

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

Company Petition No.
CP (IB) No. 398/KB/2017

CORAM:

Shri V.P. Singh
Hon'ble Member(J)
&
Shri Jinan K.R.
Hon'ble Member(J)

In the Matter of:

An application under section 10(1) of the Insolvency & Bankruptcy
Code, 2016;

-And-

In the Matter of:

Tayo Rolls Limited, a Listed Public Non-Governmental Company,
Limited by shares, registered under the provisions of the Companies
Act, 1956 bearing CIN: L27105JH1968PLC000818 and having its Registered
office at 2, Tata Steel Limited, General Office, Bistupur,
Jamshedpur 831 001, Jharkhand.

..... **Corporate Debtor**

-And-

Mr Suresh Padmanabhan, Deputy Chief Financial Officer, Tayo Rolls
Limited, No.3, Circuit House Area (North East), Road No.11, Bistupur,
Jamshedpur- 831 001.

..... **Corporate Applicant**

Counsels appeared:

1. Mr Ratnanko Banerjee, Sr. Advocate]
2. Mr Soorjya Ganguli, Advocate,] For Corporate Applicant
3. Ms Pooja Chakrabarti, Advocate]
4. Mr Somdutta Bhattacharyya, Advocate]

1. Ms Urmila Chakraborty, Advocate,] For Tata Steel Ltd.

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1. Mr Ritoban Sarkar, Advocate]
2. Mr Kamal Toshniwal, Advocate] For Bank of India
3. Mr A. K. Singh, Advocate]

1. Mr Md. Minhajuddin, Advocate] For Financial Creditor, IDBI Bank Ltd.
2. Mr G. Pachisia, Advocate]

1. Mr Akhilesh Kumar Shrivastava, Advocate,] For the Intervener
2. Mr Shakeel Mohammed Akhter, Advocate]

Date of Pronouncing the Order: 22. 12.2017

ORDER

Per Shri V.P. Singh, Member (J):

Petitioner has filed this petition under section 10(1) of Insolvency & Bankruptcy Code, 2016 for initiation of Corporate Insolvency Resolution Process (from now on referred as CIRP). Relying on the Board Resolution dated 3rd July 2017 Shri Suresh Padmanabhan, Deputy Chief Financial Officer, Tayo Rolls Ltd. has presented this petition under section 10 by which the Corporate Applicant was authorised to initiate the Corporate Insolvency Resolution Process. Board Resolution is added to the petition as Annexure -VII.

It is stated in Part III of the application that corporate applicant, i.e. corporate debtor has defaulted all amounts currently due and payable to its non-related party Financial Creditors towards its repayment obligations except the penal interest of a total amount of Rs.60.04 lakhs for the waiver of which request has already been made by the Corporate Debtor.

Corporate Applicant/ Corporate Debtor has further stated that it had raised financial debts from non-related party Financial Creditors, except for the non-fund based liability aggregating to Rs.602.87 lakhs and penal interest of Rs.60.04 lakhs. Corporate Debtor had raised an amount of Rs.6000 lakhs from its holding company i.e.Tata Steels Ltd., as has been specified. Corporate Debtor currently owes a sum of Rs.60.04 lakhs towards penal interest to non-related party financial creditor for which a request for waiver has been made. The Corporate Debtor owes an amount

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aggregating to Rs.7043.29 lakhs to its holding company, Tata Steels Ltd. for which no demand has yet been issued and hence such amount is not due as on the date of this application.

It is further stated that the Corporate Debtor has been unable to pay wages and related dues to its workmen since October 2016. Such dues, which include monthly payroll amounts, contribution towards Provident Fund and Pension Fund, Bonus, LTC, Gratuity dues and leave liability as per actuarial valuation aggregating to Rs.1149.49 lakhs.

The Corporate Debtor on 3rd July 2017 has received more than 100 notices from Labour Court, Jamshedpur about wage-related disputes raised by its workmen wherein aggregate amount of Rs.1334.43 lakhs has been claimed. The Corporate Debtor also owed a sum of Rs.5544.98 lakhs to its trade creditors, which amounts are due for payment. Corporate Debtor has added the details of various financial and operational debts which were incurred at different points in time, which is attached as Annexure-I, Exhibit -A and Annexure-II, Exhibit-A respectively.

Corporate Applicant has recommended the name of Mr Arun Kumar Gupta for appointment as I.R.P.

Corporate Applicant has annexed all documents relating to all financial debts which is at Serial No.8 of Part-III of the application; details of non-related party and related party of financial creditors of the Corporate Debtor Annexure-I, Exhibit-A; correspondence regarding waiver of penal interest Annexure-I Exhibit-B; correspondence of term sheet executed by and between the Corporate Debtor and Tata Steel Annexure-I, Exhibit-C; letter of bank guarantee issued in favour of Corporate Debtor from non-related financial creditors Annexure-I, Exhibit-B; all documents relating to operational debt listed in serial no.8 of Part III of the application Annexure-II; details of operational creditor of the Corporate Debtor and their addresses, Annexure-II Exhibit-A; details of proceedings before Labour Court, Annexure-II Exhibit-B; entries from books of accounts from the Corporate Debtor, Annexure-II, Exhibit-C, written communication from the proposed I.R.P. in Form 2,

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Annexure-III; copy of relevant books of accounts from Corporate Debtor evidencing the default to creditors Annexure-IV; copies of audited financial statement of the Corporate Debtor for the last two financial years Annexure-V; condensed un-audited financial statement of the Corporate Debtor up to 30th June, 2017 evidencing the default to its creditor, Annexure-IV; statement of affairs of the Corporate Debtor Annexure-VI; list of Corporate Debtor's assets and liabilities with estimated value assigned to each category Annexure VI, Exhibit-A; property on which claim against the Corporate Debtor is wholly or partly secured with details of debt when security was created Annexure-VI, Exhibit-B; certificate of Registration of Charge issued by the ROC, Annexure-VI, Exhibit-B1; notice bearing no.38/2015 dated February 19.2015 under section 7 of the PDR Act, 1914 prohibiting the Corporate Debtor from alienating its immovable properties Annexure VI Exhibit-B2; names and addresses of the financial and operational creditors of the Corporate Debtor with the amount due to each of them Annexure-VI Exhibit-B; names and addresses of the members and partners of the Corporate Debtor Annexure VI, Exhibit-A; names and addresses of the members and partners of the Corporate Debtor; Annexure-VI, Exhibit-F; names and addresses of all directors and promoters of Corporate Debtor Annexure-VI, Exhibit-F1; name and addresses of all members of the Corporate Debtor with details of their respective shareholding Annexure-VI, Exhibit-F2; copy of Board Resolution dated July 3, 2017 whereby the Corporate Debtor authorising the Corporate Applicant to make this application, Annexure-VII; affidavit in support of the application, Annexure-VII.

We have heard the arguments of the Ld. Sr. Counsel of the Corporate Applicant as well as of the Ld. Counsel of the Intervener, who has filed Intervening Application IB No.439 of 2017, instead of Objection.

Ld. Counsel for the Corporate Applicant has also filed written submissions wherein it is stated that instant application under section 10 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as the IBC) has been filed by Shri Suresh Padmanabhan, Deputy Chief Financial Officer of Tayo Rolls Ltd., the Corporate Debtor herein, praying for initiation of Corporate Insolvency Resolution

Process. Ld. Counsel has argued that Board of Directors of the Corporate Applicant has by its resolution dated 3rd July 2017 authorised Corporate Applicant to apply to section 10 of IBC on behalf of Corporate Debtor.

In the written submission it is detailed by the Corporate Debtor as to how it has come to its present financial position, thereby rendering it unable to pay its debts. It has been stated that considering the negative network, continued cash losses, inability to meet future financial obligations and other related factors, the Board of Directors of the Corporate Debtor at their meeting held on 12th February, 2016 had decided to refer the Corporate Debtor to the Board of Industrial and Financial Reconstruction (hereinafter cited as BIFR) under the provision of the Sick Industrial Companies (Special Provision) Act, 1995 (hereinafter referred as SICA). Such reference was made by the Corporate Debtor on February 29, 2016, which was registered on 23rd March 2016 as case no.48 of 2016. The Reference before BIFR was last heard on November 24, 2016. However, SICA has been repealed w.e.f. 1st December 2016 vide government notification dated 28th November 2016 and all the References or Enquiries pending before the BIFR and AAIFR had abated. Therefore, the Corporate Applicant has approached this Tribunal for admission of the application and seeking among other things for initiation of CIRP about Corporate Debtor under the new framework of laws.

Ld. Counsel for the Corporate Applicant has raised the argument that Hon'ble NCLAT in case of Leo Duct Engineers & Consultants Ltd. -vs- Canara Bank Company Appeal 100/2017 has held that :

"21. In an application under section 10, the Financial Creditor or the Operational Creditor may dispute that there is no default or that the debt is not due and is not payable by law or fact. They may also oppose admission on the ground that Corporate Applicant is not eligible to make application given ineligibility under section 11 of the I.B. Code. The Adjudicating Authority on hearing the parties and on perusal of record, if satisfied that there is a debt and default has occurred, and the Corporate Applicant is not ineligible under section 11, the Adjudicating Authority has no option but to admit the application, unless it is

incomplete, in which case the Corporate Applicant is to be granted time to rectify the defects.

22. Section 10 does not empower the Adjudicating Authority to go beyond the records as prescribed under section 10 and the information as required to be submitted in Form VI of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules 2016 subject to ineligibility prescribed under section 11. If all information is provided by an applicant as required under section 10 and Form VI and if the Corporate Applicant is otherwise not ineligible under section 11, the Adjudicating Authority is bound to admit the application and cannot reject the application on any other ground.

23. Any fact unrelated or beyond the requirement under IB Code or forms prescribed under Adjudicating Authority Rules (Form VI in the present case) are not required to be stated or pleaded. Non-disclosure of any facts, unrelated to section 10 and Form-VI cannot be termed to be suppression of facts or to hold that the Corporate Applicant has not come with clean hand except the application where the Corporate Applicant has not disclosed disqualification if any under section 11..”

Ld. Counsel for the Corporate Applicant is relying on the law laid by the Hon'ble NCLAT in Leo Duct (supra) and has stated that his application is complete in all nature and it is in required form-VI. There is no ineligibility under section 11 of the IBC. Therefore, this Tribunal has no option but to admit the petition.

It is pertinent to mention that in the written submissions Corporate Applicant has himself stated that in the Board meeting of the Corporate Debtor dated 12th February 2016, it was decided to refer the Corporate Debtor to the BIFR under the provisions of SICA. Such reference was made by the Corporate Debtor on February 29, 2016, which was registered on March 23, 2016, as case no.48/2016. The reference before the BIFR was last heard on 24th November 2016. However, SICA has been repealed w.e.f. December 1, 2016, vide Government Notification dated 28th November 2016 and all the References and Enquiries pending before the BIFR and

AAIFR have abated. Therefore, the Corporate Applicant has approached this Tribunal for admission of the application for initiation of Corporate Insolvency Resolution Process under section 10.

It is important to reproduce the amended section 4, sub-clause (b) of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003, which is as follows:

In section 4, sub-clause (b), the following sub-clause shall be substituted, namely,

“ on such date as may be notified by the Central Government in this behalf, any appeal preferred to Appellate Authority or any Reference made or Enquiry pending to or before the Board or any proceeding of whatever in nature pending before the Appellate Authority or the Board under the Sick Industrial Companies (Special Provision) Act 1985 (1 of 1986) shall stand abated;

Provided that a company in respect of which such Appeal or Reference or Enquiry stands abated under this clause **may make reference to the National Company Law Tribunal under the Insolvency & Bankruptcy Code, 2016 within 180 days (one hundred and eighty days) from the date of commencement of the Insolvency & Bankruptcy Code, 2016** in accordance with the provisions of the Insolvency & Bankruptcy Code, 2016.

Provided also that any scheme sanctioned under sub-section 4 or any scheme under implementation under sub-section (12) of section 18 of the Sick Industrial Companies (Special Provision) Act, 1985 shall be deemed to be an approved Resolution Plan under sub-section (1) of Section 31 of the Insolvency & Bankruptcy Code, 2016 and the same shall be dealt with, in accordance with the provisions of Part II of the said Code;

Provided also that in case, the Statutory period within which an appeal was allowed under the Sick Industrial Companies (Special Provision) Act, 1985 against an order of the Board had not expired as on the date of notification of this Act, an appeal against any such deemed approved Resolution Plan may

be preferred by any person before NCLAT within 90 days from the date of publication of this order.”

The above provision came into effect w.e.f. 28.05.2016 and by Government Notification dated 28th May 2016, Insolvency & Bankruptcy Code, 2016 came into effect w.e.f. 1st Dec 2016 which has been published in the Gazette of India Extra, Part II, Section 1 dated 28th May 2016, pp.1-109, 37.

It is pertinent to mention that this petition under section 10 has been filed on dated 13th July 2017. Section 4 sub-clause (b) of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 **provides that a company in respect of which such appeal or reference or enquiry stands abated under this clause may make reference to the National Company Law Tribunal under the Insolvency & Bankruptcy Code, 2016 within 180 days from the date of commencement of the Insolvency & Bankruptcy Code, 2016 in accordance with the provisions of Insolvency & Bankruptcy Code, 2016.**

The above statutory provision is applicable in this case. Corporate Applicant in its written submission has submitted that his reference case no.48/2016 was pending before BIFR and on account of provisions of SICA Repealing Act, w.e.f. 1st December 2016, reference pending before BIFR got abated. Corporate Applicant has admitted that abatement order is on account of government notification no.SO 3568(E) and SO 3569(E) dated 28th November 2016. In this case, admittedly on account of SICA Repealing Act under section 4(b) Corporate Applicant was entitled to file a petition before NCLT within 180 days, i.e. the statutory time limit provided in proviso to section 4(b) of the SICA Repeal Act, 2003 which came into effect w.e.f. 28.05.2016. Admittedly, this petition has been filed after expiry of 180 days, and Corporate Applicant had not stated anything about the abatement of Reference on account of Government Notification dated 28.5.2016.

It is important to point out that Hon'ble NCLAT in case of Leo Duct Engineers & Consultants (*supra*) had laid down the conditions for admitting the petition under section 10 of the I.B. Code but fact of this case shows that Corporate Debtor had filed

the petition under section 10 of the I.B.C. after abatement of the Reference before the BIFR, which got abated on account of Government Notification dated 28.05.2016. After coming into force of the Insolvency & Bankruptcy Code came by implication of statutory proviso to section 4(b) of the Sick Industrial Companies (Special Provision) Repeal Act, 2003 and after abatement of the reference before BIFR, liberty was given to file proceeding before NCLT within 180 days from the date of commencement of Insolvency & Bankruptcy Code, 2016.

Insolvency & Bankruptcy Code came into effect w.e.f. 01.12.2016 vide Government Notification SO 3591(E) dated 30th November 2016 published in Gazette of India Extra, Part-II, Section 3 sub-clause (ii) dated 30th November 2016, wherein it is specifically mentioned that Notification shall come into force from 1st December 2016. Therefore, in case of abatement of Reference before BIFR, time limit of 180 days expires in May 2017. This petition has been filed under section 10 of the Insolvency & Bankruptcy Code, 2016 on 13th July 2017, i.e. **after the expiry of the statutory time limit prescribed under Sick Industrial Companies (Special Provision) Repeal Act, 2003**. It is pertinent to mention that in the petition, the petitioner has not stated anything about the abatement of reference pending before BIFR. He only disclosed the fact about abatement of reference before BIFR after filing of Intervening Application No.439/2017 by the Authorised Representative of 284 workers of Tayo Rolls Ltd. In the Intervening Application, the Intervener has attached the copy of the order of Labour Employment and Training Department, Government of Jharkhand, whereby application filed under section 25(O) of Industrial Disputes Act, 1947 relating to permission to close the undertaking was rejected by order dated 27.10.2016. This order was challenged by M/s. Tayo Rolls Ltd. before the Hon'ble High Court of Jharkhand at Ranchi in Writ Petition L No.3846/2017 Tayo Rolls Ltd. - vs- Santosh Kumar Gupta, which was disposed of by order of the Hon'ble High Court dated 11.07.2017, whereby order passed by Labour, Employment & Training department of Government of Jharkhand was confirmed. **In the said order, the permission to close the unit was rejected.** Petitioner has not disclosed this fact while filing this petition under section 10 of the Insolvency & Bankruptcy Code. The petitioner had disclosed the fact about abatement of Reference before BIFR only when Intervener applied to oppose the application filed under section 10 of IBC.

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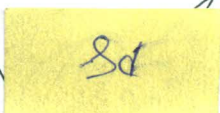
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Since the petition filed under section 10 of IBC is, in fact, a Reference, which was earlier pending before BIFR and when the IBC came into force then on account of the amendment in SICA Repeal Act, 2003, petitioner was given liberty to file a petition within 180 days after coming into force of Insolvency & Bankruptcy Code. Undoubtedly IBC 2016 came into effect w.e.f. 1st December 2016, therefore petition under IBC could have been filed only within 180 days. The fact of this case differs from the case of Leo Duct Engineers (supra), and a petition has been filed beyond the statutory time limit of 180 days from the date of coming into force of Insolvency & Bankruptcy Code. Thus it is clear that the petition is not maintainable and deserves to be rejected.

ORDER

Petition is rejected as not maintainable on the ground as disclosed hereinabove


(Jinan K.R.)
Member (J)

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(V.P. Singh)
Member(J)

Dated, this the 22nd day of December 2017