NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No. 508/2025
(IA No. 1429/2025)

In the matter of :
Mr. Ajay Kumar Bhuwalka
No.2996, 12th 'A' main, 5th Cross,
Indiranagar, H.A.L, II Stage,
Bangalore – 560 038.

Mr. Ankit Kumar Bhuwalka
No.2996, 12th 'A' main, 5th Cross,
Indiranagar, H.A.L, II Stage,
Bangalore – 560 038. **…Appellants**
V
M/s. Bhuwalka Steel Industries Ltd.
Rep by its Resolution Professional,
Mr. Shivadutt Bannanje,
Having Registration Number:
IBBI/IPA/002/IP-N00266/2017-2018/10779
Having his office at
N-602, North Block, Manipal Centre,
Dickenson Road, Bangalore – 560 042. **…Respondent**

Present :

For Appellants	:	Mr. S.S. Naganand, Senior Advocate For Ms. Madhuvanti Prabhath, Advocate
For Respondent	:	Mr. Rishi Srinivas, Advocate

JUDGMENT
(Hybrid Mode)

[Per : Justice Sharad Kumar Sharma, Member (Judicial)]

The Appellants in the instant Company Appeal claim themselves to be the nominal directors of the Corporate Debtor, M/s. Bhuwalka Steel Industries Private

Limited. The integral management of the Corporate Debtor was absolutely vested in Mr. Suresh Kumar Bhuwalka, and the Appellants herein appear to be related parties to one another. It is an admitted case, as borne out from the records as well as from the submissions of the Appellants, that all managerial affairs and vital decisions of the Corporate Debtor were taken by Mr. Suresh Kumar Bhuwalka. The Appellants, admittedly being nominal directors/shareholders, did not exercise effective control over the management or affairs of the Corporate Debtor.

2. The grievance of the Appellants in the instant Company Appeal is directed against the impugned order dated 9.07.2025 passed in IA No.122/2022 in CP(IB) No.228/BB/2018. In the principal proceedings held before the Learned Tribunal, the Appellants were not shown as parties to the proceedings of the Interlocutory Applications (IA) filed previously, but in the present IA filed by the Corporate Debtor through its Resolution Professional, the present Appellants have been arrayed as opposite parties. The IA was preferred by the Resolution Professional invoking the provisions of Sections 43, 44, 66 and 69 of the Insolvency and Bankruptcy Code, 2016, read with Regulation 35A (3) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, and Rule 32 of the NCLT Rules, 2016.

3. The aforesaid Application was preferred by the Resolution Professional of the Corporate Debtor in compliance with earlier orders passed by the Tribunal on

22.02.2022 in IA No.248/2021 and pursuant to the liberty granted vide order dated 10.03.2021 passed in IA No.133/2020. Consequently, in compliance with the orders dated 10.03.2021 and 22.02.2022, the Resolution Professional filed IA No.122/2022 before the Learned Tribunal, seeking directions against the 1st and 2nd Respondents therein, i.e., the Appellants herein, to contribute an amount of Rs.154.55 Crores to the assets of the Corporate Debtor under Section 66 of the Code; to contribute Rs.1.49 Crores under Section 44 of the Code; and also seeking imposition of a fine of Rs.1 Crore under Section 69 of the I&B Code.

The reliefs sought in IA No.122/2022 were formulated as follows:

> *"A. Direct the First and Second Respondents to contribute an amount of Rs.154.55 Crores to the assets of the Corporate Debtor, under Section 66 of the Code;*
>
> *B. Direct the First and Second Respondents to contribute an amount of Rs.1.49 Crores to the assets of the Corporate Debtor, under Section 44 of the Code;*
>
> *C. Impose fine of Rs.1,00,00,000/- (Rupees One Crore only) on the First and Second Respondents under Section 69 of the Code;*
>
> *D. Pass other orders under Sections 44, 66 and 69 of the Code, as may be necessary to secure the ends of justice and protect the interests of the creditors of the Corporate Debtor; and*
>
> *E. Pass any other order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."*

4. This application was considered by the Learned Tribunal. During its consideration, a preliminary issue arose regarding the bar of limitation, as raised in the reply, namely whether the reliefs sought in the application, being allegedly barred by limitation, could be granted at all by the Resolution Professional.

5. The Learned Tribunal took note of the fact that an application filed by M/s. Indu Corporation Private Limited under Section 9 of the I & B Code, 2016 against M/s. Bhuwalka Steel Industries Private Limited was admitted and CIRP was commenced by order dated 08.04.2019, resulting in the appointment of an IRP. Subsequently, IA No.133/2020 was filed under Section 66 read with Section 60 of the I&B Code seeking directions against the promoters of the Corporate Debtor to make good the losses suffered. This application was disposed of as premature by order dated 10.03.2021, with directions to the Resolution Professional to conduct further enquiry, consider all evidence and facts on record, and thereafter either revive the application or file a fresh application with suitable modifications.

6. Another application, IA No.248/2021, was filed by M/s. Wahaca Trading Private Limited under Section 60(5) of the I&B Code, seeking replacement of the IRP and a direction to the RP to place on record the enquiry and investigation report prepared pursuant to the order dated 10.03.2021. This application was disposed of by order dated 22.02.2022, the relevant portion of which reads as follows:

> *"9. It is to be seen that this Adjudicating Authority while disposing of the IA No.133 of 2020 vide order dated 10.03.2021, though not fixed any specific time to the RP to revive the said IA or to file a fresh petition after complying with the directions of this Adjudicating Authority, but the Respondent-RP cannot postpone the implementation of the directions issued by this Adjudicating Authority beyond a reasonable period. Since the RP has stated that he is in the process of taking appropriate steps against all necessary parties in terms of the order dated 10.03.2021 in IA No.133 of 2020, we are of the view that no further orders are required to be passed in the instant IA. However, the Respondent/RP shall comply with the order dated 10.03.2021 in IA No.133 f 2020 as early as possible, but not later than 30 days."*

7. Thus observing that the Resolution Professional cannot postpone compliance of the directions issued in IA 133/2020 beyond a reasonable period, IA No.248/2021 was disposed of with a direction to comply with the earlier order issued in IA No. 133/2020 within 30 days. Thereafter, the present IA No.122/2022 was filed on 18.03.2022 under Sections 43, 44, 66 and 69 read with Regulation 35A (3). The Appellants have contended that the application, though filed within the time granted by the order dated 22.02.2022, the said application was barred by limitation, because it has been filed 369 days from the date of passing of order in IA No. 133/2020, with no separate application for condonation of delay having been filed, and also because the original application IA No. 133/2020 was filed 333 days after the commencement date of CIRP, which is beyond the prescribed period of 135 days from the insolvency commencement date.

8. The objections raised by the Appellants were opposed by the Respondent/Applicant, contending that the timelines under Regulation 35A are directory and not mandatory, and that minor delays do not vitiate the proceedings. Reliance was placed on the judgment in Comp App (AT) (Ins) No.869/2022, Prakash Chandra Rath vs. Suryakanth Satapathy, wherein it was held that Regulation 35A is directory in nature, as consistently reiterated by the Hon'ble Apex Court. The Learned Tribunal observed that filing of a separate application for condonation of delay is not mandatory, as no such requirement is expressly provided under law, and delay can be condoned even without a formal application if sufficient cause is disclosed.

9. On the issue of limitation, the Respondent/Applicant submitted that various procedural formalities had to be completed following the order dated 10.03.2021, including securing documents from former directors, which caused delay. It was also contended that Hon'ble Apex Court in suo motu proceedings on account of Covid-19 pandemic have issued directions to exclude the period between 15.03.2020 and 28.02.2022 for computation of limitation which will be applicable in the instant case. The Tribunal, upon considering these aspects, concluded that IA No.122/2022 could not be dismissed on the ground of limitation, as the delay stood protected by the orders of the Hon'ble Apex Court as well as by the period impliedly granted under the order dated 22.02.2022.

10. The Learned Counsel for the Appellant has argued that filing a specific application for condonation of delay is mandatory. However, the statute does not prescribe any such requirement, nor did the earlier orders specify a rigid timeline. Reliance placed on the judgment of the Hon'ble High Court of Chhattisgarh in Shilendra Prasad Dubey vs. Priya Dubey (2021 SCC OnLine Chh 347) was found to be misplaced, as the said judgment arose out of matrimonial proceedings under the Hindu Marriage Act and involved provisions of the CPC, which are not applicable to the present case.

11. It is observed that the said judgment could be regarded as per incuriam, as it did not consider the law laid down by the Hon'ble Apex Court in Sesh Nath Singh & Anr. vs. Baidya Bati Sheoraphuli Co-operative Bank Ltd & Anr., wherein it was categorically held that delay can be condoned even without a formal application if sufficient material is available on record. The relevant paragraph reads as follows:

> *"102. In any case, Section 5 and Section 14 of the Limitation Act are not mutually exclusive. Even in a case where Section 14 does not strictly apply, the principles of Section 14 can be invoked to grant relief to an applicant under Section 5 of the Limitation Act by purposively construing 'sufficient cause'. It is well settled that omission to refer to the correct section of a statute does not vitiate an order.* ***At the cost of repetition it is reiterated that delay can be condoned irrespective of whether there is any formal application, if there are sufficient materials on record disclosing sufficient cause for the delay."***

12. Further, the judgment in **Shilendra Prasad Dubey(supra)** was based on entirely different factual circumstances and statutory provisions and therefore it has no application to the facts of the present Company Appeal.

13. The Learned Counsel for the Appellant also relied upon the judgment in Ragho Singh vs. Mohan Singh & Others, (2001) 9 SCC 717, which arose under revenue laws concerning delay condonation in appellate proceedings. The said judgment cannot be applied to the present case, which arises under a special statute, nor can it be used to deny condonation of delay merely due to absence of a formal application.

14. The Learned Counsel for the Appellant has made reference to Regulation 35A of the IBBI (CIRP) Regulations, 2016, containing the that the aspect of limitation has to be construed in the light of the aforesaid Regulation. However, the filing of IA No.122/2022 was a consequence of the liberty granted by the Tribunal in its order dated 10.03.2021 in IA No.133/2020. Paragraph 7 of that order expressly granted liberty to revive or file a fresh application after suitable modifications, thereby giving rise to a fresh cause of action. The relevant portion reads as follows:

> *"7. In view of the above, I.A.No.133/2020 in C.P.(1B)No.228/BB/2018 is considered premature and is hereby disposed of with the directions that the Applicant will carry out basic enquiry of all surrounding facts to make out his case, make enquiries from all concerned parties with reference to*

the transactions highlighted in the forensic report, and come to some definite conclusion before referring the matter to this Tribunal u/s 66 of the Code. He may then consider adding the parties to the transactions as Respondents, so that they can be directed to file their objections, if any, and heard before reaching any conclusion. The Applicant is granted liberty to revive this petition / file a fresh petition after carrying out the above and suitably modifying its Application as may be in consonance with the requirements of the provisions of section 66 of the Code".

15. Since IA No.122/2022 was preferred under the liberty granted by the order of 10.03.2021 by filing the same on 18.03.2022, and the time taken to file the application was falling well within the extended period of limitation based on the Judgement of the Hon'ble Apex Court in the Suo motu WP (C) No. 3 of 2020, the Application cannot be held as time barred. Hence, the impugned order, holding the Application IA No. 122/2022 to be not barred by limitation, and directing the IA to be heard on merits, cannot be said to be bad in law as it is being attempted to be portrayed by the Learned Counsel for the Appellant. Thus, the Company Appeal lacks merit and the same is accordingly dismissed. We had not made any observation on merits of IA No.122/2022, except for dealing with issue of limitation, which itself has to be decided independently.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]

Member (Technical)

16/12//2025
VG/MS/RS