

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)

Comp App (AT)(CH)(Ins) No.49/2023 & IA No. 170

&

I.A. No.171 of 2023

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I.A. No.172/ 2023

**(Under Section 32 read with Section 61(3) of the Insolvency and
Bankruptcy Code, 2016)**

**(Arising out of the Impugned Order dated 26.03.2021 in I.A. No. 87 of
2020 in Company Petition No.(IB) 08/9/HDB/2019) passed by the
'Adjudicating Authority' (National Company Law Tribunal,
Hyderabad Bench, Hyderabad)**

In the matter of:

**Employees Provident Fund Organisation,
Regional Office, Patancheru
Employees Provident Fund Organisation,
H.No.12-1, First Floor, Susheeram Complex,
Patancheru – 502 319.**

... Appellant

V

- 1. Nethi Mallikarjuna Setty
IBBI Registration No. IBBI/IPA-001/
IP-P01251/2018-2019/11958
Flat No. 101, Laurel Residency, Road No.18,
Panchavati Colony, Manikonda,
Hyderabad, Telangana – 500 089.**
- 2. M/s. Kamini Metalliks Pvt. Ltd.
Sy No.372, Chandapur Village,
Hatnoora Mandal Medak,
Telangana 502 296.**

... Respondents

Present :

For Appellant : Mr.M.S. Viswanathan, Advocate
For RP : Mr.Mallikarjuna Setty, Erstwhile RP

ORDER
(Virtual Mode)

13.03.2023:

Heard Mr. M.S. Viswanathan, Learned Counsel appearing for the 'Appellant'. According to the Petitioner/Appellant, the instant Company Appeal (AT)(CH)(Ins) No. 49 of 2023 is preferred before this 'Tribunal', being aggrieved with the 'Impugned Order' dated 26.03.2021 passed by the 'Adjudicating Authority' in I.A. No.87 of 2020 in Company Petition No. (IB) 08/9/HDB/2019.

The Learned Counsel for the 'Petitioner'/'Appellant' submits that the 1st Respondent on 23.02.2021 had informed the 'Petitioner'/'Appellant' that the 2nd Respondent had submitted a 'Resolution Plan' and the 'Committee of Creditors' had approved the same and preferred an application before the 'Adjudicating Authority' seeking approval of 'Resolution Plan' and hence the claim filed by the 'Appellant' cannot be considered at this stage and the same was not entertained.

The stand of the 'Petitioner'/'Appellant' is that due to the second waive of COVID 2019, the 'Petitioner'/'Appellant' could filed an application against the rejection of the claim and on 11.05.2021, the 'Petitioner'/'Appellant' had inadvertently filed the above before the 'Adjudicating Authority'/'Tribunal', against the rejection of the claim by the 'Resolution Professional'. Also, that, the 'Adjudicating Authority'/'Tribunal' through an order dated 09.03.2022 had dismissed the I.A. No. 262 of 2021 and dispose of the application mentioning that the 'Resolution Plan' was already approved.

The Learned Counsel for the 'Petitioner'/'Appellant' contends that the instant Company Appeal is within the limitation period, as the period between 11.05.2021 to 09.03.2022 specified as the atleast at inadvertently

left the ‘Adjudicating Authority’ / ‘Tribunal’ under an Application as per Provisions of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules on 11.05.2021 against the ‘Impugned Order’ dated 26.03.2021 instead of preferring an appeal before this ‘Tribunal’. Ultimately, the Application was heard and came to be dismissed on 09.03.2022, as the ‘Resolution Plan’ was already approved.

The submissions of the Learned Counsel for the ‘Petitioner’/‘Appellant’ is that the period between 11.05.2021 [being date of filing of the Application] till 09.03.2022 [being the date of ‘Dismissal’ of the ‘Application for Review’] shall be excluded, as per Section 14 of the Limitation Act.

The Learned Counsel for the ‘Petitioner’/‘Appellant’ refers to the following tabular Form:

| Period for exclusion | Particular | No. of days |
|-------------------------|--|--|
| 26.03.2021 – 11.05.2021 | Period between approval of Resolution Plan by AA and Filing of the Application IA/262/2021 | 46 days (period covered under SC order on exclusion of limitation) |
| 11.05.2021 – 09.03.2022 | Period between filing of application IA/262/2021 till date of disposal | 302 days |

and submits that the instant Company Appeal is preferred with a bona fide intention, in the interest of justice and at the earliest available opportunity by the ‘Appellant’.

Be it noted that Section 6(1) and (2) of the Insolvency and Bankruptcy Code reads as under:-

(1)“Notwithstanding anything to the contrary contained under the Companies Act 2013 (18 of 2013), any person aggrieved by the order of

the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.

(2) Every appeal under sub-section (1) shall be filed within thirty days before the National Company Law Appellate Tribunal;

Provided that the National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed fifteen days.

(3) An appeal against an order approving a resolution plan under section 31 may be filed on the following grounds, namely—

- i. The approved resolution plan is in contravention of the provisions of any law for the time being in force;
- ii. There has been material irregularity in exercise of the powers to the resolution professional during the corporate insolvency resolution period;
- iii. The debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;
- iv. The insolvency resolution process costs have not been provided for repayment in priority to all other debts; or
- v. The resolution plan does not comply with any other criteria specified by the board.

(4) An appeal against a liquidation order passed under section 33 may be filed on grounds of material irregularity or fraud committed in relation to such a liquidation order.”

From the above, ingredients of Section 61(1) and (2) of the Insolvency and Bankruptcy Code, in person being aggrieved in respect of order passed by the ‘Adjudicating Authority’ is to prefer an ‘Appeal’ before this ‘Appellate Tribunal’ within 30 days and this means from the date of

pronouncement of the concerned orders. However, in the instant Case, admittedly according to the ‘Petitioner’/‘Appellant’, the ‘Petitioner’ seeks to condone delay of 289 days from 10.03.2022 till 23.12.2022 in preferring the instant Company Appeal and also seeks for an exclusion of 302 days between 11.05.2021 [Period between filing of application IA/262/2021] till 09.03.2022 (date of disposal of the ‘Application’ by the ‘Adjudicating Authority’].

It is worthwhile for this ‘Tribunal’ to advert to Rule 150(1) of the NCLT Rules, 2016 which runs as under:-

150. “Pronouncement of Order:- (1) The Tribunal, after hearing the applicant and respondent, shall make and pronounce an order either at once or, as soon as thereafter as may be practicable but not later than thirty days from the final hearing.”

Further, Rule 150(3) of the NCLT Rules, enjoins that a certified copy of every order passed by the ‘Tribunal’ shall be given to the parties etc.

In view of the clear-cut position of Section 61(1) of the Insolvency and Bankruptcy Code coupled with 150 of the NLCT Rules, this ‘Tribunal’ is of the considered opinion that the delay of 289 days as afforded by the ‘Petitioner’/‘Appellant’ from 10.03.2022 to 23.12.2022 in filing the instant Company Appeal cannot be condoned as there is no power to enjoin upon this ‘Appellate Tribunal’ to condone not even a single day beyond the condonable period prescribed as per Section 61 of the Insolvency and Bankruptcy Code, 2016.

Looking at from any angle, I.A. Nos.170 and 171 of 2023 in CA (AT)(CH)(Ins) No. 49 of 2023 sans merits.

In fine, I.A. Nos.170 and 171 of 2023 in CA (AT)(CH)(Ins) No. 49 of 2023 is dismissed. No Cost.

Consequent to the 'Dismissal' of the I.A. No.170 of 2023 in Comp App (AT) (CH) (Ins) No.49 of 2023, the Instant Company Appeal (AT) (CH) (Ins) No. 49 of 2023, is rejected. No cost.

The connected pending I.A. Nos.171 and 172 of 2023 are closed.

[Justice M. Venugopal]
Member (Judicial)

[Shreesh Merla]
Member (Technical)

SE/TM