

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI**

(APPELLATE JURISDICTION)

Comp. App. (AT) (CH) (Ins.) No. 143 of 2023

(I.A. No.476/2023)

(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)

(Arising out of the 'Impugned Order' dated 12.05.2023 in

I.A. No.1522/2022 in C.P. (IB) No.75/2021, passed by the

**'Adjudicating Authority', National Company Law Tribunal, Chennai
Bench – I, Chennai)**

In the matter of:

Mr. Toral Rathod

1/687, Divyam, new Natham Road,
Opp. Thirupalai Mandapam,
Thirupalai, Madurai – 625014.

..... Appellant

V.

Mr. Gopalsamy Ganesh Babu

(Resolution Professional of
Milan Textile Enterprises Private Limited)
986, H Block, 24th Street, Anna Nagar West,
Chennai – 600040.

..... Respondent

Present:

For Appellant : Ms. Deepika Murali, Advocate.

For Respondent : Mr. A. Karthikeyan, Advocate.

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

[Per; Ms. Shreesha Merla, Member (Technical)]:

1. This Appeal is preferred by Mr. Toral Rathod/the 'Appellant' under Section 61 of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as 'The Code'), against the 'Impugned Order' dated

12.05.2023, in I.A. 1522/2022 in C.P. (IB) No.75/2021, whereby the Tribunal/'Adjudicating Authority' has dismissed the said Application filed by the 'Appellant'/'Applicant' herein seeking Condonation of Delay of 49 days in filing of the 'Claim' under 'Form – C'.

2. Facts in brief are that I.A. (IBC)/1522 (CHE)/2022 in C.P. (IB)/75/CHE/2021 was filed by the 'Applicant'/'Appellant' seeking Condonation of Delay of 49 days in filing of the 'Claim' before the Respondent and for acceptance of the 'Claim'. The Corporate Insolvency Resolution Process ('CIRP') of the 'Corporate Debtor' was initiated on 21.03.2022 and the public announcement was made on 23.03.2022, the last date for submission of 'Claim' being 04.04.2022. Admittedly, the 'Claim' was filed belatedly by the 'Applicant' after the expiry of 90th day on 02.08.2022 in an incorrect form i.e., 'Form – B'. On receipt of the incorrect form, the Resolution Professional ('RP') had sent a reply email dated 03.08.2022 stating that 'Form – B' filed by the 'Applicant' exceeds the 90 days period and advised the 'Applicant' to approach the 'Adjudicating Authority'. Subsequently, on 07.08.2022, the 'Applicant' filed 'Form – C', before the RP and thereafter filed I.A.1522/2022, seeking the aforementioned relief.

3. It is observed in the 'Impugned Order' that the I.A. was signed by the 'Appellant'/'Applicant' on 26.11.2022 and e-filed before the

`Adjudicating Authority' on 29.11.2022. The `Adjudicating Authority' has noted that except for a vague averment that there was a delay seeking `legal advice' there are no proper pleadings or material placed on record to substantiate reason for delay. Placing reliance on the Judgement of the Hon'ble Supreme Court in the matter of *'Esha Bhattacharjee' Vs. 'Managing Committee of Raghunathpur Nafar Academy & Ors.'*¹, it was held that the Condonation of Delay cannot be granted as a matter of course and such a liberal approach cannot be taken when there are no proper grounds given by the `Appellant'/'Applicant'. Placing reliance on *'Esha Bhattacharjee' (Supra)*, the `Adjudicating Authority' dismissed the Application.

4. Learned Counsel for the `Appellant', strenuously argued that an amount of Rs.1,33,33,562/- was lent to the `Corporate Debtor'; that the `Appellant' had incorrectly filled her `Form' under `Form – B' as an `Operational Creditor' on 02.08.2022; that the RP rejected the `Claim' vide email communication dated 03.08.2022 on the ground of `delay' and filing the `Claim'; upon receiving correct advice. The `Appellant' was advised to resubmit her `Claim' under `Form – C' vide email communication dated 07.08.2022; the same was done without any delay and the reminder was also sent on 10.08.2022; that no response was received from the Respondent who had never adjudicated on her `Claim'

¹ (2013) 12 SCC 649

and therefore the 'Appellant' filed I.A.1522/2022, seeking Condonation of Delay of 49 days in submission of her 'Claim'.

5. It is submitted that the 'Adjudicating Authority' has failed to recognize the 'Claim' of the 'Appellant' as 'Financial Debt' as the unsecured loan was against the 'payment of interest' and is tantamount to a 'debt' disbursed against 'time value of money' and therefore falls within the ambit of 'Financial Debt'. It is also submitted that the delay of 49 days in filing a 'Claim' as a 'Financial Creditor' is neither willful nor wanton. It is argued by the Learned Counsel that the 'Adjudicating Authority' did not take into consideration the legal arguments of the 'Appellant' and was prejudiced by the Respondents' arguments that the 'Appellant' had colluded with the suspended Directors of the 'Corporate Debtor'. It is also contended that the 'Adjudicating Authority' did not address to the merits of the matter and has erroneously relied upon '**Esha Bhattacharjee**' (*Supra*), wherein there was almost 7 years delay, whereas in this case, the delay is of a short duration of only 49 days. There is a distinct between an 'inordinate delay' and 'delay of short duration', which was not addressed to in the 'Impugned Order'. The non-Condonation of Delay would affect the rights of the party and the 'Adjudicating Authority' is vested with 'inherent powers' to condone the same.

6. Learned Counsel placed reliance on the Judgement of the NCLAT Principal Bench in '*Puneet Kaur*' Vs. '*K V Developers Pvt. Ltd. & Ors.*'², and in '*Punjab National Bank*' Vs. '*Animesh Mukhopadhyay*'³, 2022 SCC Online NCLAT 3259, in support of his arguments that even 'belated Claims' could be considered by the Tribunal.

7. Learned Counsel for the Respondent submitted that the Resolution Plan of the 'Successful Resolution Applicant' ('SRA'), M/s. CDR & Co. Constructions was approved and the approval for the said Resolution Plan is posted 'for hearing' on 01.06.2023 in I.A. (IBC)/1556/CHE/2022. The IA along with the 'Affidavit' seeking Condonation of Delay was signed on 26.11.2022 and the actual days of delay in filing the Claim Petition before the Respondent is 125 days and with a further delay of 100 days, the 'Appellant' approached the 'Adjudicating Authority' understating the delay as 49 days without filing any Interim Application to condone the delay. It is submitted that the Claim Petition without any proof was filed before the RP on 07.08.2022, which is the 139th day of commencement of CIRP and therefore the actual days of delay in submitting a 'Claim' is 125 days and the actual days of delay in approaching the 'Adjudicating Authority' is 225 days. It is submitted that the 'Appellant' has erroneously relied on the Judgement of the Hon'ble Apex Court in '*State*

² Comp. App. (AT) (Ins.) No.390/2022

³ 2022 SCC OnLine NCLAT 3259

Tax Officer (1)' Vs. 'Rainbow Papers Ltd'⁴, 2022 SCC OnLine SC 1162, as that case relates to State Tax Claims under Gujarat VAT Act and the Sales Tax Dues were to be treated as dues of a Secured Creditor instead of an Unsecured Creditor. It is submitted that all the decisions relied upon by the Counsel for the 'Appellant' are not relevant to the facts of this case and that the 'Adjudicating Authority' has rightly relied upon *Esha Bhattacharya (Supra)*.

Assessment:

8. The main issue which arises in this Appeal is whether the 'Adjudicating Authority' was justified in rejecting the Condonation of Delay of 49 days in filing the 'Claim' together with the delay in filing the Application before the 'Adjudicating Authority'.

9. A brief perusal of the material on record shows that the CIRP commenced on 21.03.2022, a public announcement was made on 25.03.2022, the last date for filing of the 'Claims' was 04.04.2022, the expiry of 90 days is 19.06.2022, whereas the 'Appellant' had filed the 'Claim' before the RP on 07.08.2022, which is indeed the 139th day of the commencement of the CIRP. The ground taken by the Counsel for the 'Appellant' that it was initially filed under 'Form – B' as an 'Operational Creditor' which was rejected vide email communication dated 03.08.2022, and thereafter the 'Appellant' had resubmitted her 'Claim'

⁴ 2022 SCC OnLine SC 1162

under 'Form – C' on 07.08.2022, does not strengthen or substantiate her case as the timelines given under IBC are to be strictly adhered to and any latches on behalf of the 'Appellant' in filing, the 'Claim' under a wrong category cannot be a substantial ground for condoning the delay. Moreover, keeping in view the aforementioned dates, it is clear that the actual time period of delay in submitting the 'Claim Form' is 125 days. It is also significant to mention that the 'Appellant' approached the 'Adjudicating Authority', vide I.A.1522/22 with a further delay of 100 days, and the only reason that was given is that they were seeking 'legal advise', which the 'Adjudicating Authority' has rightly held is only a bald explanation and does not construe a 'sufficient cause for the delay'.

10. Counsel for the 'Appellant' placed reliance on '**Puneet Kaur**' (**Supra**), in support of his case that the NCLAT Principal Bench condoned the delay of the Homebuyers in filing their 'Claims'. The facts in that matter are distinguishable as the case relates to Homebuyers where there were Builder Buyer Agreements ('BBA') and it was held that rightfully some provisions in the Plan/submission of Claims are to be made for the genuine Homebuyers. This decision is not applicable to the facts of this case. Had there been a substantial ground, the case of '**N. Balakrishnan**' Vs. '**M. Krishnamurthy**'⁵, could have been applied to the matter on hand. But the fact of the matter is that the 'Appellant' has given

⁵ (1998) 7 SCC 123

no substantial grounds to condone the delay. IBC is a time bound process, which has been repeatedly held by the Hon'ble Supreme Court in a catena of Judgements and at the cost of repetition, the explanation given by the 'Appellant' herein is neither 'substantial' nor can be construed as a 'sufficient cause'.

11. For all the aforementioned reasons, this Appeal fails and is 'dismissed' accordingly. No costs. The connected pending 'Interlocutory Applications', if any, are closed.

**[Justice Rakesh Kumar Jain]
Member (Judicial)**

**[Ms. Shreesha Merla]
Member (Technical)**

02/06/2023
HIMANSHU / TM