

**In the National Company Law Tribunal,
Kolkata Bench,
Kolkata**

Coram:

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

CP (IB) No.701/KB/2017

In the matter of:

An application under section 9 of the Insolvency and
Bankruptcy Code, 2016;

-And-

In the Matter of:

Mr. Suresh Narayan Singh, (Authorised Representative of
284 workers) residing at 47, P. Road, Bistupur, Jamshedpur,
District- Singhbhum, Jharkhand- 831 001.

...Operational Creditor

-Versus-

Tayo Rolls Limited, a company incorporated under the
Companies Act, 1956 having its registered office a 3, Circuit
House Area (North East), Road No.11, P.O. & P.S.- Bistupur,
District- East Singbhum, Jamshedpur- 831 001.

...Corporate Debtor

Counsels appeared :

For the Petitioner : 1. Mr. Soorjya Ganguli, Advocate
2. Ms. Pooja Chakrabarti, Advocate
3. Mr. Somdutta Bhattacharyya, Advocate

For the Respondent : 1. Mr. Akhilesh Kumar Shrivastava, Advocate
2. Mr. Shakeel Mohammed Akhter, Advocate

Order delivered on 3rd January, 2018

ORDER

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

The petitioner has filed this application under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as I & B Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to Adjudicating Authority Rules, 2016) for initiation of corporate insolvency process against corporate debtor, Tayo Rolls Ltd.

2. Brief facts of the case are the following: -

The applicant operational creditor is Mr Suresh Narayan Singh whose identification No. is not given in the application, having his office at 47, P. Road, Bistupur, Jamshedpur, District East Singhbhum, Jharkhand - 831001. The Corporate debtor is Tayo Rolls Ltd. whose identification No. is L27105JH1968PLC000818 having its registered office at 3, Circuit House Area, (North East), Road No.11, Bistupur, Jamshedpur, Jharkhand - 831 001 .

3. The petitioner has stated that the respondent/corporate debtor Tayo Rolls Ltd. has applied for closure of their industrial undertaking under sub-section(1) of Section 25(O) of the Industrial Disputes Act, 1947. The proposed date of closure mentioned in the application was 6/12/2016. The petitioner had further stated that 182 workers covered by Payment of Wages Act, 1936 had filed individual claim cases for unpaid wages before the Labour Court, Jamshedpur, which was registered as P.W. Case No.1 to 182 of 2017 and award was

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passed for Rs.2,19,83,760/- regarding unpaid wages and Rs.21,98,37,600/- for compensation .

4. It is the case of the applicant that 102 workers, who are not covered by Payment of Wages Act, 1936 have filed for recovery of Rs.2,71,24,186/- as arrears of wages under Section 33C(1) of the Industrial Disputes Act, 1947. The amount claimed to be in default is Rs.40,33, 75,260/-. A statement of total due salaries of 102 workers and 182 workers are annexed with the application in tabular form and marked as Annexure - B.

5. The applicant further submits that 182 workers who are covered by payment of Wages Act, 1936 have filed individual claim case for unpaid wages before the Labour Court, Jamshedpur. The corporate debtor had filed a writ petition before the Ranchi High Court for quashing of the proceedings which were dismissed by the Hon'ble Court vide order dated 11/7/2017. Copy of the order of the Hon'ble Ranchi High Court is annexed with the application and marked as Annexure D. Applicant/operational creditor issued demand notice dated 24/10/2017 issued to the corporate debtor under Section 8 of the I & B Code which is annexed with the application and marked as Annexure G. State Bank of India issued certificate dated 7/11/2017 certifying that no payment was made by the corporate debtor from October 2016 to October 2017. A copy of the document is annexed with the application and marked Annexure H.

6. This petition has been filed under Section 9 of the I & B Code by Shri Suresh Narayan Singh as an authorised representative of 284 workers of Tayo Rolls Ltd. The petitioner has filed affidavit of 284 workers dated 16/10/2017 whereby the petitioner Shri Suresh Narayan Singh has been authorised as President and Shri T.R. Pandey ,as Secretary of the Tayo Workers Union to represent all

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proceedings in respect of M/s Tayo Rolls Ltd., on behalf of the Union before Hon'ble Supreme Court of India, Hon'ble High Courts, BIFR, AAIFR, NCLT, Labour Commissioner and other courts/statutory authorities.

7. It is pertinent to mention that Section 8 of the I & B Code only operational creditor can file a petition. Operational creditor has been defined in Section 5(20) of the I & B Code which reads as follows:-

"Operational creditor means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred."

8. Shri Suresh Narayan Singh who has filed this petition has not been assigned or transferred operational debt of other workers, on whose behalf this petition has been filed. Therefore he cannot be considered as an operational creditor. Two hundred and eighty-four workers of Tayo Rolls Ltd. has only authorised Shri Suresh Narayan Singh to pursue their case before the NCLT, but it does not mean that they have assigned or transferred their debt in his name. Thus the petitioner Shri Suresh Narayan Singh cannot be considered as an operational creditor. Since Shri Suresh Narayan Singh does not owe the debt of 284 workers and those operational creditors have not assigned or transferred their debt to him, therefore, he cannot be treated as an operational creditor.

9. It is pertinent to mention that as per provision of Section 7 of the I & B Code.

"A joint application" is permitted in section 7 itself which can be moved by the financial creditor, but the language of Sec.9 of the Code does not provide provision for "joint application".

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10. The word "operational creditor" used in Section 8 of I B Code itself shows that it is used in the singular form. There is no such provision for "joint application" in Section 8 & 9 of I B Code. But the same is provided under Section 7 of the I & B Code. Therefore, the application filed by Shri Suresh Narayan Singh on behalf of several workers in the representative capacity as an operational creditor is not maintainable on this ground.

11. It is pertinent to reproduce Section 8 of the I & B Code for ready reference which is as under :

"An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed."

12. In the above provision, the word "an operational creditor" itself indicates that an application to be made by the single operational creditor and it cannot be a joint application. Section 7 deals with the financial creditor, which itself authorises financial creditor to move an application either by itself or jointly with another financial creditor for initiating corporate insolvency process against the corporate debtor.

It is also important to mention that under Adjudicating Authority Rules 2016, Form 5 is prescribed for applying Section 8 & 9 of the I & B Code.

13. In Form 5, a Note is given at the end, which is as follows:-

"Where workmen/employees are operational creditors, the application may be made either in

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an individual capacity or a joint capacity by one of them who is duly authorised for the purpose."

14. The above footnote given in Form 5 is not in consonance with the provision of Section 8 of the I & B Code, because Section 8 does not authorise joint application or joint Demand Notice by the Operational Creditor. Section 7 which deals with the financial creditor allows joint application by the financial creditor. The note provided at the end of Form V, Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules 2016 requires reconsideration by Appropriate Authorities.

15. This petition under Section 9 of the I & B Code cannot be filed in the representative capacity of 284 workers. The petitioner has filed this petition in the representative position of 284 employees which is not maintainable under Section 9 of the I & B Code. The operational creditor himself can file a petition regarding the debt of other persons, only in case debt is assigned or transferred to him. On this ground, the petition is not maintainable.

16. As per law laid down by Hon'ble NCLAT in Uttam Galva Steels Ltd joint petition on behalf of 284 workers in a representative capacity is not maintainable, because joint demand notice U/S 8 of I&B Code is not permissible.

In case of Uttam Galva Steels Limited vs DF Deutsche Forfait AG and Ors. (28.07.2017 - NCLAT) : MANU/NL/0050/2017 Hon'ble NCLAT has decided the issue regarding the joint application by operational creditors.

In the case mentioned above, Hon'ble NCLAT has held that:

" From the provisions above of Section 8 and 9 of I & B Code, it is clear that unlike Section 7, a notice under Section 8 is to be issued by an "Operational Creditor" individually and the petition

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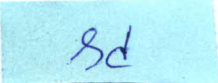
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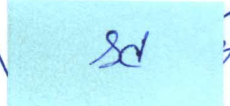
under Section 9 has to be filed by Operational Creditor individually and not jointly. Otherwise, also it is not practical for more than one 'operational creditor' to file a joint petition. Individual 'Operational Creditors' will have to issue their individual claim notice under Section 8 of the I & B Code. The claim will vary which will be different. Date of notice under Section 8 of the I & B Code in different cases will be different. It will have to be issued in format(s). Separate Form-3 or Form-4 will have to be filled. A petition under Section 9 in the format will contain, separate individual data."

17. On the ground, it is clear that petition deserves to be rejected as not maintainable.

ORDER

The petition filed under section 9 of the I & B Code is rejected as not maintainable. Let a copy of the order be sent to the Secretary, Ministry of Corporate Affairs for information.


(Jinan K.R.)
Member (J)


(V. P. Singh)
Member (J)

Signed on this, the day of 3rd January, 2018