Item No. 8

APPEAL (IBC)/32(MB) 2025 IN C.P. (IB)/4488(MB)2018

CORAM:

SH. PRABHAT KUMAR — **HON'BLE MEMBER (TECHNICAL)**
SH. SUSHIL MAHADEORAO KOCHEY — **HON'BLE MEMBER (JUDICIAL)**

ORDER SHEET OF THE HEARING ON **04.09.2025**

NAME OF THE PARTIES: **IDFC BANK LIMITED VS ASHAPURA INTIMATES FASHION LTD**

Section 9 & 42 of the Insolvency and Bankruptcy Code, 2016

ORDER

APPEAL (IBC)/32(MB) 2025

1. Ld. Counsel for the Appellant is present but has not marked his appearance in the attendance sheets.
2. This Appeal has been filed by The State of Gujarat, Through the State Tax Officer, O/o Assistant Commissioner of State Tax challenging the decision of the Liquidator of Ashapura Intimates Fashion Ltd ("Corporate Debtor"), under Section 42 of the Insolvency and Bankruptcy Code, 2016 seeking following reliefs;
   a. *The Hon'ble Tribunal be pleased to condone the delay of 1040 days in filing the present Appeal;*
   b. *The Hon'ble Tribunal be pleased to condone the delay of 206 days in filing the claim before the Liquidator, the Respondent herein, and further quash his decision in not accepting the Claim and further direct the Liquidator Respondent to register the Claim of the*

Appellant in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016;

c. *The Hon'ble Tribunal be pleased to pass any other order in the interest of justice in favour of the Appellant herein;*
d. *The Hon'ble Tribunal be pleased to award such costs as may be deemed appropriate in the facts of the matter.*

3. The present Appeal is being filed by the State of Gujarat through the State Tax Officer, Unit No. 73, for seeking condonation of delay in filing its claim in Form C pursuant to the Public Announcement dt. 08.10.2020 published as per Regulation No. 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 pursuant to an order dt. 05.10.2020 initiating liquidation proceedings in the case of Corporate Debtor Ashapura Intimates Fashion Limited.
4. This Bench by an order dated 28.06.2019 admitted the Petition (CP 1B No. 4488/ MB/ 2018) under Section 7 of the Code initiating Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor and thereafter, the Liquidation proceedings commenced on 5.10.2020.
5. The Applicant filed its claim in Form C dated 22.9.2022 for a sum of Rs. 2,44,54,516/- along with interest @ 18% after the claim date. This claim pertains to demand raised by the Applicant pursuant to order(s) dated 8.1.2021 (dispatched on 16.1.2021) passed in assessment proceedings for A.Y. 2016-17 and June 17 quarter. The details are said claims are as under:

ANNEXURE 1

ASHAPURA INTIMATES FASHION LIMITED (MOMAI APPARELS LTD) 24250703921/24750703921/GSTIN.24AAHCM7564R1ZN
Interest calculation up to 22/09/2022

No.	Year	Act	Category	Pay By Date	Fragmentation				Interest after due date up to claim date(22/09/2022)	Total
					Tax	Interest	Penalty	Total		
1	2016-17	Vat	Clear Dues	12-Feb-21	103443	68893	20689	193025	55877	248902
			Subjudice Dues		0	0	0	0	0	0
			Total		103443	68893	20689	193025	55877	248902
		Cst	Clear Dues	12-Feb-21	8949322	5913909	1789865	16653096	4820729	21473825
			Subjudice Dues		0	0	0	0	0	0
			Total		8949322	5913909	1789865	16653096	4820729	21473825
			Total		9052765	5982802	1810554	16846121	4876606	21722727
2	2017-18 (APRIL 2017 TO JUNE 2017)	Vat	Clear Dues	12-Feb-21	0	0	28800	28800	8337	37137
			Subjudice Dues		0	0	0	0	0	0
			Total		0	0	28800	28800	8337	37137
		Cst	Clear Dues	12-Feb-21	1123010	742109	224602	2089721	604931	2694652
			Subjudice Dues		0	0	0	0	0	0
			Total		1123010	742109	224602	2089721	604931	2694652
			Total		1123010	742109	253402	2118521	613268	2731789
			TOTAL		10175775	6724911	2063956	18964642	5489874	24454516

Note: - Interest @18% per annum will be applicable after the claim date also.

6. As regards delay for condonation of delay in filing present appeal, the applicant has explained the reasons for delay stating that "*the office of the Appellant sought authorisation from the concerned authorities to file appropriate proceedings before this Hon'ble Tribunal. There are multiple departments involved in decision making process for filing Appeal including GST department, legal department and Finance Department. Due to administrative procedures and decisions, it took some time to collect information and to take further steps for approaching this Hon'ble Tribunal*".
7. Hon'ble Supreme Court in ***Pathupati Subba Reddy (Died) by LRs & Ors. vs. The Special Deputy Collector (LA) – (2024) 4 S.C.R. 241****,* had occasion to consider the expression 'sufficient cause' occurring in Section 5 of the

Limitation Act, 1963. In this case, an Appeal was filed after lapse of 5/6 years in the High Court under Section 54 of the Land Acquisition Act challenging an Award given by the Deputy Collector Land Acquisition. While dealing with Section 5 of the Limitation Act, following was laid down in paragraphs 12 and 13:

> *"12. In view of the above provision, the appeal which is preferred after the expiry of the limitation is liable to be dismissed. The use of the word 'shall' in the aforesaid provision connotes that the dismissal is mandatory subject to the exceptions. Section 3 of the Act is peremptory and had to be given effect to even though no objection regarding limitation is taken by the other side or referred to in the pleadings. In other words, it casts an obligation upon the court to dismiss an appeal which is presented beyond limitation. This is the general law of limitation. The exceptions are carved out under Sections 4 to 24 (inclusive) of the Limitation Act but we are concerned only with the exception contained in Section 5 which empowers the courts to admit an appeal even if it is preferred after the prescribed period provided the proposed appellant gives 'sufficient cause' for not preferring the appeal within the period prescribed. In other words, the courts are conferred with discretionary powers to admit an appeal even after the expiry of the prescribed period provided the proposed appellant is able to establish 'sufficient cause' for not filing it within time. The said power to condone the delay or to admit the appeal preferred after the expiry of time is discretionary in nature and may not be exercised even if sufficient cause is shown based upon host of other factors such as negligence, failure to exercise due diligence etc.*

"13. It is very elementary and well understood that courts should not adopt an injustice-oriented approach in dealing with the applications for condonation of the delay in filing appeals and rather follow a pragmatic line to advance substantial justice.

"16. Generally, the courts have adopted a very liberal approach in construing the phrase 'sufficient cause' used in Section 5 of the Limitation Act in order to condone the delay to enable the courts to do substantial justice and to apply law in a meaningful manner which subserves the ends of justice. In ***Collector, Land Acquisition, Anantnag and Ors. vs. Katiji and Ors.****, this Court in advocating the liberal approach in condoning the delay for 'sufficient cause' held that ordinarily a litigant does not stand to benefit by lodging an appeal late; it is not necessary to explain every day's delay in filing the appeal; and since sometimes refusal to condone delay may result in throwing out a meritorious matter, it is necessary in the interest of justice that cause of substantial justice should be allowed to prevail upon technical considerations and if the delay is not deliberate, it ought to be condoned. Notwithstanding the above, howsoever, liberal approach is adopted in condoning the delay, existence of 'sufficient cause' for not filing the appeal in time, is a condition precedent for exercising the discretionary power to condone the delay. The phrases 'liberal approach', 'justice-oriented approach' and cause for the advancement of 'substantial justice' cannot be employed to defeat the law of limitation so as to allow stale matters or as a matter of fact dead matters to be revived and re-opened by taking aid of Section 5 of the Limitation Act."*

8. The Applicant, itself, had admitted that "*the Respondent Liquidator communicated his impugned decision to the Appellant on 23.09.2022. The limitation to file the Appeal expired on 07.10.2022. Thus, there is a delay of 1040 days till 12.08.2025, for the reasons stated above*". On perusal of the stated reasons, it is noted that there is no explanation for delay, except the long time taken in decision making process. If delay attributable to the tardy decision-making process in government department is taken as sufficient cause in every case without there being any other cause to justify its occurrence, it will render the limitation period redundant in case of appellant/petitioner being government department. In our considered view, this could not have been while observing that a cause of substantial justice should be allowed to prevail upon technical considerations while consideration condonation of delay. Dehors any other explanation, we do not find any substance in stated explanation in relation to delay of about 3 years attributable to laxity in decision making process. However tardy bureaucratic process may be, delay attributable to such lax and tardy attitude cannot said to be a sufficient and good cause justifying condonation of delay. Accordingly, we do not consider it a fit case for condoning the delay in filing of the present appeal.
9. Nonetheless, since the above demands came into existence pursuant to assessment order(s) dated 08.01.2021 passed after commencement of liquidation proceedings on 5.10.2020, none of said amount was in existence on the date of the commencement of liquidation proceedings. Hon'ble NCLAT in case of ***Regional P.F. Commissioner EPFO v. Alok Kailash Saksena (Liquidator) and Anr.,*** ***[(2025) ibclaw.in 689 NCLAT]*** rejected the appeal quoting its earlier decision in case of *Employees Provident Fund Organisation, Nashik vs. Girish Siriram Juneja & Anr.- Company Appeal (AT) (Insolvency) No.693 of 2025 & IA No.2676 of 2025* wherein it was held that *"any claim which arises after*

liquidation commencement date cannot be entertained by the Liquidator as per the statutory scheme under Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016". Accordingly, even if the delay is condoned, the claims, having come into existence after liquidation commencement date, cannot be admitted. Hence, the question of condonation of delay in filing of claim before the Liquidator is academic in nature and is not being adjudicated here.

10. In view of the above, APPEAL(IBC)/32(MB)2025 is **dismissed and disposed of** accordingly.

Sd	Sd
PRABHAT KUMAR	**SUSHIL MAHADEORAO KOCHEY**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Shubham Bide