

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)
IA No.843
in
Comp. App. (AT)(CH)(Ins) No. 365/2022
(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)
(Arising out of the Impugned Order dated 16.03.2021 in IA/70/2021 in
CP (IB) No.563/9/HDB/2019
passed by the ‘Adjudicating Authority’ (National Company Law
Tribunal, Hyderabad Bench-I)

In the matter of:

Office of the Mining Engineer ... Applicant /Appellant
V
Dr. Govindarajula Venkata Narasimha Rao
(Resolution Professional) & anr. ... Respondents

Present :

For Appellant : Mr. G. Kalyan Jhabakh, Advocate
For Respondents : Mr. Viswaraj Maharshi Marripati, Advocate
For Caveator

ORDER

(Virtual Mode)

14.10.2022: Heard Mr. G. Kalyan Jhabakh, the Learned Counsel appearing for the ‘Applicant’ / ‘Appellant’ in IA No.843/2022 (‘Condone Delay’ Application) in the instant Comp. App. (AT)(CH)(Ins) No.365/2022.

2. According to the Learned Counsel for the ‘Applicant’ / ‘Appellant’, in the ‘Impugned Order’, which was passed on 16.03.2021 in IA/70/2021 in CP (IB) No.563/9/HDB/2019, on the file of the ‘Adjudicating Authority’ (National Company Law Tribunal, Hyderabad Bench-I), that it is the ‘Plea’ of the ‘Applicant’ / ‘Appellant’ that it was not a ‘Party’ in the aforesaid proceedings before the ‘Adjudicating Authority’ (National Company Law Tribunal, Hyderabad Bench-I), being the ‘Operational Creditor’. In fact, the ‘Applicant’ / ‘Appellant’, who is aware of any ‘Resolution Plan’, only through an ‘E-mail’ communication dated 20.05.2021.

3. According to the Learned Counsel for the ‘Applicant’ / ‘Appellant’, there has occasioned a ‘Delay’ of ‘122 Days’, in preferring the instant Comp. App. (AT)(CH)(Ins) No.365/2022 and, in fact, the said instant Company Appeal, is to be preferred before 29.05.2022, when ‘90 Days’ period from 01.03.2022, came to an end.

4. It is an ‘axiomatic principle’ in ‘Law’ that Section 61(2) of the Insolvency & Bankruptcy Code, 2016, provides for filing of an ‘Appeal’ by an ‘Aggrieved Party’ is to within ‘30 Days’ before the ‘National Company Law Appellate Tribunal’, in respect of an ‘Order’ passed by the ‘Adjudicating Authority’ (National Company Law Tribunal). Furthermore, after the expiry of ‘30 Days’ time, as per Section 61 (2), the ‘National Company Law

Appellate Tribunal' had further '15 Days' time to 'Condone the Delay' in preferring an 'Appeal', provided 'Sufficient Cause' is shown before the 'Appellate Tribunal', for not preferring an 'Appeal', within the time, so prescribed.

5. As far as the instant Comp. App. (AT)(CH)(Ins) No.365/2022 is concerned, the same is filed, admittedly, with a delay of '122 Days'. Although, the Learned Counsel for the 'Applicant' / 'Appellant' has referred to the Hon'ble Supreme Court Order dated 10.01.2022 in the Miscellaneous Application No.21/2022 in Miscellaneous Application No.665/2021 in Sua Motu Writ Petition (C) No.3/2020 to the fact that the period from 15.03.2020 till 28.02.2022 can be excluded for the 'purpose of Limitation' and further in cases where the 'Limitation would have expired', during the period from 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of the 'Limitation remaining', all persons shall have a 'Limitation Period' of '90 Days' from 01.03.2022, the said Order of the Hon'ble Supreme Court, will not come to the aid of the 'Applicant' / 'Appellant' in Comp. App. (AT)(CH)(Ins) No.365/2022, in the considered opinion of this 'Tribunal'.

In view of the clear cut 'Legal Position' this 'Appellate Tribunal' has no power to 'Condone the Delay' beyond '45 Days' (30 + 15), in terms of Section 61 (2) of the Insolvency & Bankruptcy Code, 2016 and as such this

‘Appellate Tribunal’ is left with no other option, but, to **‘dismiss IA No. 843/2022’** (‘Condone Delay’ Application) in the instant Comp. App. (AT)(CH)(Ins) No.365/2022 to secure the ends of ‘Justice’.

In view of the fact that IA No. 843/2022 (‘Condone Delay’ Application) in the instant Comp. App. (AT)(CH)(Ins) No.365/2022 is **‘dismissed’**, the Comp. App. (AT)(CH)(Ins) No.365/2022 is **‘Rejected’** by this ‘Tribunal’. The connected IA Nos.844, 845 and 846/2022 in the instant Comp. App. (AT)(CH)(Ins) No.365/2022 are **Closed**.

[Justice M. Venugopal]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

ghk/tm