NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 304 of 2024
& I.A. No. 825, 1024 of 2024

IN THE MATTER OF:

Sahara Export **...Appellant**

Versus

About U Fashions Pvt. Ltd. **...Respondent**

Present:

For Appellant	**:**	Mr. Narender Sorout, Advocate.
For Respondent	**:**	Ms. Neha Agarwal, Advocate.

J U D G M E N T
(Hybrid Mode)

[Per: Justice Mohd. Faiz Alam Khan, Member (Judicial)]

I.A. No. 825 of 2024- Instant application has been moved by the appellant requesting to condone the delay of 91 days occurred in refiling of the CA (AT) (Ins) No. 304 of 2024.

2. Heard Ld. Counsel for the applicant/appellant as well as Ld. Counsel appearing for the Respondents and perused the record.

3. Ld. Counsel for the applicant/appellant submits that the appeal against the impugned order dated 11.08.2023 was submitted online on 25.09.2023 and certain defects were raised by the Registry and communicated to him on 04.10.2023, however he could not remove those defects within the stipulated time due to logistical constraints and the defects could only be removed till 10.01.2024, whereon he has refiled the appeal and has also moved an application for condonation of delay supported by his affidavit.

4. It is further submitted that the delay which had occurred in refiling the appeal is neither intentional nor deliberate on the part of the appellant or his counsel and therefore, the same be condoned.

5. Ld. Counsel for the Respondent on the other hand submits that delay condonation application moved by the applicant is though supported by an affidavit, but no explanation of delay has been given either in the application or in the affidavit to justify the delay of 91 days and thus the delay has not been explained at all.

6. It is vehemently submitted that though the matter of condonation of delay, which has occurred in refiling of the appeal is necessarily between the appellant and the court (Appellate Tribunal) but in order to condone the same, sufficient and reasonable explanation must be given and in absence of the same the condonation of delay occurred in refiling the appeal may not be condoned and despite opportunity was available to the appellant she has not filed any better affidavit and thus the delay condonation application is liable to be rejected.

7. Ld. Counsel for the Respondent has relied on the following orders passed by the coordinate Benches of this Appellate Tribunal, placed as under:

(a) CA Ramchandra Dallaram Choudhary, Liquidator of Anil Ltd. vs. Adani Infrastructure & Developers Pvt. Ltd., I.A. No. 8709 of 2024 in CA (AT) (Ins) No. 2316 of 2024.

(b) Dhanlaxmi Bank Ltd. vs. Ritu Rastogi (RP), I.A. No. 7598 of 2024 in CA (AT) (Ins) No. 2131 of 2024.

(c) Anup Kumar Liquidator of Independent TV vs. Ministry of Information and Broadcasting & Ors., I.A. No. 6903 of 2024 in CA (AT) (Ins) No. 1913 of 2024.

(d) Employees Provident Fund Organization vs. HL Buildwell Pvt. Ltd., I.A. No. 3202 of 2024 in CA (AT) (Ins) No. 1700 of 2024.

In all these cases the delay condonation application of the applicant/appellant, filed to condone delay occurred in refiling, was rejected in absence of sufficient reasons.

8. We have heard Ld. Counsel for the parties and perused the record.

9. Perusal of the record would reflect that initially the appeal was e-filed on 25.09.2023. The Registry thereafter has noticed certain defects and these defects were admittedly intimated to the Ld. Counsel for the appellant on 04.10.2023. It is also reflected that the appellant after removing the defects has re-filed the appeal on 10.01.2024 and has also moved an application for condonation of 91 days' delay, which vide order of the Ld. Registrar dated 09.02.2024, was directed to be placed before the tribunal along with the appeal.

10. It appears to be an admitted fact to the parties that delay of 91 days has occurred in refiling the appeal and the defects were admittedly intimated to the appellant by the Registry on 04.10.2023. The main objection of Ld. Counsel for the Respondent, pertaining to the application moved by the appellant for condonation of delay occurred in refiling, is that in the application no ground at all or any reason, what to say of sufficient ground/reason has been given for the purpose of explaining the delay and thus the application, as it is, may not be allowed.

11. Perusal of the application moved by the appellant would reveal that the grounds which have been taken therein are that *'due to the actual delay occurred in the efforts of removing the defects were due to the logistical constraints and the same is not intentional or deliberate.*, We asked Ld. Counsel to clarify the stand taken by him on which he answered that he has filed the affidavit in support of the application. For convenience the relevant part of the application moved by the applicant/appellant for condonation of delay in refiling is reproduced, here under:

> *1.That in the abovementioned matter, I had submitted the appeal online on 25.09.2023. Thereupon in the pursuit of removing defects from the appeal as advised by the learned office of this Appellate Tribunal it took 91 days' till 10.01.2024 to remove the defects.*
>
> *2. That this delay of 91 days is neither intentional nor deliberate on the part of the appellant or her counsel but due to the actual delay in the efforts of removing the defects due to the logistical constraints.*
>
> *3.That this is the utmost humble pray that the refiling be allowed in the interest of the Natural justice.*

12. Perusal of the aforesaid application would conspicuously show that no justification or any explanation of the delay of 91 days has been stated therein. What has been stated in the application is that the delay of 91 days is neither intentional nor deliberate on the part of the appellant or her Counsel and the same has occurred due to logistical constraints.

13. We are conscious of the fact that we are dealing with an application for condonation of delay which has occurred in refiling of the appeal and a liberal approach must be adopted in such cases. A five Member Bench of this Appellate Tribunal in ***V.R. Ashok Rao & Ors. vs. TDT Copper Ltd.,*** I.A. No. 2095 of 2022 in CA (AT) (Ins) No. 780 of 2022 with ***Stressed Assets Stabilization Fund vs. Delta International Ltd.,*** I.A. No. 2211 of 2022 in CA (AT) (Ins) No. 823 of 2022 with ***A'XY Kno Capital Services Pvt. Ltd. vs. Rattan India Power Ltd.***, I.A. No. 2499 of 2022 in CA (AT) (Ins) No. 913 of 2022 with ***Bhagwati Singh vs. Incab Industries Ltd.,*** I.A. No. 2513 of 2022 in CA (AT) (Ins) No. 914 of 2022 while considering the issue has opined, after considering the relevant cases on the subject that the condonation of delay in refiling/representation has to be examined on the case to case basis and the criteria for considering an application for condonation of delay under Section 5 of the Indian Limitation Act may not be strictly applicable when question of condonation of delay in refiling arises. It is to be seen as to whether any justifiable cause for delay has been given? It is also held therein that the time period allowed for removal of the defects is only directory.

14. It may be recalled that defects as highlighted by the registry are required to be removed within the time stipulated in Rule 26 of the NCLAT Rules i.e. within 7 days. Rule 26 would be relevant for our discussion and the same is reproduced as under:

*"**26. Endorsement and scrutiny of petition or appeal or document**. -*
(1) The person in charge of the filing-counter shall immediately on receipt of appeal or document affix the date and stamp of the Appellate Tribunal thereon and also on the additional copies of the index and return the acknowledgement to the party and he shall also affix his initials on the stamp affixed on the first page of the copies and enter the particulars of all such documents in the register after daily filing and assign a diary number which shall be entered below the date stamp and thereafter cause it to be sent for scrutiny.

(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.

Rule 11 and 14 of the NCLAT are also important and are also reproduced hereunder: -

"***Rule 11: Inherent powers.*** *- Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Appellate Tribunal to make such orders or give such directions as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Appellate Tribunal."*
"***Rule14: 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."*

15. Perusal of these rules, would reveal that if on scrutiny the appeal is found to be defective the same would be returned for removal of the defects and if there is any failure to comply the same within seven days from the date of return the same shall be placed before the Ld. Registrar of this Appellate Tribunal who may pass appropriate orders. The Registrar may provide reasonable time to the party even beyond the period of 7 days to comply with the direction of removal of defects and thereafter also on a sufficient cause shown, the delay which had occurred in refiling of the appeal may be condoned by appellate tribunal.

16. Ld. Counsel for the Respondent has placed before us many cases disposed of by coordinate Benches of this Appellate Tribunal wherein the application for condonation of delay occurred in refiling the appeal has been rejected when no sufficient explanation or reasonable cause of such delay has been shown in the application. All these cases have been placed herein before.

17. We are of the considered view, that though the application for condonation of delay in refiling may not be tested on the anvil of the settled principles of disposal of an application for condonation of delay moved under various provisions of the Indian Limitation Act but the applicant of such cases would remain under an obligation to show sufficient and reasonable cause, which in the opinion of a normal prudent person may justify the delay occurred in rectification of defects and refiling of appeal.

18. In the instant case, delay of 91 days in refiling has occurred and absolutely no explanation what to say of any sufficient explanation has been stated by the appellant/applicant in his application and only it is stated in

the application that the delay which has occurred is not deliberate and intentional and has occurred due logistical constraints. At this stage we have to consider as to whether when the applicant has not at all explained the delay of 91 days occurred in refiling the appeal, even then this tribunal would be under an obligation to adopt a liberal approach and condone the delay even on insufficient grounds or on no grounds, in the guise of providing substantial justice by deciding the *lis* on merits.

19. It may also to be recalled that the delay condonation application moved in any other civil or criminal proceedings may not be equated with any such application moved in connection with the cases under Insolvency and bankruptcy Code, 2016. Perusal of various provisions of the Code would reveal that time is the essence of this Code. Let us have a glance on the scheme of the Code.

> Section 12 of the IBC provides as under: -
> *"12. Time-limit for completion of insolvency resolution process. --(1) Subject to Sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.*
> *(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of sixty-six per cent of the voting shares.*
> *(3) On receipt of an application Under Sub-section (2), if the Adjudicating Authority is satisfied that the subject-matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days:*

> *Provided that any extension of the period of corporate insolvency resolution process under this Section shall not be granted more than once."*

Thus the time line of 190 days, which may be further extended by 90 days more, has been provided for completion of insolvency resolution process.

20. Hon'ble Supreme Court in **Innoventive Industries Ltd. vs. ICICI Bank and Ors., MANU/SC/1063/2017,** in order to highlight the importance of time line enshrined in the IBC, quoted the statement of objects and reasons of the IBC, relevant part of the same is reproduced here under: -

> *"12. The Insolvency and Bankruptcy Code, 2016 has been passed after great deliberation and pursuant to various committee reports, the most important of which is the report of the Bankruptcy Law Reforms Committee of November, 2015. The Statement of Objects and Reasons of the Code reads as under:*
>
> *STATEMENT OF OBJECTS AND REASONS*
> *2. The objective of the Insolvency and Bankruptcy Code, 2015 is to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals* ***in a time bound manner for maximization of value of assets of such persons****, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the priority of payment of government dues and to establish an Insolvency and Bankruptcy Fund, and matters connected therewith or incidental thereto. An effective legal framework for timely resolution of insolvency and bankruptcy would support development of credit markets and encourage entrepreneurship. It would also improve Ease of Doing Business, and facilitate more investments leading to higher economic growth and development.* ***(Emphasis Ours)***
> *13. One of the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the object of speeding up of the insolvency process. As per the data available with the World Bank in 2016, insolvency resolution in India took 4.3 years on an average, which was much higher when compared with the United Kingdom (1*

year), USA (1.5 years) and South Africa (2 years). The World Bank's Ease of Doing Business Index, 2015, ranked India as country number 135 out of 190 countries on the ease of resolving insolvency based on various indicia.

16. At this stage, it is important to set out the important paragraphs contained in the report of the Bankruptcy Law Reforms Committee of November, 2015, as these excerpts give us a good insight into why the Code was enacted and the purpose for which it was enacted:

Speed is of essence

Speed is of essence for the working of the bankruptcy code, for two reasons. First, while the 'calm period' can help keep an organisation afloat, without the full clarity of ownership and control, significant decisions cannot be made. Without effective leadership, the firm will tend to atrophy and fail. The longer the delay, the more likely it is that liquidation will be the only answer. Second, the liquidation value tends to go down with time as many assets suffer from a high economic rate of depreciation.

From the viewpoint of creditors, a good realisation can generally be obtained if the firm is sold as a going concern. Hence, when delays induce liquidation, there is value destruction. Further, even in liquidation, the realisation is lower when there are delays. Hence, delays cause value destruction. Thus, achieving a high recovery rate is primarily about identifying and combating the sources of delay.

Objectives

The Committee set the following as objectives desired from implementing a new Code to resolve insolvency and bankruptcy:

1. Low time to resolution.

2. Low loss in recovery.

3. Higher levels of debt financing across a wide variety of debt instruments.

The performance of the new Code in implementation will be based on measures of the above outcomes.

Principles driving the design

The Committee chose the following principles to design the new insolvency and bankruptcy resolution framework:

III. The Code will ensure a time-bound process to better preserve economic value.

8. The law must ensure that time value of money is preserved, and that delaying tactics in these negotiations will not extend the time set for negotiations at the start".

(Emphasis Supplied)

21. In **Arcelor Mittal India Private Limited vs. Satish Kumar Gupta and Ors., MANU/SC/1123/2018** Hon'ble Supreme Court held as under: -

"70. The time limit for completion of the insolvency resolution process is laid down in Section 12. A period of 180 days from the date of admission of the application is given by Section 12(1). This is extendable by a maximum period of 90 days only if the Committee of Creditors, by a vote of 66%2, votes to extend the said period, and only if the Adjudicating Authority is satisfied that such process cannot be completed within 180 days. The authority may then, by order, extend the duration of such process by a maximum period of 90 days (see Sections 12(2) and 12(3)). What is also of importance is the proviso to Section 12(3) which states that any extension of the period Under Section 12 cannot be granted more than once. This has to be read with the third proviso to Section 30(4), which states that the maximum period of 30 days mentioned in the second proviso is allowable as the only exception to the extension of the aforesaid period not being granted more than once.

71. What is important to note is that a consequence is provided, in the event that the said period ends either without receipt of a resolution plan or after rejection of a resolution plan Under Section 31. This consequence is provided by Section 33, which makes it clear that when either of these two contingencies occurs, the corporate debtor is required to be liquidated in the manner laid down in Chapter III. Section 12, construed in the light of the object sought to be achieved by the Code, and in the light of the consequence provided by Section 33, therefore, makes it clear that the periods previously mentioned are mandatory and cannot be extended.

72. In fact, even the literal language of Section 12(1) makes it clear that the provision must read as being mandatory. The expression "shall be completed" is used. Further, Sub-section (3) makes it clear that the duration of 180 days may be extended further "but not exceeding 90 days", making it clear that a maximum of 270 days is laid down statutorily. Also, the proviso to Section 12 makes it clear that the extension "shall not be granted more than once".

22. Hon'ble Supreme Court in **Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta and Ors., MANU/SC/1577/2019** held the time line of completing the CIRP in stipulated days as directory in following words: -

"Thus, while leaving the provision otherwise intact, we strike down the word "mandatorily" as being manifestly arbitrary Under Article 14 of the Constitution of India and as being an excessive and unreasonable restriction on the litigant's right to carry on business Under Article 19(1)(g) of the Constitution.

The effect of this declaration is that ordinarily the time taken in relation to the corporate resolution process of the corporate debtor must be completed within the outer limit of 330 days from the insolvency commencement date, including extensions and the time taken in legal proceedings. However, on the facts of a given case, if it can be shown to the Adjudicating Authority and/or Appellate Tribunal under the Code that only a short period is left for completion of the insolvency resolution process beyond 330 days, and that it would be in the interest of all stakeholders that the corporate debtor be put back on its feet instead of being sent into liquidation and that the time taken in legal proceedings is largely due to factors owing to which the fault cannot be ascribed to the litigants before the Adjudicating Authority and/or Appellate Tribunal, the delay or a large part thereof being attributable to the tardy process of the Adjudicating Authority and/or the Appellate Tribunal itself, it may be open in such cases for the Adjudicating Authority and/or Appellate Tribunal to extend time beyond 330 days.
Likewise, even under the newly added proviso to Section 12, if by reason of all the aforesaid factors the grace period of 90 days from the date of commencement of the Amending Act of 2019 is exceeded, there again a discretion can be exercised by the Adjudicating Authority and/or Appellate Tribunal to further extend time keeping the aforesaid parameters in mind. It is only in such exceptional cases that time can be extended, the general Rule being that 330 days is the outer limit within which resolution of the stressed assets of the corporate debtor must take place beyond which the corporate debtor is to be driven into liquidation."

Thus the time period provided under Section 12 of the Code for completion of the CIRP, though was held directory but the importance of timely resolution and delay occurred in litigation was also highlighted.

23. In **RPS Infrastructure Ltd. vs. Mukul Kumar and Ors., MANU/SC/1001/2023** Hon'ble Supreme Court emphasised the importance of time frame provided in the Code, in order to not entertaining a claim raised with delay, in following words: -

> *"19. The second question is whether the delay in the filing of claim by the Appellant ought to have been condoned by Respondent No. 1. The IBC is a time bound process. There are, of course, certain circumstances in which the time can be increased. The question is whether the present case would fall within those parameters. The delay on the part of the Appellant is of 287 days. The Appellant is a commercial entity. That they were litigating against the Corporate Debtor is an undoubted fact. We believe that the Appellant ought to have been vigilant enough in the aforesaid circumstances to find out whether the Corporate Debtor was undergoing CIRP. The Appellant has been deficient on this aspect. The result, of course, is that the Appellant to an extent has been left high and dry."*

24. Hon'ble Supreme Court in **Tata Steel Ltd. vs. Raj Kumar Banerjee and Ors., MANU/SC/0643/2025** though in distinct context (in relation to the time limit provided for preferring an appeal to NCLAT) highlighted the importance of time line given in the IBC as under: -

> *"11.1. Once the prescribed and condonable periods (i.e., 30 + 15 days) expire, the NCLAT has no jurisdiction to entertain appeals, regardless of the reason for the delay. In Mobilox Innovations Private Limited v. Kirusa Software Private Limited MANU/SC/1196/2017: 2017: INSC:975 : (2018) 1 SCC 353, while interpreting Section 9 IBC, this Court underscores the IBC's strict procedural discipline i.e., only applications strictly conforming to statutory requirements can be entertained. This principle is also applicable to limitation issues Under Section 61(2), as it supports the idea that tribunals must operate within the bounds of the Code, without adding equitable or discretionary powers not conferred by statute. This Court in Kalpraj Dharamshi v. Kotak Investment Advisors Limited and Anr. MANU/SC/0174/2021: 2021: INSC:173: (2021) 10 SCC 401 has categorically held that the NCLAT cannot condone any delay beyond 15 days even on equitable grounds; and that the appellate*

mechanism under IBC is strictly time-bound by design to preserve the speed and certainty of the insolvency resolution process.
13. Before parting, we may observe that time is of the essence in statutory appeals, and the prescribed limitation period must be strictly adhered to. Even a delay of a single day is fatal if the statute does not provide for its condonation. As held by us, the NCLAT has no power to condone delay beyond the period stipulated under the statute. Allowing condonation in such cases would defeat the legislative intent and open the floodgates to belated and potentially frivolous petitions, thereby undermining the efficacy and finality of the appellate mechanism."

Though this case was in relation to other subject but the message has been conveyed that the limitation prescribed anywhere in the code or Regulations must be strictly adhered to.

25. A five member Bench of this Appellate Tribunal vide **order dated 30.08.2022** passed in leading case **Company Appeal (AT)(INS) No.780 of 2022, V.R.Ashok Rao & Ors. v TDT Copper Ltd** and other connected cases, framed following two questions and answered same as under: -

"(a) Whether the law laid down by this Tribunal in "Mr. Jitendra Virmani Vs. MRO-TEK Realty Ltd. & Ors" and three Member Bench Judgement in "Arul Muthu Kumaara Samy Vs. Registrar of Companies" that when the defect in appeal is cured and the Appeal is refiled before the Appellate Tribunal beyond seven days, the date of re-presentation of the Appeal shall be treated as a fresh Appeal, lays down correct law?

(b) Whether the limitation prescribed for filing an Appeal before this Appellate Tribunal under Section 61 of Insolvency and Bankruptcy Code, 2016 or Section 421 of the Companies Act, 2013 shall also govern the period under which a defect in the Appeal is to be cured and this Appellate Tribunal shall have no jurisdiction to condone the delay in refiling/re-presentation if it is beyond the limitation prescribed in Section 61 of the IBC or Section 421 of the Companies Act, 2013.

10. Sub-rule (2) of Rule 26 contemplates that 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 any failure to comply within seven days from the date of return, the same shall be placed before the Registrar who may pass appropriate orders. Sub-rule (3) empowers the Registrar to return the document for rectification or amendment, to the party and for which purpose he may allow to the party such reasonable time as he may consider necessary or extend the time for compliance. The power under Rule 26(3) is to be exercised after scrutiny under Sub-rule (2) when a defect is pointed out to the Appellant and there is failure to comply within 7 days from the date of return. Sub-rule (2) and (3) does not indicate that any penal consequences have been provided for removal of defects after 7 days. When specific power is there under Sub-rule (3) of Rule 26 to extend the time for compliance, the period of 7 days cannot be said to be mandatory period. The scheme of Rule 26 also does not indicate that when the appeal is re-presented after removal of the defects after 7 days, the appeal is to be treated as an appeal filed afresh.

17. The filing of appeal (presentation) and refiling (re-presentation) are two different concepts and have been separately dealt with in the Rules. Rule 22 deals with the presentation of the appeal whereas Rule 26 envisages the re-presentation of the appeal after removal of the defects notified to the Appellant. Section 61(2) of the Code provides that appeal under Section 61(1) shall be filed within 30 days before the NCLAT. The expression 'filing' as occurring in Section 61(2) is for filing of the appeal/presentation of the appeal.

18. Hon'ble Supreme Court in "Indian Statistical Institute vs. M/s Associated Builders & Ors, (1978) 1 SCC 483" laid down that condonation of delay as prescribed in an appeal is different from petition for excusing the delay in re-presentation. In Para 11 following has been laid down:
"11. In a recent judgment of this Court delivered on August 3, 1977 in Mahant Bikram Dass v. Financial Commissioner and Ors.,(1) it is pointed out that the petition under section 5 of the Limitation Act seeking to condone the delay in preferring an appeal is different from a petition for excusing the delay in re-presentation."
19. Division Bench of Delhi High Court in "S.R. Kulkarni vs. Birla VXL Ltd., (1998) 3 RCR (Civil) 436" had also laid down that question of condonation of delay in refiling has to be considered from a different angle and view point as

compared to consideration of condonation of delay in initial filing. Following observations have been made by the Delhi High Court in Para 7 of the judgment:

"7. Notwithstanding which of the aforesaid Rules are applicable, the question of condensation of delay in refiling of an application has to be considered from a different angle and viewpoint as compared to consideration of condensation of delay in initial filing. The delay in refiling is not subject to the rigorous tests which are usually applied in excusing the delay in a petition filed under Section 5 of the Limitation Act (See Indian Statistical Institute Vs. M/s. Associated Builders and others AIR 1978 Supreme Court 335)."

The five-member Bench also took into consideration the judgment of Hon'ble Delhi High Court passed in "**Delhi Development Authority v. Durga Construction, 2013 (139) DRJ 133 [DB]**", where the question of condonation of delay in refiling came for consideration and quoted following excerpts from it in paragraph no. 20 and 25 as under: -

"20. It follows from the above that once an application or an appeal has been filed within the time prescribed, the question of condoning any delay in re-filing would have to be considered by the Court in the context of the explanation given for such delay. In absence of any specific statute that bars the jurisdiction of the Court in considering the question of delay in re- filing, it cannot be accepted that the courts are powerless to entertain an application where the delay in its re-filing crosses the time limit specified for filing the application.

….x…….x……x….

25. Thus, in our view a Court would have the jurisdiction to condone delay in re-filing even if the period extends beyond the time specified in section 34(3) of the Act. However, this jurisdiction is not to be exercised liberally, in view of the object of the Arbitration and Conciliation Act to ensure that arbitration proceedings are concluded expeditiously. The delay in re-filing cannot be permitted to frustrate this object of the Act. The applicant would have to *satisfy the Court that it had pursued the matter diligently and the delays were beyond his control and were unavoidable. In the present case, there has been an inordinate delay of 166 days and in our view the appellant has not been able to offer any satisfactory explanation with regard to the same. A liberal approach in condoning the delay in refiling an application under section 34 of the Act is not called for as it would defeat the purpose of specifying an inelastic period of time within which an application, for setting aside an award, under section 34 of the Act must be preferred.*

33. We, thus, are of clear opinion that limitation prescribed for filing an appeal under Section 61 and Section 421 of Companies Act cannot be imported while considering condonation of delay in refiling/ representation. ***We may, however, hasten to add that condonation of delay in refiling/re-presentation has to be examined on case to case basis. As noticed above, the criterion for considering an application for condonation of delay under Section 5 may not be strictly applicable when question of condonation of delay in refiling/re-presentation arises. A party who is exercising its right to file a statutory appeal in time has not to be shut out on some procedural or technical defects and when defects notified have been removed although with some delay, question to be considered is as to whether there was justifiable cause for delay or not. The time period allowed for removal of the defects is only directory........"***

34. In view of the foregoing discussion, reasons and conclusions, we answer the two questions in following manner: (a) The law laid down by this Tribunal in "Mr. Jitendra Virmani Vs. MRO-TEK Realty Ltd. & Ors" and three Member Bench Judgment in "Arul Muthu Kumaara Samy Vs. Registrar of Companies" that when the defects in appeal are cured after seven days and the same is refiled, it shall be treated as a fresh Appeal, does not lay down a correct law. The re-presentation of appeal after expiry of a period of 7 days or after extended period shall not be a fresh filing and shall only be refiling/representation. (b) The limitation prescribed in filing an appeal under Section 61 of the Code or Section 421 of the Companies Act, 2013 shall not govern the period taken in an appeal for removal of the defects in refiling/re-presentation. Even if, there is a delay in refiling/re-presentation which is more than the period of limitation prescribed for filing an appeal under Section 61 of the Code and Section 421 of Companies Act, 2013, the same can be condoned on sufficient justification. "

(Emphasis Supplied)

Therefore, it was held that on presentation of sufficient cause by the applicant the delay occurred in refiling may be condoned and the criterion prescribed for considering an application for condonation of delay under Section 5 of the Indian Limitation act may not be strictly applicable to cases of condonation of delay in refiling and also that the time period of 7 days stipulated in Rule26 for removal of the defects is only directory.

26. Thus it is well settled general proposition that while considering condonation of delay in refiling, a liberal approach may normally be adopted and if sufficient cause is shown to the satisfaction of the Court, such delays may be condoned. Thus the rigor with which the delay is required to be explained in these cases is not the same, as is required while dealing with an application under other provisions of the Indian Limitation Act. However, the moot question, in this case, which stares at our face is whether the same principles be followed for condonation of delay in cases of Insolvency Code, which are applicable in other cases of civil or criminal nature or a liberal but cautious approach should be adopted. At this juncture it is also fruitful to mention a model time Line provided in Regulation 40-A of the CIRP regulations ,2016 for resolution of the corporate debtor and the same is reproduced as under: -

> *"40-A.* ***Model time-line for corporate insolvency resolution process****- The Following Table presents a model time-line of corporate insolvency resolution process on the assumption that the interim resolution professional*

is appointed on the date of commencement of the process and the time available is hundred and eighty days: -

Section/Regulation	*Description of Activity*	*Norm*	*Latest Time-line*
Section 16(1)	*Commencement of CIRP and appointment of IRP*	*…..*	*T*
Regulation 6(1)	*Public announcement inviting claims*	*Within 3 Days of Appointment of IRP*	*T+3*
Section 15(1)(c)/Regulations 6(2)(c) and 12(1)	*Submission of claims*	*For 14 Days from Appointment of IRP*	*T+14*
Regulation 12(2)	*Submission of claims*	*Up to 90th day of commencement*	*T+90*
Regulation 13(1)	*Verification of claims received under regulation 12 (1)*	*Within 7 days from the receipt of the claim*	*T+21*
	Verification of claims received under regulation 12(2)		*T+97*
Section 21(6-A)(b)/Regulation16-A	*Application for appointment of AR*	*Within 2 days from verification of claims received under regulation 12(1)*	*T+23*
Regulation 17(1)	*Report certifying constitution of CoC*		*T+23*
Section 22(1)/Regulation 19(2)	*1st meeting of the CoC*	*Within 7 days of filing of the report certifying constitution of the CoC, but with five days' notice.*	*T+30*
Section 22 (2)	*Resolution to appoint RP by the CoC*	*In the first meeting of the CoC*	*T+30*
Section 16(5)	*Appointment of RP*	*On approval by the AA*	*…..*
Regulation 17(3)	*IRP performs the functions of RP till the RP is*	*If RP is not appointed by 40th day of*	*T+40*

	appointed.	*commencement*	
Regulation 27	*Appointment of valuer*	*Within 7 days of appointment of RP, but not later than 47th day of commencement.*	*T+47*
Section 12(A)/ Regulation 30-A	*Submission of application for withdrawal of application admitted*	*Before issue of EoI*	*W*
	CoC to dispose of the application	*Within 7 days of its receipt or 7days of constitution of CoC, whichever is later.*	*W+7*
	Filing application of withdrawal, if approved by CoC with 90% majority voting, by RP to AA	*Within 3 days of approval by CoC*	*W+10*
Regulation 35-A	*RP to form an opinion on preferential and other transactions*	*Within 75 days of the commencement*	*T+75*
	RP to make a determination on preferential and other transactions	*Within 115 days of the commencement*	*T+115*
	RP to file applications to AA for appropriate relief	*Within 130 days of the commencement*	*T+130*
Regulation 36(1)	*Submission of IM to CoC*	*Within 95 days of commencement*	*T+95*
Regulation 36-A	*Publish Form G*	*Within 60 days of commencement*	*T+60*
	Invitation of EoI		
	Submission of EoI	*At least 15 days from issue of EoI (Assume 15 days)*	*T+75*
	Provisional List of RAs by RP	*Within 10 days from the last day of receipt of EoI*	*T+85*
	Submission of objections to provisional list	*For 5 days from the date of provisional list*	*T+90*
	Final List of RAs	*Within 10 days of*	*T+100*

	by RP	*the receipt of objections*	
Regulation 36-B	*Issue of RFRP, including Evaluation Matrix and IM*	*Within 5 days of the issue of the final list*	*T+105*
	Receipt of Resolution Plans	*At least 30 days from issue of RFRP (Assume 30 days)*	*T+135*
Regulation 39(4)	*Submission of CoC approved Resolution Plan to AA*	*As soon as approved by the CoC*	*T+165*
Section 31(1)	*Approval of resolution plan by AA*		*T+180*

AA: Adjudicating Authority; AR: Authorised Representative; CIRP: Corporate Insolvency Resolution Process; CoC: Committee of Creditors; EoI: Expression of Interest; IM: Information Memorandum; IRP: Interim Resolution Professional; RA: Resolution Applicant; RP: Resolution Professional; RFRP: Request for Resolution Plan."

27. The above placed Regulation would highlight the importance of a speedy resolution process under the IBC, 2016, in ensuring the completion of the CIRP process timely as per Section 12 of the IBC, 2016 or in ensuring the timely Liquidation, if required. It is to be remembered that by delaying the process of Resolution or liquidation the assets of the Corporate Debtor may be depreciated. The Insolvency and Bankruptcy Code 2016 (Code) is a special enactment and as discussed by us herein before, the time line provided in this Code is its life line and once this enactment is divested of its time line, the whole object of the Code would be frustrated and it would never achieve the object for which it came into existence.

28. Thus it is expected from this Appellate tribunal to adopt a liberal but cautious approach and assess the sufficiency of explanation put forth by the applicant for justifying delay of 91 days occurred in refiling the appeal

without meticulously appreciating it on the touch stone of settled principles pertaining to condoning of delay under various other provisions of Limitation Act. We are of the view that even if utmost liberal approach is adopted by the Tribunal in dealing with such applications, the minimum expected from such applicant is that he at least must state some facts in his application, which if taken on their face value, without appreciating meticulously, must be sufficient to explain the delay caused in refiling and to show that the delay is not wilful or deliberate or at least these stated facts must show that the applicant was acting deligently. But where the applicant (As in this case) has not pleaded any fact at all in his application, in order to show that the delay was not deliberate or wilful and where even remote, what to say of justifiable cause, of such a delay, has not been stated, it would be unfair and travesty of justice that even in absence of any such averment, the application for condonation of delay of such an applicant is allowed. The applicant has failed in discharging his basic obligation i.e. at least to avert facts in his application which may be taken as justification of the delay caused in refiling of appeal and in absence of any such averment in the application or affidavit, it would not be fair on our part to exercise our discretion in favour of applicant. This may also be seen from another angle. It is incumbent on this Tribunal to assign reasons while allowing any application for condonation of delay. There cannot be any quarrel with the proposition that assigning of reasons is the life and soul of a judicial, quasi-judicial or even of an administrative order. Assigning of reasons are necessary in any order, as the party against whom such order has been passed must know, as to why the order has gone against him/her. We are in a dilemma that even if we choose to adopt most liberal approach and proceed in the direction of allowing any such application, what reasons we will assign in order to accept the request of applicant. This again will put us back to the square and reaffirm our trust in the proposition that even if most liberal approach is adopted by this tribunal in considering condonation of delay in refiling of the appeal the same may not absolve the applicant from at least stating such facts in the application, which if accepted on their face would be sufficient to explain the delay. In simple words by adopting a liberal approach this tribunal may persuade itself not to examine the truthfulness or otherwise of the explanation (set of facts) by meticulously analysing and appreciating the same, but even the adoption of liberal approach by us, in our considered opinion, may not exempt such applicant of its responsibility and duty to explain the delay by stating certain facts in his application or affidavit.

29. Applicant has relied on the law laid down by the Ho'ble Supreme Court in **P. Ram Bhoopal Vs Prangaya River Bridge developers, Civil Appeal No.19486 of 2017 decided on 4.12.2017**, however the said law may not be of any help to him, as the applicant has not pleaded any facts at all to explain delay in his application. What has been pleaded by the applicant in paragraph No. 2 of his application, even at the cost of repetition, is again reproduced as under

> ***" 2. That this delay of 91 days is neither intentional nor deliberate on the part of the appellant or her Counsel but due to the actual delay in the efforts of removing the defects due to the logistical constraints."***

How the delay was/is not intentional or deliberate on the part of the appellant or her Counsel and has allegedly occurred due to logistical constraints could only be explained by stating certain facts either in the application or in the affidavit filed in support of the application or even in any additional affidavit, which may be filed with the permission of the Tribunal. Thus in absence of narration of any such facts, either in the application or in affidavit, which may even prima facie explain the delay of 91 days in refiling of appeal, we are unable to exercise our discretion in favour of the applicant.

30. Thus, keeping in view all the facts and circumstances of this case and for the reasons given herein before, the delay condonation application moved by the applicant for condoning the delay of 91 days occurred in refiling the appeal, is hereby **rejected**.

31. Since the application for condonation of delay in refiling has been rejected, memo of appeal is also rejected.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Justice Mohd. Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

New Delhi.
20.08.2025.

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