

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

I.A. No. 8821 of 2024

in

Company Appeal (AT) (Insolvency) No. 2362 of 2024

IN THE MATTER OF:

KVD Windpark Social Welfare Association & Ors.

...Appellants

Versus

**Consortium of Brij Kishore Trading & Sumit Kumar
Khanna (SRA for K V Developers Pvt. Ltd.) & Anr.**

...Respondents

Present:

For Applicant : Mr. Pallav Kumar, Ms. Farheen Penwale, Advocates.

For Respondents : Mr. Sumesh Dhawan, Advocate.

O R D E R
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present application I.A. No. 8821 of 2024 is an application filed by the Applicant praying for condonation of 139 days delay in refiling of Company Appeal (AT) (Insolvency) No. 2362 of 2024.

2. Notice was issued in respect of the refiling delay condonation application by this Tribunal vide order dated 12.02.2025 and the Respondent was allowed two weeks' time to file their reply and Applicant was allowed two weeks further time to file their rejoinder.

3. The Learned Counsel for the Applicant submitted that the refiling delay was caused by genuine and bonafide reasons as time was taken in obtaining

the directions and the signature of the various Home-buyers who have filed the appeal collectively. Since the Applicants reside at different locations, it took time for them to review the documents. Time was also consumed in obtaining certified copy of the impugned order from the NCLT Registry. Furthermore, Dussehra and Diwali vacations and consequential closure of the Tribunal and absence of the legal counsel on account of vacations compounded the delay. All these factors cumulatively caused delay of 139 days in refiling the defect free appeal. It was vehemently contended that there was no intentional negligence or deliberate inaction on the part of the Applicant and hence the delay deserves to be condoned. Given the unavoidable circumstances of the present case as explained above, it was pressed that it would be just and expedient to condone the refiling delay in the interest of furthering the cause of substantial justice and protecting the Appellants from facing prejudice.

4. Elaborating their stance, the Applicant has tendered the following explanation justifying their refiling delay in their Rejoinder-Reply which is extracted hereunder:

“4. It is humbly submitted that since the Appellants are homebuyers and any action concerning the Appeal can only be taken by the counsel only after all the Appellants arrive at a consensus and assemble together to give instructions/sign documents. Pertinently, all the Appellants reside at different locations. However, due to certain unavoidable circumstances as well as unavailability of all the Appellants together in the same place, steps required for removal of defects in the present Appeal could not be taken within the stipulated period of seven days.

5. It is respectfully submitted that Appellant No. 2 Mr. Kanwar Pal was not available from 27.07.2024- 01.08.2024; Appellant No. 5 Mr. Suresh Kumar was not available from 25.07.2024 to 26.07.2024; 27.08.2024 to

30.08.2024 and again from 15.09.2024 to 21.09.2024; Appellant No. 6 Mr. Jitendra Kumar was not available from 31.08.2024 to 02.09.2024 and Appellant No.7 Mr. Himanshu Kumar was not available from 26.07.2024 to 30.07.2024 and from 10.08.2024 to 19.08.2024. It is respectfully submitted that it was only after 21.09.2024 that all Appellants could come together to review the documents and give instructions to the counsel for taking steps for removal of defects.

6. The Appellants, thereafter, instructed the counsel to take the necessary steps for removal of defects sometime in the last week of September, 2024. The counsel for the Appellants took the steps to cure the defects raised by the Registry and also applied for the certified copy of the Impugned Order, which required some time.

7. However, given the festive season in the month of October, 2024, this Hon'ble Appellate Tribunal remained closed on account of Dusshera vacation from 05.10.2024 to 13.10.2024 (including Saturday and Sunday) and for Diwali vacation from 30.10.2024 to 03.11.2024. Moreover, the counsel for the Appellants was also intermittently not available due to vacations. All these factors cumulatively led to delay in filing/ refiling the Appeal after receipt of defect from the registry on 26.07.2024.

8. That it is respectfully submitted that the period of limitation of 7 days from receiving the notification on 26.01.2024 for removing the defects and refiling the present Appeal expired on 02.08.2024. However, for the reasons stated hereinabove, the present Appeal could not be filed within 7 days of receipt of defect from the registry on 26.07.2024 and was refiled on 20.11.2024 and as such, there is a delay of 139 days in refiling the present Appeal.”

5. Per contra, it is the contention of the Respondent that the explanation and reasoning given by the Applicant to justify the delay of 139 days lacks substance and fails to adequately justify the delay in refiling after such an inordinately long period of 139 days. It was pointed out that plea taken by the Applicant that time was taken in consultation with Appellant-Home-buyers since they were unavailable is dubious as no reasons have been stated to explain their unavailability. The Applicant has also failed to explain why

application was not lodged on time for obtaining certified copy of impugned order from NCLT Registry. Even the ground raised of Dussehra and Diwali vacations leading to delay is baseless since the NCLAT Registry was partly functional during the vacations. This explanation not only lacks foundation but smacks of negligence and a casual attitude on the part of the counsel in handling the appeal. It was vehemently contended that allowing the refiling delay in the given circumstances would undermine the sanctity of timeliness of Insolvency and Bankruptcy Code.

6. We have heard both parties and seen the material on record.

7. In the present facts of case where delay in refiling is for an unduly prolonged period of 139 days, it becomes incumbent on the Bench to be satisfied with the cogency and plausibility of the reasons set forth by the Applicant to explain the delay. Coming to our analysis, we find that one of the principal explanations given for delay is that the applicants were not available for long periods of time which led to delay in review of documents. This explanation is rather airy and light-weighted as no concrete reasons have been given to explain as to why the Applicants were absent or remained unavailable for consultation for such long periods. We are of the considered view that the refiling delay condonation application fails to explain to our satisfaction as to why the Applicants were unavailable individually and collectively from 27.07.2024 to 21.09.2024 to file the application.

8. Neither has any credible explanation been given as to what prevented the Applicant or his counsel to obtain certified copy of the impugned order on time. The impugned order was passed on 15.06.2024 following which the Appeal had been filed by the Applicant on 17.07.2024. The NCLAT Registry marked the defects on 26.07.2024 and allowed 7 days' time to cure the defects which ended on 02.08.2024. However, the certified copy of impugned order was obtained as late as on 27.09.2024. Clearly a period of nearly four months was allowed to be frittered away in obtaining the certified copy. This indicates a rather casual disposition on the part of the Applicant as well as the counsel in filing a defect free appeal. Such a lack-lustre, careless and negligent approach does not commend us especially in view of the fact that IBC prescribes strict time-lines in the completion of the CIRP proceedings. Even the attribution of court vacations as a ground for delay is not acceptable since the holiday period on account of Dussehra and Diwali vacations does not exceed 15-20 days collectively as against a delay of 139 days noticed in the present case. We also notice that explanation for delay is given only upto 03.11.2024. However, the Appeal was refiled after an efflux of further 40 days on 13.12.2024 in the NCLAT Registry for which delay no explanation has been given at all. We are not persuaded by these bald and frivolous explanations to cover up the lack of diligence on the part of both the Applicants and their counsel in filing the appeal in a timely manner.

9. The Applicant has clearly failed to effectively demonstrate sufficient cause for condonation of delay of 139 days in refiling the appeal.

10. In view of the above, we do not see any merit in the Application filed for seeking condonation of 139 days delay in refiling the appeal. Sufficient grounds not having been made out, IA No. 8821 of 2024 is rejected. In view of the dismissal of the application for condonation of delay in refiling, the Memo of Appeal is also rejected.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**Place: New Delhi
Date: 18.03.2025**

Abdul/Harleen