

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

I.A. No. 8804 of 2024

In

Company Appeal (AT) (Insolvency) No. 2349 of 2024

(Arising out of the Impugned Order dated 24.01.2024 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Mumbai Bench in CP (IB) No. 80/MB/2020]

IN THE MATTER OF:

Evergreen Corporation

Having address at:

M24, Fida Mansion, 3rd Floor,
Bibijan Street, Nagdevi,
Mumbai – 400003

...Appellant

Versus

M/ss. Satec Envir Engineering (India) Pvt. Ltd.,

Having address at:

102, 1st Floor, Waterford Building,
C.D. Burfiwala Road, Juhu Lane,
Andheri (West), Mumbai-400058.

...Respondent

Present:

For Appellant : Mr. Sagar Ghogare and Mr. Suraj S. Ghogare,
Advocates.

For Respondent : Mr. Nakul Mohta, Mr. Munaf Virjee, Mr. Rushabh
Parekh and Mr. Ayush Kashyap, Advocates

O R D E R
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

This is an Appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 (the Act) against the Order dated 24th January, 2024 (Impugned Order) of the Hon'ble National Company Law Tribunal, Mumbai Bench (Adjudicating Authority) in Company Petition (CP) (IB) (MB) No.80 of 2020.

2. Before the Company Appeal (AT) (Insolvency) No. 2349 of 2024 is taken up, prayer for condonation of delay of 244 days, as filed in I.A. No. 8804 of 2024 is being addressed. Initially, the Appellant had filed I.A. No. 8804 of 2024 for the delay in condonation. Later on, Additional Affidavit in support of the condonation of delay has been filed on 18.03.2025 in the same I.A. No. 8804 of 2024.

3. Learned Counsels for both sides were heard and perused all materials on record. Both the affidavits filed in support of the condonation of delay application have been gone through.

4. It is contended by the Appellant that on 24.01.2024, the impugned order was passed by National Company Law Tribunal, Mumbai Bench in Company Petition (CP) (IB) (MB) No.80 of 2020. The present Company Appeal (AT) (Insolvency) No. 2349 of 2024 was filed by the Appellant on 22.02.2024, which was well within 30 days.

5. But as per the office record after 233 days only, the Appeal was finally cleared of all the defects and date of last e-filing was 23.10.2024. In the initial affidavit vide I.A. No. 8804 of 2024, the Appellant had claimed that defects / objections / notifications were raised by the department on 26.02.2024 to be complied within 7 days. The Appellant cleared the defects on 02.03.2024, which was within 7 days from the date of receipt of the defects notification. Further, few other defects were notified on 19.03.2024 to be complied within 7 days. The counsel for the Appellant refiled the above appeal on 19.03.2024

itself. The registry again raised defects vide email dated 26.04.2024 with the directions to comply within 7 days. These defects could not be complied within 7 days period and only for this purpose condonation of delay in refiling has been filed.

6. The Appellant claims that he was suffering from various health issues owing to his old age. The Appellant is aged about 77 years and was hospitalised for medical issues for a period of 10 days from 13.02.2024 till 22.02.2024. Owing to his old age and health issues, he was not keeping well and therefore could not follow up with his Advocate on Record. The Advocate on Record could comply with all the defects raised by the department after 244 days in re-filing of the above appeal. He claims that the delay occurred solely due to consumption of time in clearing of the objections by the concerned department of this Tribunal and compliance of the same on the part of the advocate on the record. Further, the same also occurred as the Appellant herein was not able to follow up with the office of his advocate due to his old age, ailments and constant health issues. The Appellant states that the delay of 244 days was neither intentional nor deliberate and solely occurred for the reasons aforesaid. Further, he has not made any wrongful gains by not refiling the above appeal within the time with this Hon'ble Tribunal.

7. Further to strengthen the condonation of delay he has filed explanation for delay an additional affidavit from para 5 to 37 which are not being

reproduced for reasons of brevity. The summary of his explanation for delay is as tabulated below:

Defect Sheet No.	Date of scrutiny	Date of Intimation to the Appellant	No. of defects	Compliance / Defect curing date
1.	26.02.2024	26.02.2024	18	02.03.2024
2.	19.03.2024	19.03.2024	11	19.03.2024
3	26.04.2024	26.04.2024	5	12.06.2024
4.	29.07.2024	29.07.2024	4	02.08.2024
5.	27.08.2024	27.08.2024	2	12.09.2024
6.	23.09.2024	23.09.2024	3	23.10.2024

We note that many defects were being repeated again and again by the Registry and were not being cured by the Appellant and also most of the time defects were cured beyond 7 days period.

8. Finally on 22.01.2025, the Registry intimated by email that the Appeal and I.A will be listed on 22.01.2025. In brief, it is claimed that:

“....

38. In view of the above, Appellant states and submits as follows:

38.1. Appellant states and submits that he is a 78 years old senior citizen with various age-related health issues. The age-related issues have contributed and led to unintentional delay in the present matter. The actions of the Appellant are bonafide.

38.2. The Advocate on record is based in Mumbai and predominantly practices at Courts in Mumbai, including the Hon'ble Bombay High Court. This is the first matter of the Advocate on record before the Hon'ble National Company Law Appellate Tribunal. The Advocate on record at the relevant time though diligent was not so familiar with the practice and procedure at NCLAT and hence took some time to familiarize himself with the procedure and practice at NCLAT.

38.3. It is submitted that the Advocate on record acted bonafide and on most occasions has removed/cured the defects immediately and/or within a reasonable time. It is only on few occasions the

time was taken for various reasons not attributable to the Advocate on record.

38.4. Appellant has a very strong case on merits and bonafide seeks indulgence of the Tribunal to condone the delay and hearing of the said Appeal on merits.

38.5. Appellant states and submits that all its actions and acts of its Advocate on record are bonafide and sufficient cause and explanation has been provided for the said delay.

38.6. It is stated that Appellant did not stand to benefit from not removing/curing the defects as he had diligently filed the said Appeal within 30 days.

38.7. Appellant humbly prays that the Hon'ble Tribunal take a liberal and justice-oriented approach to further the cause of substantial justice as against a technical approach.”

9. The Counsel for the Respondent vehemently opposes the condonation of delay, it is claimed that there is a delay of 244 days and the defects were not cured timely for dubious and unknown strategic reasons. With respect to the health issues, it was contended that the Appellant was suffering from health issue sometime in the month of February as per the record produced in the appeal, and he was discharged in the month of February itself. Thereafter, for no clear reasons, the Appeal has been kept pending for a very long time thereafter for no clear reasons. The Appellant has been blaming either the registry for pointing out defects or he is claiming that the Advocate on record at the relevant time, though diligent was not so familiar with the practice and procedures at NCLAT and for that reason took some time to familiarise himself with the procedure and practice at NCLAT. It is also pointed out by the Respondent that despite repeated some defects being pointed by the Registry, they were not being cured and they were notified

again and again by the registry. This shows that the Appellant was not diligent in curing the defects. And in case he was not able to cure the defects he could have mentioned it before this Tribunal to take up the appeal with defects, which was not done in this case.

10. The Appeal being filed on 22.02.2024 through e-filing, which was within the 30 days from the impugned order dated 24.01.2024, was filed within limitation period and there is no delay in filing of the Appeal. However, it is to be noted that the defects have to be cured within a period of 7 days as per Rule 26 of the National Company Law Appellate Tribunal Rules, 2016. But in this case, it has not been done repeatedly and the cumulative delay in refiling is 233 days. Furthermore, same defects were being notified again and again and the Appellant has allowed the Appeal to remain defective for a very long time with the Registry. We find that the Appellant has been callous in not correcting the defects pointed out by the NCLAT registry in a timely manner. The grounds taken by the Appellant giving health reasons of the Appellant do not correlate with the reality in the present case. It is not clear as to why the Appellant was not pursuing his case for curing of the defects in a timely manner. In case if the defects were not curable, the Appellant could have mentioned it before this Tribunal to take up the Appeal with defects, which was not done in this case. The explanation provided in the Additional Affidavit also doesn't inspire much confidence. We do not find the reasons as provided from paragraphs 5 to 37 to be sufficient to condone the delay in refiling. We find the Appellant has been negligent in prosecuting the re-filing, which

indicates that he was not diligent. We find that the delay in re-filing by about 233 days has not been explained justifiably.

Orders:

11. Under these circumstances, we are not inclined to allow the condonation of long delay of 233 days, as there is no sufficient cause explained by the Appellant. Therefore, the condonation of delay application is dismissed. Consequently, the present Company Appeal (AT) (Insolvency) No. 2349 of 2024 is also dismissed.

**[Justice Ashok Bhushan]
Chairperson**

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

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

**New Delhi.
March 21, 2025.**

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