

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 5 of 2025
&
I.A. No. 8920 of 2024

IN THE MATTER OF:

Ritu Shree Somani **...Appellant**

Versus

Bank of Baroda **...Respondent**

Present:

For Appellant : **Mr. Vasu Goyal, Advocate.**

For Respondent : **Mr. Naman Shukla and Mr. A.K. Shukla,
Advocates.**

WITH

Company Appeal (AT) (Insolvency) No. 25 of 2025
&
I.A. No. 13 of 2025

IN THE MATTER OF:

Bimla Maheshwari **...Appellant**

Versus

Bank of Baroda **...Respondent**

Present:

For Appellant :

For Respondent : **Mr. Naman Shukla and Mr. A.K. Shukla,
Advocates.**

WITH
Company Appeal (AT) (Insolvency) No. 26 of 2025
&
I.A. No. 11 of 2025

IN THE MATTER OF:

Gopal Das Maheshwari **...Appellant**

Versus

Bank of Baroda & Anr. **...Respondents**

Present:

For Appellant :

For Respondents : **Mr. Naman Shukla and Mr. A.K. Shukla,**
Advocates.

WITH
Company Appeal (AT) (Insolvency) No. 27 of 2025
&
I.A. No. 10 & 93 of 2025

IN THE MATTER OF:

Sanjay Maheshwari **...Appellant**

Versus

Bank of Baroda **...Respondent**

Present:

For Appellant :

For Respondent : **Mr. Naman Shukla and Mr. A.K. Shukla,**
Advocates.

WITH
Company Appeal (AT) (Insolvency) No. 28 of 2025
&
I.A. No. 14 & 96 of 2025

IN THE MATTER OF:

Shweta Maheshwari **...Appellant**

Versus

Bank of Baroda & Anr. **...Respondents**

Present:

For Appellant :

For Respondents : **Mr. Naman Shukla and Mr. A.K. Shukla,**
Advocates.

WITH
Company Appeal (AT) (Insolvency) No. 29 of 2025
&
I.A. No. 12 & 99 of 2025

IN THE MATTER OF:

Yogesh Maheshwari **...Appellant**

Versus

Bank of Baroda & Anr. **...Respondents**

Present:

For Appellant :

For Respondents : **Mr. Naman Shukla and Mr. A.K. Shukla,**
Advocates.

O R D E R
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

Present is a set of six I.A. Applications praying for condonation of
refiling delay in respective Appeals preferred by six Applicants against order

dated 13.06.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Court-III, New Delhi) admitting application under Section 95 of Insolvency & Bankruptcy Code, 2016 (IBC).

2. To list out these IAs, we notice that I.A. No. 11 of 2025 has been filed by the Applicant seeking condonation of 160 days' delay in refiling of Company Appeal (AT) (Ins) No. 26 of 2025. The other I.As for condonation of delay in refiling alongwith number of days of delay are I.A. No. 8920 of 2024 (delay of 142 days) in C.A. (AT) (Ins) No. 5 of 2025; I.A. No. 13 of 2025 (delay of 147 days) in C.A. (AT) (Ins) No. 25 of 2025; I.A. No. 10 of 2025 (delay of 160 days) in C.A. (AT) (Ins) No. 27 of 2025; I.A. No. 14 of 2025 (delay of 141 days) in C.A. (AT) (Ins) No. 28 of 2025 and I.A. No. 12 of 2025 (delay of 147 days) in C.A. (AT) (Ins) No. 29 of 2025.

3. We have perused the refiling delay condonation applications and notice that though the number of days of delay indicated in each application is at variance, we find that the reasons offered for delay in refiling by affidavit by the Applicants are more or less identical with the only distinction that in two I.A.s, the Applicants are found to be senior citizens. Since the explanation offered is the same, we propose to take up I.A. No. 11 of 2025 for our consideration and basis our findings thereupon, we propose to dispose of the other I.A's on the same lines.

4. In the application filed by the Applicant for the first time in I.A. No. 11 of 2025 seeking condonation of delay in refiling the appeal, the justification offered for the delay as outlined in paragraphs 2 to 4 is as reproduced below:

“2. That through this application, the applicant is seeking condonation of delay which comes to 160 days in refiling the said application (Diary No. - 9910110/07865/2024).

3. That the delay in refiling was caused because file was misplaced in the office of the advocate of the applicant. The said Memorandum of Appeal is being filed now again after removing the objections.

4. That the applicant submits that he has diligently taken all steps to cure the defects.”

5. As prayed, the Applicant was further allowed 10 days time to place on record an Additional Affidavit to amplify the reasons in support of their application for condonation of re-filing delay. The relevant paragraphs in the Additional Affidavit substantiating the delay is as reproduced below:

“6. I state that this is not a case where the memo of appeal was filed and forgotten by the appellant but several refilings took place in order to cure the defects. The defect sheets are annexed herewith as Annexure-A/ 1.

7. I further state that the deponent is a resident of Jaipur and a senior citizen aged above 75 years, therefore, it was difficult for the deponent to travel again and again to Delhi to append his signatures to any of the changes made by the counsel in the memo of appeal.

8. I further state that the main reason behind such an inordinate delay in refiling the appeal was that the counsel for the appellant had engaged a clerk on freelance basis who was expert in NCLAT filings. The said clerk was in possession of the original memo of appeal and made the counsel for the appellant run from pillar to post. First, the said clerk went back to his village with the original file of the appeal as his grandfather had passed away. Then later, it was informed that he has been hospitalized due to certain ailment. Therefore, the counsel was left with no other option but to chase him in order to retrieve the originals from him and cure the defects. Printout of whatsapp chats with the said clerk is annexed herewith as Annexure-A/2.

9. I further state that it is only after the file was taken back from the said clerk, the counsel refiled the memo of appeal and cured all the defects.

10. I state that the delay was neither intentional nor deliberate and the same was due to the reasons beyond the control of the Appellant.”

6. Notice in respect of the above-mentioned IAs was issued by this Tribunal by order dated 05.03.2025, which reads as under:

“Issue Notice on the delay condonation Application for re-filing. Let Reply be filed with two weeks. Two weeks for Rejoinder. List on 24.04.2025.”

7. A Reply Affidavit was filed by the Respondent, and the submissions made therein have been captured in the succeeding paragraph.

8. When we peruse the reasons offered by the Applicant in the Additional Affidavit, we notice that it has been stated that the principal cause of the delay in re-filing was due to delay caused by the freelance clerk, engaged by the legal counsel, due to personal emergencies on account of the death of his grandfather and later his hospitalization which delayed the retrieval of the original file. Time was also consumed in multiple re-filing which had to be undertaken to rectify defects in the Memo of Appeal, as pointed out by the Registry from time to time, some of which were repeat defects. Further being, a senior citizen over 75 years old residing in Jaipur, considerable difficulty was faced in making multiple trips to Delhi to sign the revised Memo of Appeal. Submission was pressed that the delay was unintentional and caused by factors beyond the counsel's control.

9. The above submissions of the Applicant were contested by the Respondent stating that that the Applicant has deliberately delayed the re-filing of the appeal with the intent to obstruct and derail the proceedings thereby

causing prejudice to the Respondent. The Applicant has failed to provide any valid or convincing reason for the condonation of the excessive delay of 160 days in refiling the appeal. It was pressed that the principal explanation offered that the original file was not readily available in the counsel's office as it was lying with a free-lance clerk who had gone missing for some-time is frivolous and unacceptable. Rather the delay in refiling was attributable to a lack of due diligence and proper care on the part of the Applicant and his counsel which did not deserve to be condoned. The Respondent has relied on the judgment of this Tribunal in ***Dhanlaxmi Bank Limited vs. Ritu Rastogi, Resolution Professional and Ors. in I.A. No. 7598 of 2024 in CA(AT)(Ins) No. 2131 of 2024*** wherein it was held that to condone any delay in filing/re-filing, the Applicant was required to provide an explanation for each day's delay. The Respondent has further placed reliance on the judgement of this Tribunal in ***Govardhan Nirman Pvt. Ltd. and Ors. Vs Vaibhav Khandelwal and Ors. in CA(AT)(Ins) No. 1524 of 2024 and Employees Provident Fund Organization vs. HL Buildwell Pvt. Ltd. in I.A. No. 3202 of 2024 in CA(AT)(Ins) No. 1700 of 2024*** wherein it has been held, that IBC proceedings have stringent timelines to be followed and the adjudicatory proceedings have to be completed in a prompt, expeditious and time bound manner.

10. We have heard the rival contentions of both the parties and perused the records carefully.

11. At the very outset we would like to make it clear that there should be a liberal, practical and justice-oriented approach while dealing with any application for condonation of refiling delay so that securing of substantive

justice is not trampled upon. We are also of the view that for negligence of lawyers, litigants cannot be made to suffer. Be that as it may, while adopting a non-pedantic, pragmatic and liberal approach, we cannot afford to marginalize or side-line the need to factor in the quotient of objectivity and reasonableness. We are therefore of the considered view that this Tribunal is not precluded from scrutinizing the tenability, reasonability and bonafide of the grounds on which refiling delay condonation has been sought since the scale of justice has to balance out equally for both parties.

12. We therefore proceed to consider as to whether there was justifiable cause for delay in refiling or not. We first come to the explanation offered that the original file was misplaced and became unavailable to the counsel as it was lying with a free-lance clerk who for personal reasons was unable to follow up with the Registry to correct the defects leading to the delay. In support of their contention, certain exchange of WhatsApp messages with the derelict free-lance staff engaged by the counsel has been placed on record. The Respondent has contested this explanation to be a lame-duck excuse as the counsel cannot be permitted to cast the entire blame on the staff deployed by him while ignoring the need for continuous vigil and oversight of the counsel over his staff.

13. When we look at the Additional Affidavit, we notice that it is the contention of the Applicant that the Memo of Appeal could be refiled after curing the defects only after the file was recovered from the clerk. The first set of defects was admittedly notified by the Registry on 23.07.2024 and thereafter the defect sheets were notified again on 20.08.2024, 21.09.2024, 21.10.2024

and 09.12.2024. The defects pointed out include missing details of impugned order, unsigned index, incomplete respondent information, pagination and annexure issues, incorrect page orientation, missing court fees and stamps etc. When we peruse the defect list pointed out by the Registry, most of the defects were minor in nature which were easily curable. This amply bears proof that the Applicant was lackadaisical and negligent while making routine corrections and removing the defects in a timely manner. Had the Applicant been more alert, careful and vigilant, they would not have been required to undergo the rigmarole of correcting defects four times at every one-month interval. Further the fact that the Applicant had to be explicitly instructed by the Registry to file the delay in refiling application and upload the same on three occasions shows how casually the corrections were being carried out. We are of the considered view that the delay was clearly not occasioned by factors which were beyond the control of the Applicant

14. We also tend to agree that nothing has been shown to demonstrate what alternative steps were taken by the counsel to overcome the inaction on the part of the clerk employed by him and the slipshod manner in which defects were being remedied by him. By merely referring to exchange of WhatsApp messages with the derelict free-lancer staff is not enough to prove that the counsel was sufficiently proactive in curing the defects. Putting the entire blame upon the clerk to wriggle out of their own lack of bonafide does not commend us. The delay in refiling is clearly attributable to lack of due diligence and proper care on the part of the counsel to pursue completion of the procedural compliances with due earnest. The inaction and absence of the

clerk of the counsel being the mainstay ground for delay therefore does not meet our countenance. This game of each one passing on the buck to the other cannot be taken by us casually.

15. At this stage we must also add here that the litigant owes a duty to be vigilant of their own rights and are expected to be equally vigilant about the judicial proceedings pending in a court of law against them especially where appeals have been initiated at their instance. The issue of geographical distance between Jaipur and Delhi being a cause of discomfort for two Applicants being senior citizens in travelling down to Delhi to sign the Memo of Appeal can be accepted. However, it fails to explain why the others could not sign the Memo of Appeal on time. We are, therefore, not persuaded to accept that all the Applicants had been prevented by any exceptional reason beyond their control in acting in a timely fashion to cure the defects. We cannot condone refiling delays without strong and credible reasons as sympathy or equity cannot override the stringent timelines of IBC especially with several judgements of the Hon'ble Apex Court having emphasised that time is of essence in IBC proceedings. We cannot allow any compromise of the well settled precept of "timeliness" which constitutes one of the cardinal hallmarks of the statutory framework of IBC.

16. We do not find that any unavoidable or exceptional circumstance had come in the way of the Applicant or their counsel which prevented them from refiling the defect-free Appeal in a timely manner. We are of the view that in this case there was gross inaction, negligence and display of lethargy on the part of the Applicant in curing the defects. In the given facts and

circumstances, IBC being a time bound matter, we cannot perceive refiling delays spreading from 141 to 160 days as a non-serious matter.

17. In view of the above, we do not see any merit in the present I.A. seeking condonation of delay of 160 days in refiling the Appeal. Sufficient grounds have also not been made out for condonation of delay of 141 to 160 days in respect of the other five I.A.s in the refiling of the respective Appeals. Accordingly, all the six I.A.s are rejected. In view of the dismissal of the application for condonation of delay in refiling the appeal, all the six Memos of Appeal are also rejected.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi
Date: 25.08.2025