue direction to deposit TDS amount. We are of the view that while permitting withdrawal of Section 9 Application, the Adjudicating Authority could have passed an order taking into consideration the Settlement entered between the parties. Hence, direction to Appellant to deposit the deducted amount of TDS cannot be faulted. The Appellant who has undertaken under the Settlement Agreement to deposit the TDS amount directly to the concerned authorities cannot be heard that it should not be asked to deposit the said amount. Under the Income Tax Act, 1961, the Income Tax Authority has ample jurisdiction to take steps for recovery of its dues including the amount of TDS which although deducted has not been deposited by the Appellant. We only observe that the Adjudicating Authority after withdrawal of Section 9 Application ought not take any further steps regarding deposit of TDS amount by the Appellant and further steps for recovery and appropriate action against the Corporate Debtor regarding deposit of the TDS amount is to be taken by the Income Tax Authorities.

13. In C.P.(IB) No. 1321(MB)/2020 (Company Appeal (AT) (Ins.) No. 873 of 2021), C.P.(IB) No. 1373(MB) 2020 (Company Appeal (AT) (Ins.) No. 874 of

2021) and C.P.(IB) No. 1371(MB) 2020 (Company Appeal (AT) (Ins.) No. 875 of 2021), the Adjudicating Authority has already allowed withdrawal of Section 9 Applications but in C.P.(IB) No. 566(MB) 2021 (Company Appeal (AT) (Ins.) No. 506 of 2022), Section 9 Application is still pending which was directed to be listed on 14.06.2022. Before us, Learned Counsel for the Respondent does not dispute that the entire dues of the employees have been paid.

14. In view of the aforesaid, in Company Appeal (AT) (Ins.) No. 506 of 2022, we permit the withdrawal of Section 9 Application by the Operational Creditor being C.P.(IB) No. 566(MB) 2021 and no further steps need to be taken in C.P.(IB) No. 566(MB) 2021. We, however, do not interfere with the order passed by the Adjudicating Authority directing the Corporate Debtor to deposit the unpaid TDS amount. We notice that in the impugned order passed in all these Appeals, directions have been issued to deposit the TDS amount within 15 days. We only observe that the deposit of TDS amount by the Appellant shall be in the period as permitted by the Income Tax Authorities.

15. In view of the foregoing discussions, we dispose of these Appeals in following manner:-

(i) Company Appeal (AT) (Ins.) Nos. 873, 874 and 875 of 2021 are disposed of upholding the direction of the Adjudicating Authority to the Appellant to deposit the TDS amount. We, however, set aside the period of 15 days as allowed by the Adjudicating Authority to the Appellant to deposit and we observe that the deposit shall be made by the Appellant during the period as provided by the Income Tax Authorities.

(ii) Company Appeal (AT) (Ins.) No.506 of 2022 is partly allowed. Application under Section 9 filed by the Operational Creditor being C.P.(IB) No. 566(MB) 2021 is allowed to be withdrawn. Direction in the impugned order to deposit the unpaid TDS amount is maintained. However, the direction to deposit the amount within 15 days is set aside with liberty to Appellant to deposit the amount within the period as provided by the Income Tax Authorities.

[Justice Ashok Bhushan]
Chairperson

[Shreesha Merla]
Member (Technical)

[Naresh Salecha]
Member (Technical)

New Delhi
Anjali