NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 246 of 2020

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I.A. No. 652 of 2020

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I.A. No. 247 of 2022

IN THE MATTER OF:

Saurav Vashist **....Appellant**

Vs.

Metallica Industries Ltd. & Ors. **....Respondents**

Present:

For Appellant:- **Ms. Shagun Bhargava, Advocate.**

For Respondent:- **Mr. Ravinder K. Rawat, Advocate.**

O R D E R

19.09.2022: Heard Ms. Shagun Bhargava, Advocate appears on behalf of the Appellant and Mr. Ravinder K. Rawat, Advocate appears on behalf of the Respondent No. 1.

2. I.A. No. 652 of 2020 has been filed by the Appellant in CA (AT) (Ins.) No. 246 of 2020 seeking condonation of delay in filing the present Appeal. Further, I.A. No. 247 of 2022 has been filed seeking amendment in I.A. No. 652 of 2020.

3. The Appellant has preferred this Appeal being aggrieved and dissatisfied by the order dated 16.10.2019 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) in CP(IB)1329/MB/2017 wherein the Adjudicating Authority has rejected the objections of the Appellant while approving the Resolution Plan of Respondent No. 1 – Corporate Debtor proposed by Respondent No. 3- Resolution Applicant.

4. The Ld. Counsel for the Appellant while pressing the I.A. No. 652 of 2020 submits that the Appellant had inadvertently mentioned that he had received the copy of the order on 14.12.2019 as he had misplaced the envelope and presumed that the order was receive don 14.12.2019, after the Appeal was filed on 30.01.2020, the Appellant was able to trace the envelope and upon inspecting the "Indiapost" website, gained knowledge that Appellant actually received the order only on 16.12.2019. The appellant had filed the Appeal after the period of 30 days, however, within the additional 15 days as prescribed under Section 61 of IBC hence it is evident that the Appellant had filed the Appeal on 30.01.2020 i.e. on the 45 days from the date of receipt of order, therefore, the Appeal is within limitation.

5. On the other hand, the Ld. Counsel for the Respondent No. 1 in his reply affidavit in para 2 it is stated that the Appellant wants to establish the fact that the impugned order dated 16.10.2019 was received by him on 16.12.2019 instead of 14.12.2019, which he alleged in his application for consideration. The limitation period to file the present Appeal commenced from the day his Counsel received the said order and not from the day he received the Courier sent by his Counsel. The tracking report of the consignment further confirms the fact that the copy of the order was dispatched on 11.12.2019 therefore, the Appellant cannot blame anybody else for his negligence and filed the present Appeal beyond the period of 45 days.

6. After hearing the parties and gone through the record, we are of the view that the Appellant has filed the present Appeal beyond the period of 45 days, therefore, I.A. No. 652 of 2020 and 247 of 2022 are hereby dismissed. Accordingly, the instant Appeal hit by limitation, is also dismissed.

[Justice Anant Bijay Singh]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

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