

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

I.A. No. 1680 of 2024

In

Company Appeal (AT) (Insolvency) No. 582 of 2024

IN THE MATTER OF:

Prakash Ambure & Ors.

...Appellants

Versus

Invent Bio-Med Pvt. Ltd.

...Respondent

Present:

For Appellants : Ms. Uttara Babbar, Sr. Advocate with Ms. Alpana Sharma and Ms. Rayana Mukherjee, Advocates.

For Respondent : Mr. Ritesh Khare, Ms. Nikita Anand, Mr. Abhijeet Banarjee, Ms. Namarata Chadorkar and Mr. Piyush Jain, Advocates.

O R D E R

ASHOK BHUSHAN, J.

This is an application praying for condonation of refiling delay of 164 days.

2. Appellant filed additional affidavit in support of the condonation of refiling delay. Respondents have filed reply to the I.A. to which a rejoinder has also been filed by the applicant.

3. The applicant's case in the application is that challenging the order passed by the adjudicating authority dated 04.08.2023, the Company Appeal was filed on 14.09.2023 with delay of 11 days. (11 days in filing the appeal has already been condoned by our order dated 04.03.2025). The applicant's case is that appeal was filed on 14.09.2023, and thereafter the defects were marked by the Registry on 22.09.2023. Time was taken to cure such defects,

certain annexures were handwritten, hence they were required to be typed out. In the additional affidavit filed by the appellant, appellant in paragraphs 2, 5, 6 & 7, following has been pleaded:

“2. The present Appeal has been filed against the Impugned Order dated 04.08.2023 passed by the Ld. National Company Law Tribunal, Mumbai Bench in the Company Petition (IB) No. 4100/MB/2019. The Memo of Appeal was presented before this Tribunal on 14th September, 2023. After the scrutiny of Memo of Appeal, the defects were intimated on 22nd September 2023. The Memo of Appeal was re-filed on 1st March, 2024, after the delay of 154 days along with the Interlocutory Application No. 1680 of 2024 for seeking condonation of delay in re-filing the appeal under Rule 31 read with Rule 11, 14 and 26 of the National Company Law Appellate Tribunal Rules, 2016 ('NCLAT Rules' herein).

5. The Applicant submits that there are eight appellants in this Appeal and all are running their business across the country, resultantly, all such documents which are approximately 21 in number and mostly with regard to the Bank details, led to the difficulty in fetching them in a clear and visible form. That the applicant submits that such running of the individual business across the country by all the appellants and getting the documents from them, came in the way of rectifying the defects in a short duration of 30 days.

6. In furtherance, the Applicant submits that in order to rectify the defect number 7 of the defect list, for removing the old marked 'Exhibit/Annexures' consumed loads of time firstly, in fetching the original one and getting some of them typed, which again was the time consuming as the authorised translator, unfortunately died, due to the sudden attack in the month of October, 2023, which further created difficulty to get those documents typed again.

7. The Applicant submits that the authorised representative of all the eight corporate debtors (appellants) faced difficulty in fetching of the Affidavit of all eight appellants, despite of submission of the 'power of attorney' on behalf of all the appellants, the registry was not accepting, though, later on it was accepted and rectified the defect. (In the defect list as defect Number 6).”

4. Learned counsel for the respondent filed a reply objecting to the condonation of refiling delay. In paragraph 4 of the reply following has been stated by the respondent:

“4. That for the convenience of this Hon’ble Tribunal, the Respondent seeks to place the following Paragraph-Wise rebuttal of those paragraphs of the said Additional Affidavit, wherein averments pertaining to the delay are made:

Sr. No.	Averments in the Additional Affidavit	Rebuttal on behalf of the Respondent
1.	Para 5 : There are eight appellants in this Appeal and all are running their business across the country resultantly, all such documents which are 2L in number and mostly with regard to the Bank details, led to the difficulty in fetching them in a clear and visible form.	There are 2L annexures to the instant Appeal and all are part of the lower court record (Section 7 petition filed before the Hon'ble NCLT). There was no occasion to collect the said annexures afresh. The Bank details referred to is Annexure A-21 to the Appeal and the same forms part of the Section 7 application filed before the Hon'ble NCLT. Clear and visible copies of the same were already part of the lower court record, there was no need to fetch fresh copies.
2.	Para 6 : In order to rectify the defect number 7 of the defect list, for removing the old marked 'Exhibit/Annexures' consumer loads of time firstly, in fetching the original one and getting	This is a bogus ground as no typed copies of any of the annexures have been filed with the Appeal. Further, the claimed death of an unnamed authorised translator is hardly a ground for the condonation of a

	some of them typed, which again was the time consuming as the authorised translator, unfortunately died, due to the sudden attack in the month of October 2023, which further created difficulty to get those documents typed again.	delay of 5.5 months. There are many translators/typists in the city and nothing barred the Appellants from approaching them.
3.	Para 7 : The Applicant submits that the authorised representative of all the eight corporate debtors faced difficulty in fetching the Affidavit of all eight appellants, despite the submission of the 'power of attorney' on behalf of all the appellants, the registry was not accepting, though, later on it was accepted and rectified the defect.	Again, the Counsel for the Appellants cannot possibly attest to such facts which are solely concerning the Appellants, and not their Counsel. The entire Additional Affidavit is liable to be rejected on the ground that the deponent therein is attempting to submit indirect evidence before this Hon'ble Tribunal, which is not admissible.
4.	Para 8 : The Applicant respectfully submits that some the defects were minor but too much technical which had drained out a lot of time in curing them.	None of the defects raised in the instant matter were of such a nature as would warrant the utilization of 5.5 months to cure.

5. Appellant has filed rejoinder affidavit to the reply, in paragraph 6 of the rejoinder, appellant has categorically again given the sequence of the event and steps taken towards curing the defect. It is useful to extract paragraph 6 of the rejoinder affidavit:

“6. The petitioner with reference to para number 6 to para number 18 profoundly deny all the contents thereof. The petitioner shall now assert and put forward the rationale behind such delay.

6.1 The petitioner says and submit that after the scrutiny of Memo of Appeal, the defects were intimated on 22nd September 2023 and the Memo at Appeal was filed on 1st March, 2024.

6.2 The petitioner states that after curing all the defects as was pointed out by the registry, the Petitioner approached the registry on 29th September 2023, for refiling the appeal, which was well within time. However, when the petitioner approached the office members of the filing department for refiling of the appeal, upon a cursory glance to the memo of appeal, the officials orally notified additional defects which had not been notified earlier.

6.3 In originally notified defect number 10 it was state that ‘In whole appeal, some pages are filed in landscape. File it in portrait’ after complying with the same, the Petitioner went to refile it con 29.09.2023, however on the said date, the petitioner was asked to get those pages typed as well, as in some of the pages the font was small. Notably this was a fresh defect which had not been notified earlier.

6.4 Also, with respect to the defect number 3- 'List of Dates and Events is not filed', although it was filed in the Memo itself but were still again asked to check and amend them in the memo properly.

6.5 The petitioner states further that in defect number 7- 'Affidavit supporting memorandum of appeal and IAs on behalf of all appellants are not filed, herein, the registry was not convinced and the petitioner was asked to file the supporting affidavit of each of the Appellants which caused further delay.

6.6 The petitioner states and submit that after getting notified of the above mentioned defects, they were cured and went back for re-file the same on 5th October 2023, however the staff was changed and the new person pointed out the issue with respect to the "affidavit supporting Memo of Appeal and IAs on behalf of all appellant" and crucially, asked that as per the defect number 18- "Note: Please check and ensure that all details are uploaded with correct indexing with original colour scanned documents such as, signature, affidavit attestation stamp etc.", in order to satisfy the clarity and font it was asked to get the pages typed,

like Page No. 66 to 68, 70, 72, 73, 76, 87 to 91, 94 to 105, etc.. Thereby, such pages were given to the authorised typist so as to get them typed, unfortunately, he died due to a sudden attack in the month of October, 2023, which came into the knowledge of the Petitioner's Counsel in the first week of November, 2023. Subsequently, further the difficulty was created to get those documents typed again, and the same issue was addressed to the registry member which asked the Petitioner's counsel to address the issue after the festive Diwali Holidays and assured that no typed copy would be required and the appeal memo would be filed without that. Further, the petitioner states that since November, 2023 until February, 2024, after all the verifications, amendments, confirmations and changes, the Memo of Appeal was re-filed.

6.7 The petitioner says and submits inevitably that the 'technical issues and glitches in getting the Memo of Appeal re-filed in the period of 154 days had caused great hardships, and it is denied that the petitioners were sleeping over their rights to cure defects pointed out by the registry on 22nd September 2023.

6.8 The petitioner thereby states that they had left no stone unturned to get the memo of appeal file within the time frame, but failed to do so. Thereby, absolutely, there was no delay cause with mala fide intention in re-filing the Memo of Appeal.

6.9 The petitioner states and submits that they are aware of the importance of time frame in filing the appeal under Insolvency and Bankruptcy Code, that is why the Power of Attorney was made as getting signature and documents or any kind of technical legal work to be done by one of the authorised petitioners who is amongst them, so that no delay would be caused, as, herein all the petitioners individually running different business across the country at different places. The petitioner says and submits that thereby the petitioner had approached this Hon'ble Appellate Tribunal with clean hands and with genuine issue and such delay from the abovesaid reasons was not with the mala fide intention at all."

6. Learned counsel for the appellant submits that with respect to re-filing delay the court has to adopt a different yardstick and it has to be looked into more with leniency.

7. Learned counsel for the appellant relies on the judgment of the Hon'ble Supreme Court in the matter of **'Perymon Bhagbathy' Vs. 'Bhargavi Amma (Dead) by Lrs. & Ors.'** reported in **(2008) 11 SCR 1**, in paragraph 8(4) Hon'ble Supreme Court laid down following:

"8.(iv) ...The classic example is difference in approach of courts to application for condonation of delay in filing an appeal and applications for condonation of delay in refiling the appeal after rectification of defects".

8. Learned counsel for the respondent in support of submission has relied on the judgment of this Tribunal in **Comp. App. (AT) (Ins.) No.1524/2024, 'Govardhan Nirman Pvt. Ltd.' Vs 'Vaibhav Khanelwals & Anr.'**, where this Tribunal rejected application for refiling delay for condonation of 121 days.

9. The law with regard to condonation of refiling delay is well settled, although the Courts have adopted a liberal approach while condoning the refiling delay, but there has to be sufficient cause shown by the applicant for condoning the refiling delay. It is useful to notice paragraph 8 of the judgment of this Tribunal in **'Govardhan Nirman Pvt. Ltd.' (Supra)**, where this Court laid down as follows:

"8. At the outset, we would like to point out that it is well recognised that while dealing with refiling delay condonation applications, a liberal approach is expected to be normally taken and as long as sufficient cause is shown, such delays in refiling are to be condoned. Be that as it may, it also goes without saying that the delay in refiling can be condoned only if the Tribunal is satisfied that there was reasonable and justifiable cause for not refiling the appeal on time. In other words, the delay has to be tested on the parameters of reasonableness so that the objectives of IBC of time-bound resolution is not diluted and the interest of either of the parties involved is not prejudicially affected in any manner."

10. Now we come to the reasons given by the appellant in its application, additional affidavit and the rejoinder as noticed above, applicant's case is that there are 8 applicants in the appeal who are running their businesses across the country and obtaining the documents from them came in the way of curing defects within a short period. As noted above, the appeal was filed on 14.09.2023 and 22.09.2023 registry pointed defects through email. On 29.09.2023, appellant's counsel approached the registry for refiling the appeal, however, registry notified additional defects, which had not been notified earlier, and the appellant was informed to type the pages as well.

11. The applicant's case is that typing of documents was notified, the typist to whom paper was handed in October 2023, the counsel learnt that typist has passed away only in November 2023, and then appellant approached registry to enquire about the documents who was informed that file was again retrieved to obtain signatures of all the appellants. Eventually, one of the appellants sent the original papers of attorney which was presented during the refiling. Again, certain defects were re-notified on 01.03.2024. It is submitted that defects No. 10 & 7 cause considerable delay.

12. Learned counsel for the respondent submitted that even the name of typist who is claimed to have passed away has not been disclosed and further the typed copies were not ultimately filed. Learned counsel for the respondent further submitted that all annexures were part of NCLT record, Bank record also forms Section 7 application. Learned counsel for the respondent further submitted that additional affidavit has been filed by advocate on record who cannot possibly address such facts which are solely concerning the appellants and not their counsels. When an appeal is filed and is to be refiled after curing

the defects, counsel who is taking process of refiling after curing the defects can be said to be competent person to swear an affidavit.

13. We, thus do not find any incompetency of learned advocate on record in filing the additional affidavit in support of application for condonation of refiling delay. From the facts which has been noticed above, it is clear that present is a case where steps were taken by applicant for curing the defect. The fact that 8 appellants who have filed the appeal are not from one place. Two of the appellants are from Thane West, State of Maharashtra and others are from Beawar, State of Rajasthan.

14. We are satisfied that sufficient cause has been shown in the application, additional affidavit and rejoinder affidavit filed by the applicant in support of the refiling delay application and we are of the view that sufficient cause has been made out to condone the delay in refiling of the appeal. Refiling delay is condoned.

List the appeal 'for admission' on **14th April 2025**.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

NEW DELHI

07th April, 2025

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I.A. Nos. 1680 of 2024 in Comp. App. (AT) (Ins.) No. 582 of 2024