

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**

3<sup>rd</sup> Floor, B-1 Wing  
Pt. Deen Dayal Antyodaya Bhawan  
C.G.O. Complex, Lodhi Road  
New Delhi-110 003  
Dated : 10.10.2018

To

1.	The Registrar National Company Law Tribunal, 6 <sup>th</sup> Floor, Block-3, CGO Complex, Lodhi Road, NEW DELHI 100 003.	2.	The Registrar National Company Law Tribunal, Kolkata Bench, 5 Esplanade Row (West), KOLKATA – 700 001.
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Sub : In the matter of - Company Appeal (AT)(Insolvency) No. 29 of 2018 (Mr. Suresh Padmanabhan & Anr. Versus Tata Steel Limited & Ors.) – Appeal filed U/s. 61 of the Insolvency and Bankruptcy Code, 2016.

Sir,

A copy of the order of the Appellate Tribunal dated 04.10.2018 (Corrected Order) on the above subject matter is forwarded herewith under Section 61 of the Insolvency and Bankruptcy Code, 2016. The Registrar, NCLT, New Delhi is requested to place the aforesaid order before the Hon'ble President, National Company Law Tribunal, New Delhi.

Yours faithfully

*9/10/18*  
(R. Kumar)

Asstt. Registrar

Encl. As above

Copy to :

A-1	Mr. Suresh Padmanabhan Deputy Chief Financial Officer, Tayo Rolls Limited No.3 Circuit House Area, (North East), Road No.11, Bistupur, Jamshedpur – 831 001	A-2	Tayo Rolls Limited Regd. Office at: No.3 Circuit House Area, (North East), Road No.11, Bistupur, Jamshedpur – 831 001
R-1	Tata Steel Limited Through Company Secretary 3 <sup>rd</sup> Floor, Bombay House, 24, Homi Mody Street, Fort, Mumbai – 400 001	R-2	IDBI Bank Limited Specialized Corporate Branch, 1 <sup>st</sup> Floor, Kalyan Kutir, N. Road, Opposite St. Mary's Church, Bistupur, Jharkhand Jamshedpur – 831 001

...2/-





R-3	Bank of India Assistant General Manager, Main Branch, Bistupur, Post box No.36, Jamshedpur, Jharkhan – 831 001	R-4	Jharkhand Bijli Vitran Nigam Limited Regd. Office at: Engineering Building, H.E.C. Dhurwa, P.S. Hatia Ranchi – 834 004  Also at: Jharkhand Bijli Vitran Nigam Limited Electric Supply Circle, Jamshedpur, Vikas bhawan, Adityapur, Distt. Seralkella Kharswan – 832 401
R-5	Secretary, Ministry of Finance, Department of Revenue, Commercial Tax Department, Government of Jharkhand, Ranchi, Jharkhand, Adityapur Circle Sakchi, Jamshedpur – 831 001	R-6	Secretary, Ministry of Finance, Department of Revenue, Central Excise and Service Tax Department, Central Government, North Block, Central Secretariat, New Delhi – 110 001
R-7	Secretary, Ministry of Finance, Department of Revenue, Central Excise and Service Tax Department, Central Government, North Block, Central Secretariat, New Delhi – 110 001	R-8	Secretary, Ministry of Finance Department of Revenue, Directorate of Revenue Intelligence and Customs, Central Board of Excise Customs, Central Government, Drum Shaped Building, IP Estate, New Delhi – 110 002
R-9	Mr. Madhab Bej Uppar Para, Bara Gamharia, PO & PS-Gamharia, Seraikela-Kharsawan, Jharkhand – 832 108	R-10	Bhubneswar Mandal F-123, Tata Complex Colony, Seraikela-Kharsawan, Jharkhand – 832 108
R-11	Mr. Devander Singh K2-TS/80, Tube Baridih, PO Baridih, Jamshedpur, Singhbhum East, Jharkhand – 831 017	R-12	Mr. Prakash Bej Uppar Para, Bara Gamharia, PO & PS-Gamharia, Seraikela-Kharsawan, Jharkhand – 832 108
R-13	Mr. Jogeshmohan Patra Vill: Kashmar (Bankati), PS: Ghatsila, PO: Bankati, Jamshedpur, East Singhbhum, Jharkhand – 832 303	R-14	Tayo Workers Union of 284 Workers; Mr. Suresh Narayan Singh, A/R of the Union, 47, P. Road, Bistupur, Jamshedpur – 831 001





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

**Company Appeal (AT) (Insolvency) No. 29 of 2018**

**IN THE MATTER OF:**

**Mr. Suresh Padmanabhan & Anr.**

**...Appellants**

**Vs.**

**Tata Steel Ltd. & Ors.**

**...Respondents**

**Present: For Appellants:- None**

**For Respondents:- None**

**ORDER**

**08.10.2018—** This case has been listed in the Chamber at the instance of the office which has brought to our notice that the typographical error in the fourth line of paragraph no. 10 of the judgment dated 4<sup>th</sup> October, 2018 wherein the order of the impugned judgment has been wrongly typed as '26<sup>th</sup> September, 2018' in place of '22<sup>nd</sup> December, 2017'.

It is accordingly ordered to read the date of the impugned judgment as '22<sup>nd</sup> December, 2017' in place of '26<sup>th</sup> September, 2018' in the fourth line at paragraph 10 which has been declared as illegal and set aside. The order dated 4<sup>th</sup> October, 2018 be corrected accordingly.

Let corrected order be uploaded and communicated to the party concerned.



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OF THE ORIGINAL

sd/-

(Justice S.J. Mukhopadhaya)  
Chairperson

sd/-

(Justice Bansi Lal Bhat)  
Member(Judicial)

Ar/g

9 Oct 10/10/18

**Assistant Registrar**  
National Company Law Appellate Tribunal  
New Delhi



**IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL**

**Company Appeal (AT) (Insolvency) No. 29 of 2018**

(Arising out of Order dated 22<sup>nd</sup> December, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in C.P. (IB) No. 398/KB/2017)

**IN THE MATTER OF:**

**Mr. Suresh Padmanabhan & Anr.**

**...Appellants**

**Vs.**

**Tata Steel Ltd. & Ors.**

**...Respondents**

**Present:** For Appellants:- Dr. Abhishek Manu Singhvi, Mr. Arun Kathpalia and Mr. Rajiv Ranjan, Senior Advocates assisted by Mr. R. Sudhinder, Mr. Soorjya Ganguli, Mr. Amit Bhandari, Ms. Nimita Kaul and Ms. Amrita, Advocates.

**For Respondents:- Mr. Rohan Thawani, Advocate for R-1.**

**Mr. Ashish Rana, Advocate for R-2.**

**Mr. Himanshu Shekhar, Mr. Aabhas Parimal and Mr. Janesh Kumar, Advocates for R-4.**

**Mr. Jayesh Gaurav and Mr. Krishnanad Pandey, Advocates for R-5.**

**Mr. Akhilesh Srivastava, Advocate.**

**J U D G M E N T**

**SUDHANSU JYOTI MUKHOPADHAYA, J.**

'Tayo Rolls Limited'- ('Corporate Debtor') alongwith Mr. Suresh Padmanabhan, Deputy Chief Financial Officer of 'Tayo Rolls Limited' filed





an application under Section 10(1) of the Insolvency and Bankruptcy Code, 2016 ('I&B Code' for short) for initiation of 'Corporate Insolvency Resolution Process' against it. The Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata, by impugned order dated 22<sup>nd</sup> December, 2017 rejected the application on one of the ground that the matter has not been referred within 180 days from the date of abatement of reference in terms of sub-clause (b) of Section 4 of the 'Sick Industrial Companies (Special Provisions) Repeal Act, 2003' ('SICA Repeal Act, 2003' for short) as substituted by the 'Eighth Schedule' of the 'I&B Code'.

2. The 'I&B Code' came into effect from 1<sup>st</sup> December, 2016, whereby provisions of different Acts were amended. The 'SICA Repeal Act, 2003' was amended by Section 252 of the 'I&B Code', which is as follows:

*"THE EIGHTH SCHEDULE*

*(See section 252)*

**AMENDMENT TO SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) REPEAL ACT, 2003**

*(1 OF 2004)*

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

*"(b) On such date as may be notified by the Central Government in this behalf, any appeal preferred to the*





*Appellate Authority or any reference made or inquiry pending to or before the Board or any proceeding of whatever nature pending before the Appellate Authority or the Board under the Sick Industrial Companies (Special Provisions) Act, 1985 shall stand abated:*

*Provided that a company in respect of which such appeal or reference or inquiry stands abated under this clause may make reference to the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016 within one hundred and eighty days from the commencement of the Insolvency and Bankruptcy Code, 2016 in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016:*

*Provided further that no fees shall be payable for making such reference under Insolvency and Bankruptcy Code, 2016 by a company whose appeal or reference or inquiry stands abated under this clause.”*

3. The case of the Appellant is that the ‘Corporate Debtor’- ‘Tayo Rolls Limited’ having become sick, a reference case no. 48/2016 was instituted and pending before the ‘Board of Industrial and Financial Reconstruction’ (‘BIFR’ for short). On account of ‘SICA Repeal Act, 2003’ w.e.f. 1<sup>st</sup> December, 2016, the reference aforesaid pending before the ‘BIFR’ abated. As per sub-clause (b) of Section 4 of the ‘SICA Repeal Act, 2003’ as amended by Eighth Schedule, if a petition under Section 10 of the ‘I&B Code’ is preferred within 180 days by the Company from the commencement of the ‘I&B Code’ in respect of which such appeal or





reference or enquiry stood abated, 'no fees is payable' for making reference under the 'I&B Code'.

4. In the present case, the 'I&B Code' came into force on 1<sup>st</sup> December, 2016 and a reference case no. 48/2016 pending before the 'BIFR' stood abated. The 'Tayo Rolls Limited'- ('Corporate Debtor') along with the 'Corporate Applicant' filed application under Section 10 of the 'I&B Code' on 13<sup>th</sup> July, 2017. In this background, the Adjudicating Authority held that after expiry of the statutory time limit of 180 days prescribed under the 'SICA Repeal Act, 2003', the application under Section 10 was not maintainable.

5. The aforesaid issue fell for consideration before this Appellate Tribunal in **"Pr. Director General of Income Tax (Admn. & TPS) vs. M/s. Spartek Ceramics India Ltd. & Anr— Company Appeal (AT) (Insolvency) No. 160 of 2017 etc.,"**. In the said case, this Appellate Tribunal by judgment dated 28<sup>th</sup> May, 2018 observed and held:

*"40. In view of clause (b) of Section 4 of the 'SICA Repeal Act, 2003', the appeal preferred to the Appellate Authority or any reference made or any inquiry pending before the Board or any other authority or any proceeding of*





*whatever nature pending before the Appellate Authority or the Board, including the powers of the Board to give effect to the Scheme or to monitor periodically for its implementation under sub-section (4) read with sub-section (12) of Section 18 of the 'SICA Act, 1985' stood abated. However, by virtue of the amendment under the Eighth Schedule, the Company in respect of which such appeal or reference or inquiry stands abated, have been allowed to make reference to the NCLAT within 180 days of commence of 'I&B Code' and in accordance with the provisions of the 'I&B Code'. In such case, no fees is payable.*

*42. The time period of 180 days given therein is for making a reference to the National Company Law Tribunal to treat the application under 'I&B Code' without payment of fees, only in respect to cases, where appeal or reference stands abated. It does not mean that the Company cannot file application under Section 10 of the 'I&B Code'*





*after 180 days. If the Company prefers any application under Section 10 beyond 180 days, it is required to pay the requisite fee.”*

6. On plain reading of the provision aforesaid and decision of this Appellate Tribunal, it is clear that 180 days' time period provided in sub-clause (b) of Section 4 of the 'SICA Repeal Act, 2003' (by Eighth Schedule) relates to reference if made to the National Company Law Tribunal (Adjudicating Authority) to treat application under Section 10 of the 'I&B Code' without payment of fees. It does not mean that the 'Corporate Applicant' cannot file an independent application under Section 10 of the 'I&B Code' even after 180 days of abatement of the reference under the 'SICA Repeal Act, 2003' on payment of requisite fee.

7. In the present case, we find that the case of the Appellant is covered by this Appellate Tribunal in **“Pr. Director General of Income Tax (Admn. & TPS) (Supra)”**. The impugned order, therefore, cannot be upheld.

8. Mr. A.K. Srivastava, learned counsel appearing on behalf of Mr. Suresh Narayan Singh, one Ex-employee raised certain objections but it is not required to be noticed or referred to, ex-employee having no right





to oppose an application under Section 10 and for the reasons stated below.

9. Mr. Suresh Narayan Singh, as an Authorised Representative of 284 workers of 'Tayo Rolls Limited'- ('Corporate Debtor'), also filed an application under Section 9 of the 'I&B Code' before the Adjudicating Authority against "Tayo Rolls Limited". It was also dismissed by the Adjudicating Authority by an order dated 3<sup>rd</sup> January, 2018. The order of rejection was challenged by Mr. Suresh Narayan Singh in Company Appeal (AT) (Insolvency) No. 112 of 2018. In the said case, this Appellate Tribunal by its judgment dated 26<sup>th</sup> September, 2018 set aside the order dated 3<sup>rd</sup> January, 2018 and remitted the matter to the Adjudicating Authority with following observations and directions:

*"10. In the result, the Adjudicating Authority is directed to admit the application filed by the Appellant- Mr. Suresh Narayan Singh and pass appropriate order of 'Moratorium' and appointment of 'Insolvency Resolution Professional' in accordance with law after notice to the 'Corporate Debtor'. The application under Section 10 of the 'I&B Code', filed by the 'Corporate Debtor' as is under consideration*





*before this Appellate Tribunal in an appeal and if the said appeal is allowed, the 'Interim Resolution Professional suggested by the 'Corporate Debtor', may be appointed. The appeal is allowed with aforesaid observations and directions. However, in the facts and circumstances of the case, there shall be no order as to cost."*

10. In view of the decision in "**Mr. Suresh Narayan Singh (Supra)**", a 'Corporate Insolvency Resolution Process' is required to be initiated against 'Tayo Rolls Limited', for the said reason, while we declare the impugned judgment dated 22<sup>nd</sup> December, 2017 as illegal and set aside the said order but do not remit the case for admission of application under Section 10. The 'Corporate Debtor' having already suggested the name of the 'Interim Resolution Professional', in terms of the decision of this Appellate Tribunal in "**Mr. Suresh Narayan Singh (Supra)**", the Adjudicating Authority will appoint 'Interim Resolution Professional', as proposed by the 'Corporate Debtor', if no proceeding is pending against him.





11. The appeal is allowed with aforesaid observations and directions. However, in the facts and circumstances of the case, there shall be no order as to cost.



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sd/-

[Justice S.J. Mukhopadhaya]  
Chairperson

sd/-

[Justice Bansi Lal Bhat]  
Member (Judicial)

NEW DELHI

4<sup>th</sup> October, 2018

AR

9 am  
10/10/18  
**Assistant Registrar**  
National Company Law Appellate Tribunal  
New Delhi