

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No.1432 of 2022
& I.A. No. 4506 of 2022**

IN THE MATTER OF:

Cloud Planet Technologies Pvt. Ltd.

...Appellant

Versus

Amit Jain

Resolution Professional of M/S Neesa Leisure Ltd.

...Respondent

Present:

For Appellant: Ms. Aarzoo Aneja, Advocate.

For Respondent: Mr. Mohd. Shahan Ulla, Advocate.

O R D E R

20.12.2022: **I.A. No. 4506 of 2022:** This is an application praying for condonation of delay in filing the Appeal. This Appeal has been filed by the Appellant challenging the order dated 01.09.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad, Court -2 in I.A. No. 801 of 2021 in CP (IB) 127 of 2017.

2. The present Appeal has been filed in this Tribunal on 07.11.2022 by e-filing and on 09.11.2022 by physical filing. The Appeal has been filed with 21 days delay. The power to condone delay vested with this Tribunal under Section 60(2) proviso is only 15 days.

3. Learned counsel for the Appellant does not dispute that the delay in filing the Appeal is beyond 15 days. However, the submission of learned

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counsel for the Appellant is that when the order passed by the Adjudicating Authority is nullity and without jurisdiction, the question of limitation cannot be gone into and order is to be ignored. Learned counsel for the Appellant placed reliance on judgment of Hon'ble Supreme Court in **“(2005) 7 SCC 791, Harshad Chiman Lal Modi vs. DLF Universal Ltd. & Anr., decided on 26.09.2005”**.

4. We have considered the submissions of learned counsel for the Appellant and perused the record.

5. Section 60 of the I&B Code - Adjudicating Authority for corporate persons under Sub-section (1) provides for the Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate persons located. Present is a case where against the Corporate Person the proceedings were initiated in CP (IB) 127 of 2017. It is not the case of the Appellant that the Corporate Persons office is not located in the territorial jurisdiction of NCLT, Ahmedabad. We, thus, have no doubt that there is any lack of jurisdiction with the Adjudicating Authority/ NCLT to pass the order.

6. Learned counsel for the Appellant has relied on judgment of Hon'ble Supreme Court in **“Harshad Chiman Lal Modi vs. DLF Universal Ltd. & Anr.”** and contended that if the subject matter is not within the jurisdiction,

then the court has no jurisdiction. She has relied on Para 30 of the judgment, which is to the following effect:

“30. We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (i) Territorial or local jurisdiction; (ii) Pecuniary jurisdiction; and (iii) Jurisdiction over the subject matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is nullity.”

7. She has also referred to the judgment of Hon’ble Supreme Court in *“Embassy Property Developments Pvt. Ltd. vs. State of Karnataka & Ors.*

8. **“Harshad Chiman Lal Modi vs. DLF Universal Ltd. & Anr.”** was a case where the suit was filed in Delhi High Court with regard to property situated in the DLF Qutub Enclave Complex, Gurgaon. In the facts of the said case, the Hon’ble Supreme Court held that if the subject matter is not within the jurisdiction of the Court, the Court shall have no jurisdiction and that

question can be raised in a competent court where the property is situated. There is no dispute to the proposition laid down by the Hon'ble Supreme Court in the aforesaid case. However, present is not a case where NCLT do not have jurisdiction.

9. In relation to the judgment of Hon'ble Supreme Court in *Gujarat Urja Vikas Nigam Ltd. vs. Amit Gupta & Ors.*, the Adjudicating Authority has examined the arguments which was raised by learned counsel for the Applicant (Appellant herein), which was repelled. We being satisfied that the Appeal is barred by time, delay being more than 15 days, we are not inclined to look into the various issues on merits sought to be raised by the Appellant. Delay Condonation Application is dismissed. In result, Memo of Appeal is rejected.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

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