

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
NEW DELHI

Company Appeal (AT) No. 218 of 2017

IN THE MATTER OF:

Sudhir Power Projects Limited Appellant

Vs

M.B. Malls Pvt Ltd. & Ors. Respondent

Present:

**For Appellant: - Mr Y. Sarat Chandra and Mr Nakul
Jain, Advocates**

ORDER

14.09.2017 — The Appellant invoked provisions of Section 433 (e) and 434 of the erstwhile Companies Act, 1956 read with Rule 6 & 9 (of the Companies (Court) Rules, 1959 for winding up of Respondent company. Subsequently, pursuant to notification dated 7th December 2016 issued by the Central Government from the Ministry of Corporate Affairs, in exercise of powers conferred under sub-section (1) and (2) of Section 434 of the Companies Act, 2013, read with sub-section (1) of Section 239 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as I&B Code), it framed, The Companies (Transfer of Pending Proceedings) Rules, 2016. Rule 5 of the said Rules relate to transfer of pending winding up petitions before a High Court to enable to pay debts, which 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.”

2. In view of Rule 5 of The Companies (Transfer of Pending Proceedings) Rules 2016, the National Company Law Tribunal, Principal Bench, New Delhi (hereinafter referred to as Tribunal) by order dated 6th March 2017 disposed of the case in terms of order dated 2nd March 2017 passed in C.P. No. 926 of 2016.

3. In C.P. No. 926 of 2016, the Tribunal by order dated 2nd March 2017 held that the application as it is stood abated.

4. According to the Appellant the order was in consonance with the provisions of Section 434 (c) of the Companies Act 2013 and the Central Government had no jurisdiction to issue any Rules under Section 239 of the I&B Code in regard to transfer of cases under the Companies Act, 2013.

5. It appears that the Appellant thereafter filed an application under Rule 154 of the NCLT Rules 2016 for modification/review of the order dated 6th March 2017 passed in C.P. No. 908 of 2016. By impugned order dated 25th April 2017, the same has been rejected. The said order is under challenge in this appeal.

6. We have heard Ld. Counsel for the Appellant and perused the records. It is true that we doubt the notification dated 7th December 2016 issued by the Central Government framing Rule 5 for transfer of all winding up cases to Tribunal and treat them as an application

under Section 7 or 9 of the I&B Code, as the case may be. However, it was brought to our notice that subsequently the Central Government by another order dated 29.6.2017 notified second amendment to The Companies (Transfer of Pending Proceedings) Rules 2016 allowing time upto 15th July 2017 to convert the application under Section 7,8 or 9 of the I&B Code and thereafter failing which applications stood abated. However, it was made clear that thereafter it will be open to the concerned person to move an application individually under Section 7 or 9 of the I&B Code, as the case may be.

7. As the cut-off date of 15th July 2017 has already crossed, for the said reason we are not deciding the question on merit whether the Tribunal had jurisdiction to review or not.

8. We allow the Appellant to file appropriate application for corporate insolvency resolution process under section 7 or 9 of the I&B Code, as the case may be, if it claims itself to be 'financial creditor' or 'operational creditor' and there is a debt and default. However, if no case is made out under the aforesaid provisions, it will be open to the Appellant to move before an appropriate forum for appropriate relief. The appeal stands disposed of with aforesaid observation.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice A.I.S. Cheema)
Member (Judicial)

(Balvinder Singh)
Member (Technical)