

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

I.A. No.7598 of 2024

In

Company Appeal (AT) (Insolvency) No. 2131 of 2024

[Arising out of the Order dated April 30, 2024, passed by the 'Adjudicating Authority' (National Company Law Tribunal, New Delhi Bench, Court-V) in IA 4383 of 2021 in CP (IB) No. 2039/2019]

IN THE MATTER OF:

Dhanlaxmi Bank Limited

Branch Office:

E-108, 109, Lajpat Nagar-1,
New Delhi-110024

Registered Office:

Dhanlaxmi Bank Ltd., Dhanlaxmi Buildings,
Naickanal, Thrissur, Kerala-680001

...Appellant

Versus

1. Ritu Rastogi, Resolution Professional

Having Address at,

D-1 B, 9 A, D Block,

Janak Puri, New Delhi,

National Capital Territory of Delhi - 110058

...Respondent No.1

2. Sumit Kumar Khanna

Having Address at,

D-153, Sector 40, Noida,

Uttar Pradesh-201303

...Respondent No.2

3. Suraksha Asset Reconstruction Limited

Having Registered office at,

A Wing, 20th Floor, Naman Midtown,

Senapati Bapat Marg, Elphinstone Road,

Mumbai – 400013

...Respondent No.3

4. Suraksha ARC Trust

Having Address at,

A Wing, 20th Floor, Naman Midtown,

Senapati Bapat Marg, Elphinstone Road,

Mumbai – 400013

...Respondent No.4

5. Mr. Naveen Chaudhri

Having Address at:

D-6, Sector-31, Noida,

Uttar Pradesh-201305

...Respondent No.5

Present:

For Appellant : Mr. Abhishek Anand, Ms. Shankari Mishra, Mr. Karan Kohli and Ms. Palak Kalra, Advocates.

For Respondent : Ms. Eshna Kumar and Mr. Harpreet Malhotra, Advocates for RP.
Mr. Sumesh Dhawan, Ms. Vatsala Kak and Mr. Raghav Dembla, Advocates for SRA.
Mr. Chitranshul A. Sinha, Mr. Sagar Bansal, Ms. Pallavi, Mr. Shivam Shorewala, Ms. Rakshita Bhargava and Ms. Akansha, Advs. for R-3 & R-4.

ORDER
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

I.A. No.7598 of 2024 This is an application filed under Rule 11 and 14 of the National Company Law Appellate Tribunal Rules, 2016 for condonation of 104 days delay in refiling the appeal.

2. The condonation of refiling delay Application was filed in the Appeal filed against the impugned order dated 30.04.2024 passed by the Ld. Adjudicating Authority in IA 4383/ND/2021 in CP (IB) No. 2039/ND/2019 before NCLT, New Delhi, Bench V under Section 61(1) of the Code. It is claimed by the Appellant that:

“3... It is further stated that the present Appeal was filed well within the time frame prescribed under section 61(2) of the Insolvency and Bankruptcy Code, 2016.

4. It is respectfully submitted that there has been a delay of 104 days in refiling the captioned Appeal. The counsel handling the matter, Adv. Ms. Jyoti Khurana, was unable to file the Appeal as her father fell seriously ill in September and, unfortunately, suffered a brain stroke on 29.09.2024, resulting in paralysis. Due to these circumstances, she was unable to attend to the refiling in a timely manner.

5. Additionally, the Appeal is a substantial document, and the process of gathering all necessary documents and addressing the defects pointed out by the Registry took considerable time.

Moreover, a technical issue at the Registry, combined with the Summer vacation in June, further delayed the refiling of the Appeal within the stipulated time frame. If the Application is not allowed, the Appellant will suffer irreparable loss and injury. That the present Application is made Bonafide and in the interest of justice. The Learned Counsel for the Appellant prays for condonation of delay.”

3. Per contra, the Learned Counsel for the Respondent has vehemently opposed the condonation of delay. It is claimed that the impugned order was passed on 30.04.2024, e-filing of appeal was done on 13.06.2024; thereafter the last defects were notified on 04.07.2024 some time in the month of July and from July till end September, there was no refiling after attending to the defects. The claim of the Appellant that there was a medical emergency with the father of Advocate of the Appellant arose some time end of September, 2024. The Appeal has been filed not by just one advocate but by two advocates on record and either of them could have attended to the defects, which was not done timely leading to a delay of 104 days. There is a total silence from Appellant side for the period from July till September beginning. The Appellant has not able to provide any cogent reasons explaining why no reasonable steps were taken from 11.07.2024 onwards upto the month end of September, 2024, when the father of the Counsel for the Appellant suffered from brain stroke on 29.09.2024. The Appellant has failed to give any cogent reasons for explaining undue delay caused in refiling of this appeal. It is contended that sufficient cause has not been shown by the Appellant. The Respondent seeks to dismiss the application for condonation of delay and also rejecting the memorandum of appeal.

4. Heard both sides and perused the materials on record. Both sides have extensively cited various judgments which are being noted in subsequent paragraphs.

5. The Appellant has relied upon various judgments to bring home the point that this Appellate Tribunal is empowered to condone delay in refiling the appeal. It has relied upon the following judgments:

- ***Indian Statistical Institute Vs. Associated Builders & Ors. (1978) 1 SCC 483,***
- ***Nishant Bhutada Vs. Tata Motors Ltd. & Ors. in Competition Appeal (AT) No. 9 of 2024 & I.A. No. 4958, 5288 of 2024 decided on 13.12.2024, and***
- ***V.R. Ashok Rao and Ors. vs. TDT Copper Ltd. 2022 SCC OnLine NCLAT 3516 (5 Member's Bench)***

There is no quarrel to the argument that this Tribunal is empowered to condone the delay in refiling the appeal, but as per statutory limitations as discussed in subsequent paragraphs. So, reliance on these judgments is not being questioned subject to statutory limitations.

6. The Appellant has also cited various judgments which established the precedent for condoning delay in refiling appeals when sufficient cause has been established. These judgments cited are:

- ***People's All India Anti-Corruption and Crime Prevention Society (IP) in Competition App. (AT) No. 46 of 2022 & IA No.3685 of 2022,***

- ***Maharashtra State Power Electricity Distribution Company Ltd. Vs. Shree Diddhi Vinayak Ispat Pvt. Ltd. in Company Appeal (AT) (Insolvency) No.1133 of 2023 & IA No.3946, 3893 of 2023,***
- ***Tecpro Systems Ltd. Vs. NTPC Ltd. in Company Appeal (AT) (Insolvency) No.1343 of 2023,***
- ***Armour Security (India) Pvt. Ltd. Vs. Ambience Pvt. Ltd. in Company Appeal (AT) (Insolvency) No.1270 of 2023 & IA No.4373 of 2023,***
- ***Vipan Mittal Vs. Nipan Bansal, Resolution Professional of KSM Spinning Mills Ltd. in Company Appeal (AT) (Insolvency) No.1350 of 2023 & IA No.4743, 4790 of 2023, and***
- ***Jagadish Vs. Oyo Hotels & Homes Pvt. Ltd. in Company Appeal (AT) (Insolvency) No.1408 of 2022 & IA No. 4397, 4374 of 2022.***

These are various judgments with respect to the facts and circumstances of those cases and in which sufficient cause has been noted in each such judgment and it is not helpful for the Appellant in the specific circumstances of the present case.

7. The Appellant has also relied upon two judgments of Hon'ble Supreme Court that an innocent litigant cannot be penalised for mistake of the counsel. These are ***Rafiq and Another Vs. Munshilal and Another in (1981) 2 SCC 788*** and ***Goswami Krishna Murarilal Sharma vs. Dhan Prakash and Ors. in (1981) 4 SCC 574***. These judgments are peculiar to the facts and circumstances of those cases. In the present case several factors go against the Appellant. Firstly, there was total silence from July till end September for

rectification of defects. Secondly, the father of the Advocate fell ill in end September and prior to that there was sufficient time for rectification of defects. Furthermore, there were other Advocates on record mentioned in the Appeal Paper Book, who could have done the rectification, but the Appellant has been negligent and non-serious in prosecuting the appeal.

8. The Appellant has also relied on judgment of the Hon'ble Supreme Court in **Collector, Land Acquisition, Anantnag & Anr. Vs. MST Katiji & Ors. in (1987) 2 SCC 107**, that every day's delay must be explained in a rational and pragmatic manner. In the present case, this judgment is of no help to the Appellant as it has not been able to explain each days delay in a rational and pragmatic manner.

9. The Appellant has also relied upon two judgments of Hon'ble Supreme Court in **B.T. Purushothama Rai Vs. K.G. Uthaya & Ors. in (2011) 14 SCC 86** and **Rani Kusum (Smt.) Vs. Kanchan Devi (Smt.) & Ors. in (2005) 6 SCC 705**, wherein it has relied on the principle that procedural laws should not defeat substantive justice. It is to be noted that IBC is a self-contained code and has a time bound mechanism for all proceedings to be completed. It prescribes certain time limit within which the appeal has to be filed and if it is not filed within that time period, the Appellate Authority does not have any statutory power to condone the delay beyond that time period. This has been well settled in various judgments as has been noted by us in subsequent paragraphs.

10. The Respondent relies upon judgement of this Appellate Tribunal dated 06.12.2024 in **Govardhan Nirman Pvt. Ltd. v. Vaibhav Khandelwal and Anr., Company Appeal (AT)(Ins.) 1524 of 2024** wherein it was categorically observed that the delay in refiling can be condoned only if the Appellate Tribunal is satisfied that there was reasonable and justifiable cause for not refiling the appeal on time. Moreover, the question of condoning any delay in refiling would have to be seen in the context of the explanation offered to find out whether the reasons cited were beyond the control of the Appellant and all efforts were made to overcome the delay with due diligence and utmost despatch. The relevant extract of this Judgment is reproduced herein below 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.

9. The question of condoning any delay in refiling would have to be seen in the context of the explanation offered to find out whether the reasons cited were beyond the control of the Applicant and all efforts were made to overcome the delay with due diligence and utmost despatch. There is no hard and fast rule to measure due diligence and due despatch. However, due diligence and despatch can always be assessed from how a prudent person would act or can be expected to act in a timely manner in similar circumstances....”

11. Learned Counsel for the Respondent No.3 and 4 have relied upon the judgement of this Hon’ble Tribunal in **Goverdhan Nirman Pvt. Ltd. vs.**

Vaihav Khandelwal & Anr. Company Appeal (AT) (Insolvency) No.1524

of 2024, which a consistent stand has been taken by this Tribunal that

“since the time of intimation of defects, the Applicant was prevaricating over the defects for nearly four months. No credible, genuine endeavours were made by the Applicant to correct the defects. This shows that the Applicant was casual, callous, careless and negligent in refiling the appeal on time and such inaction or dereliction cannot be countenanced. We are of the view that the Applicant cannot be shown indulgence keeping in view that the IBC proceedings have stringent timelines to be followed and the adjudicatory proceedings have to be completed in a prompt, expeditious and time bound manner.”

12. Learned Counsel for the Respondent No.3 and 4 have also relied upon the judgement of this Hon’ble Tribunal in ***Employees Provident Fund Organization Vs. H L Buildwell Pvt. Ltd. in IA No.3202 of 2024 in Company Appeal (AT) (Insolvency) No.1700 of 2024***, has held that:

“....

11. Under IBC, CIRP is envisaged to be a time-bound process which has to be completed in 330 days. Allowing refiling delay of 205 days without convincing reasons would tantamount to encouraging parties to play havoc with timelines and put unwarranted speed-breakers in the resolution process which does not commend us. In the given circumstances, we are reluctant to allow the Applicant the luxury of 205 days delay in refiling in IBC proceedings.”

13. Furthermore, in accordance with National Company Law Appellate Tribunal Rules, 2016, the Appellant should have cured the defects within a period of 7 days i.e., on or before 11.07.2024 from the date of notification of defects by the Registry. The relevant extract of the 2016 rules is reproduced herein below:

“26. Endorsement and scrutiny of petition or appeal or document

(2) If, on scrutiny, the appeal or document is found to be defective, such document shall, after notice to the party, be returned for

compliance and if there is a failure to comply within seven days from the date of return, the same shall be placed before the Registrar who may pass appropriate orders.

(3) The Registrar may for sufficient cause return the said document for rectification or amendment to the party filing the same, and for this purpose may allow to the party concerned such reasonable time as he may consider necessary or extend the time for compliance.

(4) Where the party fails to take any step for the removal of the defect within the time fixed for the same, the Registrar may, for reasons to be recorded in writing, decline to register the appeal or pleading or document.”

14. It is contended that Rule 14 of the NCLAT Rules, 2016 which deals with Power to exempt¹, provides a mandate to this Hon'ble Appellate Authority to exempt compliance with any requirement of the rules prescribed only in situations where sufficient cause has been shown, in the interest of justice.

15. To condone the delay, the Appellant has to carefully explain each day's delay in filing/re-filing the appeal. In the present case, the only reasoning provided to explain the delay is the fact that the father of the counsel handling the matter fell ill in September and suffered a brain stroke on 29.09.2024. However, the Appellant has failed to provide any explanation whatsoever for not taking any steps from 11.07.2024 all the way till 31.08.2024.

16. In the present case, the impugned order was passed on 30.04.2024. The Appeal was e-filed on 13.06.2024 which was well within period of 45 days including condonation of delay. However, when the defects were notified by the NCLAT registry on 04.07.2024, the Appeal was finally refiled on

¹ **Rule 14 of the NCLAT Rules, 2016**

Power to exempt. - The Appellate Tribunal may on sufficient cause being shown, exempt the parties from compliance with any requirement of these rules and may give such directions in matters of practice and procedure, as it may consider just and expedient on the application moved in this behalf to render substantial justice.

23.10.2024 after rectification of defects, with a delay of 104 days. From the explanation we find no reasons except for medical condition with the father of one of the Advocates which occurred sometime on end September. There is total silence from July to end September, 2024. Explanation provided doesn't inspire much confidence. We don't find the reasons explained at paras 3, 4, 5 reproduced earlier to be sufficient to condone the delay in refiling. We find that the Appellant has been negligent in prosecuting the refiling, which in turn indicates lack of diligence of the Appellant or its bona fides. The catena of judgements as noted in previous paragraphs support the case of the Respondent and go against the Appellant. In the facts and circumstances, we therefore don't find sufficient justification to condone the refiling delay of 104 days in time bound IBC proceedings.

Orders

17. Such delay of 104 days in refiling is not reasonable and justifiably explained. The application is therefore dismissed. Consequently, Company Appeal (AT) (Insolvency) No. 2131 of 2024 is also dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

**New Delhi.
February 25, 2025.**

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