

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

I.A. No. 8762 of 2024

in

Company Appeal (AT) (Ins) No. 2345 of 2024

IN THE MATTER OF:

Ramkesh Basist

...Appellants

Versus

Canara Bank & Anr.

...Respondents

Present:

For Appellant : Mr. Deepak Somani, Advocate.

For Respondents : Mr. Rohit Arya, Advocate for Respondent No. 1.

Mr. Saurabh Kushwaha, Advocate.

WITH

I.A. No. 213 of 2025

in

Company Appeal (AT) (Ins) No. 73 of 2025

IN THE MATTER OF:

Krishan Pal Singh

...Appellants

Versus

Canara Bank & Anr.

...Respondents

Present:

For Appellant : None.

For Respondents : Mr. Rohit Arya, Advocate for Respondent No.1.

O R D E R

(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present application IA No. 8762 of 2024 and IA No. 213 of 2025 are applications praying for condonation of 240 and 190 days delay respectively in

refiling of the Company Appeal (AT)(Ins) Nos. 2345 of 2024 and Company Appeals(AT) (Ins) No. 73 of 2025.

2. Notices were issued in respect of the above IAs by this Tribunal vide order dated 24.02.2025 which reads as under:-

“24.02.2025: I.A. No. 8762 of 2024 & 213 of 2025:

These are the applications praying for condonation of delay for 240 days and 190 days’ respectively in refiling the appeal.

2. Issue notice on the applications of refiling delay.

3. Let Reply be filed within two weeks.

4. Rejoinder, if any, may be filed within two weeks, thereafter.

5. Appellant submits that he has filed an additional-affidavit dated 07.02.2025.

6. List the application on 28.03.2025.”

3. The Applicant has offered the following explanation in IA No. 8762 of 2024 justifying the refiling delay which is as extracted below:-

“2. That the appeal was filed through e-portal of this Hon’ble Tribunal. That for the first-time defects were raised by the registry on 29.02.2024, the same were cured by his clerk. However, the registry again raised defects on 28.03.2024. And the same were also cured at the earliest. Moreover, in the month of July 2024, the office of the counsel for the appellant had shifted to another location and therefore due to geographical transition, several files went misplaced including the file pertaining to the present appeal. The re-construction included collating all the annexures, entire tribunal record, other documents and naturally this exercise consumed some time, the reconstruction was successfully completed on 02.07.2024. Since the original records of the case which was before Tribunal were improperly scanned and some of them were illegible and therefore, the same were required to be

scanned and digitalized again. Although those things were done but the registry had raised defects in bits and pieces, and as and when the defects were marked, the same were cured despite the fact that re-constructing the entire record in form of digitalized paper book for the consumption of this Hon'ble Tribunal took some time. However, in the interregnum, the clerk of the counsel for the appellant was blessed with a child and hence owing to his fatherly obligation he could not effectively join the office. The defects were cured in the interregnum by the counsel for the appellant however owing to the gruelling schedule, he could not coordinate with the registry for further process. However, the counsel for the appellant had endeavored to keep up with the curing of defects. Although, despite best efforts, the re-filing suffered remote delay."

Identical explanation for delay condonation has been offered by the Applicant in I.A. No 213 of 2025 except for the fact that in this case the first time raising of defects by the Registry has been shown as 01.03.2024 instead of 29.02.2024 as depicted in I.A. No 8762 of 2024.

4. Both Applicants have also filed an additional affidavit each elaborating the steps taken by them to correct the defects pointed out by the Registry. When we look at the contents of the additional affidavit, we find that after depicting a tabular chart narrating the steps taken by the Appellant to cure the defects, the Applicant has also offered explanation to show that suitable steps had been taken to ensure that unreasonable time was not consumed in curing the defects. The explanation offered in the additional affidavit is as extracted below:

"Events explaining raising of defects and their immediate removal.

5. The defect sheet dated 28.03.2024 shows in total 13 defects in the appeal. The same were cured and refiled on 04.04.2024. However

again on 08.04.2024, the registry flagged same defects that were already cured and refiled. The clerk of the counsel for appellant had approached the registry to satisfy them that all the defects are repetitive in nature which are already cured. However he was assured that on refiling the same, the appeal will be made defect free. The appeal was refiled on 10.04.2024. On the same day, the clerk of the counsel for appellant had approached the registry to get the appeal defect free. The registry had assured that the appeal will be made defect free. However, the registry again raised defects on 06.05.2024, the perusal of the defect sheet reflects that the defects are repetitive. Having said that, the clerk of the counsel for appellant had cured those defects which were belatedly raised. And the appeal was refiled on the same day itself i.e. 08.08.2024. Another round of defects raising and its removal had taken place on 25.08.2024 and 30.08.2024. Thereafter on 09.09.2024, again repetitive defects were raised by the registry wherein despite the appeal being properly paginated, the defect of pagination was raised. The clerk of the counsel for appellant had yet again approached registry to make satisfy them as to the removal of said defect. After which the clerk was asked to refile the appeal as it is. Pursuant to which the appeal came to be refiled on 14.09.2024. On 24.09.2024, the defect sheet was issued by the registry however there were no defects mentioned in the said sheet. Despite their being no defect, the appeal was not made defect free by the registry. The same issue was flagged with the registry and the appellant was again asked to refile the appeal to get it listed. The same was done on 05.10.2024.

Earlier, no defect was raised in relation to the Interlocutory applications ["IA"] preferred with the present appeal. However, on 22.10.2024, defects in relation to LA seeking condonation of delay in refiling were raised. The same were cured and refiled on same day and ultimately the appeal came to be defect free on 16.12.2024.

6. That the remote gap between raising of defects and curing of the same were for following broad reasons:

a. In the month of July 2024, the office of the counsel for the appellant had shifted to another location and therefore due to geographical transition, several files went misplaced including the file pertaining to the present appeal. The re-construction included collating all the annexures, entire tribunal record, other documents and naturally this exercise consumed some time, the reconstruction was successfully completed on 02.07.2024. Since the original records of the case which

was before Tribunal were improperly scanned and some of them were illegible and therefore, the same were required to be scanned and digitalized again. Although those things were done but the registry had raised defects in bits and pieces, and as and when the defects were marked, the same were cured despite the fact that re-constructing the entire record in form of digitalized paper book for the consumption of this Hon'ble Tribunal took some time.

b. However, in the interregnum, the clerk of the counsel for the appellant was blessed with a child and hence owing to his fatherly obligation he could not effectively join the office in the month of august-September 2024. The defects were cured in the interregnum by the counsel for the appellant however owing to the gruelling schedule, he could not coordinate with the registry for further process.”

The minor difference in the tabular charts in the additional affidavits of the two Applicants is that while the date of closure of defects has been shown as 23.10.2024 and 16.12.2024 in I.A. No 8762 of 2024 and I.A. No 213 of 2025.

5. Reply has also been filed by the Respondent to the refiling delay condonation application of both the Applicants. In their reply, the Respondent has contended that the explanation furnished by the Applicants for delay in refiling is vague, unsubstantiated and insufficient. On the ground that relocation of the office of the legal counsel had caused the delay, submission was pressed that no evidence has been placed on record to show shifting of the office of their legal counsel nor any evidence provided regarding the purported reconstruction of the case file or digitization of the records. It has also been submitted that the birth of a child of the clerk of the legal counsel which has been raised by Applicants as ground of delay also cannot be a valid legal ground for justifying procedural non-compliance and that the counsel should have made alternate arrangements or filed the same personally if they were

genuinely serious about filing the application on time. Submission has also been pressed that the failure to cure the defects in time reflects lack of diligence and that there was no bonafide or compelling reasons to condone the refiling delay of 240 days.

6. We have heard the learned counsels of both parties and perused the records carefully.

7. It is well recognized that leniency is shown while considering requests for condonation of delay in refiling. We also have no quarrel with the well settled proposition that refiling delay is not subject to rigorous scrutiny. Be that as it may, there is a need to strike a semblance of balance between meeting the ends of justice for the litigant on the one hand and meeting the mandate of timeliness of insolvency resolution framework as envisaged in the self-contained and special enactment, namely, the Insolvency and Bankruptcy Code (IBC). We would therefore like to test the various grounds attributed for the delay on the parameters of reasonableness so as not to disturb the harmonious balance of the objective of time-bound resolution of IBC is not eroded while at the same time ensuring that the interest of the competing parties and their quest for justice does not stand to suffer.

8. When we look at the material on record, we find that defects were raised ten and nine times in I.A. No 8762 of 2024 and I.A. No 213 of 2025 respectively by the Registry and most of these defects were largely routine and minor in nature. It is the case of the Applicant that on each occasion that the Registry

pointed out defects, the same were cured within 7 days of the defects being raised. While we find that it is more or less correct that the defects were cured each time within a maximum of 10 days except once, nonetheless, one cannot lose sight of the fact that defects had to be pointed out on numerous occasions which testify that the defects were either not being cured or cured improperly in a fragmented manner. When we peruse the defect list pointed out by the Registry, we find that the defects indicated were minor in nature like defect in book marking, presence of blank pages, absence of name of Respondents, pagination defects etc. We also notice that same defects were being pointed out by the Registry repetitively. This shows that the defects were not being cured properly compelling the Registry to notify the same defects over and again. It is beyond our comprehension as to why the exercise undertaken for correction of such routine defects took such a long time when the defects notified prima facie appear free of undue complexities. This clearly shows that the Applicant was careless and negligent in making timely corrections. Such lack of earnestness on the part of the Applicants and their counsel does not commend us.

9. We also notice that it has also been admitted by the Applicant that on one occasion when defects were pointed out on 22.04.2024 and 06.05.2024 in I.A. No 8762 of 2024 and I.A. No 213 of 2025 respectively, nearly four month time got consumed to correct these defects. Submission was pressed that this delay was caused because of the birth of a child of the clerk employed in the office of the legal counsel. This explanation fails to impress us. When the process of refiling had already been so delayed, it was incumbent on part of

both the litigant and for the counsel to ensure that no further time was lost in the process of refiling the appeal. The birth of a child of the clerk employed in the office of the legal counsel cannot be a valid ground for justifying refiling delay as nothing prevented the counsel from making alternative arrangements in the given circumstances when a lot of delay had already been caused. Therefore, the ground raised about the absence from work on the part of the clerk of the counsel because of birth of his child clearly reflects lack of seriousness on the part of both the Applicant as well as their counsel to remove the defects in a timely manner.

10. Another cause for delay was that the office of the legal counsel of the Applicant was translocated during this period and in the process several files got misplaced and the reconstruction process took time. However, on taking a close look at the explanation given, we find a discrepancy in this statement. While it has been stated that the office shifting took place during July 2024, the same statement also states that the file reconstruction work stood “successfully completed on 02.07.2024” as produced at para 3 above. When by their own admission, the exercise of file reconstruction had already been completed on 02.07.2024, we fail to understand how the process of office-shifting in July 2024 could have emerged as a cause of delay. We have therefore no hesitation in holding that this ground is a fabricated defence which clearly lacks merit. In our considered view, the plea taken by the Applicant that the relevant files of the appeal had got misplaced lacks substance.

11. We have no quarrel with the well-established principle that lapse on the part of a lawyer or his staff should not prejudice the client. Be that as it may, even if the delay in curing the defects was occasioned due to certain difficulties at the end of the legal counsel, this by itself cannot be a ground to allow waiver of such a prolonged delay in refiling since the litigant cannot shy away from shouldering the mantle of responsibility of being vigilant on his own part to sort out procedural compliances in a timely manner particularly when the appeal has been initiated at their instance. However, the Applicants have been found to be clearly wanting in showing the requisite level of alacrity and promptitude in clearing the defects. Any serious litigant would have been more careful and vigilant in removing the defects on time. When this applicant on his own choosing did not act with due diligence and dispatch to remedy the defects pointed out to it by the Registry within a reasonable period of time, it is a clear case of negligence and callousness.

12. We are therefore of the considered view that the delay in the instant case was not caused by reasons beyond the control of the Applicant but manifests lack of earnest and *bonafide* efforts made to correct the defects. Condonation of refiling delay of 240 and 190 days without sufficient basis, if allowed, would clearly vitiate the mandate for time-bound resolution envisaged under IBC. As time is of essence in insolvency proceedings, condonation of refiling delay on the basis of such unsound and feeble grounds cannot be encouraged. The Applicants have failed to effectively demonstrate reasonable grounds to explain the refiling delay. This Tribunal is not satisfied that the reasons offered to

explain the delay were beyond the control of the Applicant or that the Applicant had shown the right modicum of due diligence in curing the defects.

13. We are of the considered view that sufficient ground has not been made out warranting the condonation of 240 and 190 days delay in refiling of both the appeals. Both the refiling delay applications-I.As No 8762 of 2024 and No. 213 of 2025 are rejected. Consequently, both memos of appeal and all related I.As stand rejected.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi

Date: 11.08.2025

Abdul/ Harleen