

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**Company Appeal (AT) (Ins) No. 858 of 2019 with
I.A. No. 2621 of 2019 & I.A. No. 2767 of 2019****IN THE MATTER OF:****P. Purushothaman****...Appellant****Versus****Union Bank of India & Anr.****...Respondents****Present:****For Appellant: Mr. Vibhu, Mr. Karuppaiah Meyyappan and Ms. Kanika,
Advocates****For Respondents: Mr. Avrojoyti Chatterjee, Mr. Rajiv S. Roy, Mr. Abhijit
Roy and Ms. Jayasree Saha, Advocates for R-3.
Ms. Aanchal Kapoor, Advocate for R-2.****O R D E R**

27.09.2019: Respondent No.1 – Union Bank of India filed Application under Section 7 of Insolvency and Bankruptcy Code, 2016 (IBC – in short) on 8th February, 2018 before the Adjudicating Authority (National Company Law Tribunal, Chennai Bench) against EMPEE Distilleries Limited – Corporate Debtor (Respondent No.2). The Application was admitted by Adjudicating Authority on 1st November, 2018 against which the shareholders of the Corporate Debtor filed Appeal to this Tribunal having Company Appeal (AT) (Insolvency) No. 690 of 2018 by ‘Sheena Adarsh’; and Company Appeal (AT) (Ins) 742 of 2018 filed by ‘Sheeju Purushothaman’. The same were disposed by this Tribunal vide Order dated 29.03.2019 and order admitting Section 7 application was maintained. The shareholders

filed Review Application No.7/2019 and 8/2019 on 9th April, 2019 challenging the Order dated 29th March, 2019 which were dismissed on 15th April, 2019 by this Tribunal. It is stated that after such Order dated 15th April, 2019, the Civil Appeal came to be filed to the Hon'ble Supreme Court of India having number - CA 4632 – 4635 of 2019 by that shareholders which was dismissed on 10th May, 2019. It is stated that point of limitation was kept open in case further proceedings were taken. The Appellant claims that thereafter, he filed MA 496/2019 before the Adjudicating Authority under Section 60(5) of IBC asking the Adjudicating Authority to reconsider the Order dated 01.11.2018 admitting the Application under Section 7 of IBC.

The Appellant –'P. Purushothaman', Director of the Corporate Debtor has filed this appeal against rejection of his request for review filed before Adjudicating Authority, National Company Law Tribunal division bench, Chennai vide Impugned orders passed on 04.06.2019. The review application was filed to set aside the admission order dated 01.11.2018 whereby Section 7 application filed by 'Union Bank of India' had been admitted.

Learned Counsel for the Appellant has filed I.A No. 2621 of 2019 for condonation of delay. The appellant claims to be a senior citizen and that he had several health issues and claimed that he did not have knowledge of the impugned order. Learned counsel for the Appellant submits that considering the age of the Appellant, the delay may be condoned. The Learned Counsel for

the Respondent – ‘Union Bank of India’ however, submits that the appellant was well aware of the proceedings and in the matter earlier admission order was challenged at the instance of other shareholders which was maintained till the Hon’ble Supreme Court in Civil Appeal Nos. 4632-4635/2019 and subsequently, the Adjudicating Authority was moved by way of seeking the review of admission orders and the impugned order dated 04.06.2019 which was actually pronounced on 27.05.2019 was passed. Counsel states that the Senior Advocate and another advocate for the appellant were present when the order was pronounced by the Adjudicating Authority and thus the Appellant cannot claim lack of knowledge.

Going through the material on the record and considering the delay as stated in the condonation application, we find that the I.A. No. 2621 of 2019 does not even state as to on what date, or around what time the Appellant came to know about the impugned order. It is merely stated in the application that at the time of pronouncement of the impugned order dated 04.06.2019 the Appellant took ill and was in no condition to move. Hence was unable to seek advice from the advocate it is claimed. The Appellant in condonation of delay application in the para Pg. 4 did not even calculate as to how many days are of delay.

The Appellant claimed in another application for condonation of delay in I.A. No. 2767 of 2019 that on 07.08.2019 the Appellant for the first time became aware of the impugned order through one of the shareholder. We however find that the appellant was represented by the Senior Counsel and

one more advocate when the impugned order was pronounced but it is stated that he was on complete bed rest and was not aware of the impugned order. After one round of litigation upto the Hon'ble Supreme Court, this Appellant has stepped forward and moved before Adjudicating Authority. Now with delay this appeal is moved. The appeal filed on 21.08.2019 against the order pronounced on 27.05.2019 (delivered on 04.06.2019) is clearly time barred considering sub section (2) of Section 61 of the I&B Code.

When Appellant was represented by Advocates present when impugned order was passed we are not ready to accept his plea of want of knowledge. Apart from the above, even on merits (in case our views become necessary at any point of time), we find that the basic order of admission dated 01.11.2018 which was admittedly not disturbed till the Hon'ble Supreme Court was rightly not interfered with the Adjudicating Authority as it cannot reconsider its order after admitting Section 7 proceeding.

Learned counsel for Intervener submits that although 330 days have passed, the Adjudicating Authority is not passing the order under Section second 31 of I&B Code due to pendency of various proceedings brought about at the instance of shareholders/ Directors. It is stated that no proceeding before the Adjudicating Authority is pending, still the Adjudicating Authority is not passing order due to pendency of this appeal. We can only say that we expect that the Adjudicating Authority will act in accordance with law.

We are not inclined to entertain application for condonation of delay as we are not empowered to condone the delay more than 15 days beyond 30 days period of appeal. I.A. No. 2621 of 2019 and I.A. No. 2767 of 2019 are rejected and appeal is disposed off as time barred.

[Justice A.I.S. Cheema]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

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