



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
COURT-IV

I.A. 2731/ND/2025
in
C.P. (IB) 726/ND/2020

Under Rule 11 of National Company Law Tribunal Rules, 2016

IN THE MATTER OF:

Tata Capital Limited

...Applicant/Creditor

AND IN THE MAIN MATTER OF:

Tata Capital Limited

...Applicant/Creditor

Versus

Mr. Rakesh Bhatnagar

...Respondent/Personal Guarantor

CORAM:

SHRI MANNI SANKARIAH SHANMUGA SUNDARAM
HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

Order delivered on: 01.06.2026

PRESENT:

For the Applicant: Mrs. Ekta Bhasin, Mrs. Aastha Trivedi, Advocates



ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present application I.A. No. 2731/ND/2025 in C.P. (IB) No. 726/ND/2020 has been filed under Rule 11 of National Company Law Tribunal Rules, 2016 by Tata Capital Limited (“Applicant/Creditor”) for condonation of delay of 201 days in filing the Application for initiation of Bankruptcy process against the Personal Guarantor under Chapter IV of the Insolvency and Bankruptcy Code, 2016 (“Code/IBC”).
2. The Applicant has made the following prayers in this application:
 - a) *“Allow the present application and condone the delay of 201 days in filing of the application for initiation of bankruptcy proceedings against the respondent / personal guarantor; and*
 - b) *Pass any other and further orders as deemed fit and necessary in the facts and circumstances of the present case.”*

3. Contentions of the Applicant

Brief facts of the case and contentions of the applicant as mentioned in the instant application are as follows:

- i. The present application is filed by Tata Capital Limited seeking condonation of delay in filing the application for initiation of bankruptcy proceedings under Chapter IV of the Code against the Respondent.



- ii. As per order dated 17.05.2024, this Adjudicating Authority in C.P. no. (IB)-726(ND)/2020, granted liberty to creditors to file an application for bankruptcy under Chapter IV against the Respondent and orders were passed under section 115(2) of the Code.
- iii. As per section 121 of the Code, an application for bankruptcy has to be filed within a period of three months of the date of the order passed by the Adjudicating Authority. Therefore, the Bankruptcy Application was required to be filed by August 16, 2024.
- iv. However, due to reasons beyond the control of the Applicant, the same could not be filed within the stipulated time, which is listed as follows:
 - a) The designated person assigned to this matter suffered an unfortunate bereavement in their family necessitating their absence from the professional duties for a period of 10 days.
 - b) The said bereavement in the family caused significant emotional distress and mental anguish to the designated person, rendering them temporarily incapable of attending to professional responsibilities with the requisite diligence and attention which



resulted in absence from professional duties to cope with the personal loss and attend to familial obligations arising therefrom.

- c) After resumption of work by the designated person, they were confronted with substantial accumulation of matters requiring immediate attention and hence the email concerning the details of order dated 17.05.2024 was inadvertently overlooked amidst the voluminous backlog of electronic correspondence. The said order came to the knowledge of the designated person after a considerable period of time.
- d) Thereafter, the designated person dedicated several days to deliberating on the matter with legal counsel and meticulously vetting the draft. Only thereafter, the draft could be finalised by the Authorised Signatory. Concurrently, an extensive exercise was undertaken to collate all relevant documents and pleadings pertinent to the matter, and to conduct a precise calculation of the total outstanding dues recoverable from the Personal Guarantor.
- e) Subsequent to the completion of the drafting and vetting process, additional time was necessitated for



obtaining the requisite signatures from the authorized person and for the completion of notarization formalities.

- v. Despite diligent efforts including vetting of the draft by the Authorised Signatory, the Bankruptcy Application could not be finalised for filing until March 3, 2025. It is submitted that there is a delay of 201 days as on 05.03.2025 in filing the Bankruptcy Application, which occurred due to above-stated reasons that were completely beyond the control of the Applicant. The same is inadvertent, unintentional and under bona fide mistake on the part of the Applicant.
- vi. The Applicant submits that they were under bona fide belief that the time period of 3 months as mentioned under Section 121 of the Code is directory in nature. However, since the Respondent has raised an objection in its reply regarding the Bankruptcy Application being barred by limitation, the Applicant is filing the present Condonation Application as an abundant caution and without prejudice to any rights/contention.
- vii. The present application is filed under Section 5 of the Limitation Act seeking condonation of delay of 201 days in



filing the Bankruptcy Application, which has already been taken on record.

- viii. The Applicant respectfully submits that it is held by the Hon'ble Apex Court and several other courts in a plethora of judgments that the intent behind Section 5 of the Limitation Act is to enable the Court to do justice by deciding the cases on their merits. Further, the Hon'ble Supreme Court has consistently held that beneficial legislation must receive liberal construction to advance substantial justice.

4. **Judgments Relied on by the Applicant**

- i. The Hon'ble NCLT, Hyderabad Bench, in the matter of ***State Bank of India vs. Prashant Mupparapu & Varam Bio Energy Private Limited, [Company Petition (IB) 231/HDB/2021]*** and in ***Bank of Maharashtra vs. Shri W Raghupathi Rao & M/s. SVSVS Projects Private Limited [Company Petition (IB) 175/95/HDB/2022]*** categorically held that:

" ...it is to be stated that from the language used under section 121(2) IB Code, the three months' time prescribed for filing bankruptcy application is directory but not mandatory. Hence, there is no need to condone the delay..."



- ii. The Hon'ble Supreme Court further, in the case ***State of Bihar v. Bihar Rajya Bhumi Vikas Bank Samiti, [(2018) 9 SCC 472]*** observed that-

“All rules of procedure are the handmaids of justice and if in advancing the cause of justice, it is made clear that such provision should be construed as directory, then so be it.”

- iii. It is further submitted that the Hon'ble Supreme Court has time and again, including in ***State Tax Officer v. Rainbow Papers Ltd. [(2023) 9 SCC 545]***, held that the timelines stipulated in IBC, even for completion of proceedings, are directory and not mandatory in nature. To further understand the interpretation of the provisions of the Code by the Apex Court, reference may be made to ***Surendra Trading Company v. Juggilal Kamlapat Jute Mills Company Limited & Ors. [(2017) 16 SCC 143]*** (followed by the five-member bench of the National Company Law Appellate Tribunal in the case of ***VR Ashok Rao & Ors. v. TDT Copper Ltd. [2022 SCC OnLine NCLAT 3516]***) where the Supreme Court made observations regarding the timeline prescribed under provisions of the Code. The judicial guideline regarding timelines prescribed by the provisions of the Code was here rendered as directory and not mandatory in nature.



- iv. In plethora of judgments, including ***Ram Nath Sao v. Gobardhan Sao [(2002) 3 SCC 195]***, the Courts have observed that the expression “sufficient cause” within the meaning of Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fides is imputable to a party.
- v. It is submitted by the Applicant that the aforesaid judicial pronouncements make it clear that the time limit prescribed under Section 121(2) of the Code is not an absolute bar to the filing of bankruptcy applications beyond the stipulated period. The legislative intent behind the provision is to ensure expeditious disposal of bankruptcy proceedings rather than to create a rigid temporal limitation that would defeat the substantive rights of the creditors seeking remedies under the Code.

Findings and Analysis

5. We have heard the arguments advanced by the Ld. Counsel for the Applicant and have perused the documents on record.
6. The present application has been filed by the applicant financial creditor praying for condonation of delay of 201 days in filing the



bankruptcy application filed against the respondent/personal guarantor under section 121 of the Code after order dated 17.05.2024 was passed under section 115(2) of the Code by this Adjudicating Authority granting liberty to the financial creditor to file bankruptcy application against the respondent since no repayment plan was submitted by the personal guarantor.

7. The applicant has stated the reason for the delay in filing the application for bankruptcy is the bereavement in the family of the designated person assigned to this matter and the consequent delay caused by significant emotional distress and mental anguish to the designated person, rendering them temporarily incapable of attending to professional responsibilities with the requisite diligence. This caused that the order dated 17.05.2024 was inadvertently overlooked by the designated person amidst the voluminous backlog of electronic correspondence. The said order came to the knowledge of the designated person after a considerable period of time and only then could the exercise be started for filing this bankruptcy application. Finally, the application was filed on 05.03.2025 with a delay of 201 days.

8. It is a settled position as affirmed in ***B.K. Educational Services Pvt. Ltd. v. Parag Gupta & Associates (2018 KHC 6801)***, that the provisions of the Limitation Act, 1963, apply to proceedings under the Insolvency and Bankruptcy Code, 2016. Accordingly, this Adjudicating Authority is



empowered to invoke Section 5 of the Limitation Act for condonation of delay.

9. We rely on the settled principle of statutory interpretation laid down by the ***Hon'ble Supreme Court in State of U.P. v. Babu Ram Upadhya [AIR 1961 SC 751: (1961) 1 Cri LJ 773]***, wherein it was held that the use of the word "shall" in a statute does not necessarily render a provision mandatory in all cases. The mandatory or directory nature of such a provision must be determined by examining the overall scheme and purpose of the legislation, the context in which the term is used, and the consequences of strict compliance or non-compliance. If rigid adherence to the prescribed timeline frustrates the object of the statute or results in undue hardship, a more flexible interpretation may be warranted. Therefore, in appropriate cases, procedural timelines, though expressed in mandatory terms, may be construed as directory, especially where the statute does not prescribe specific penalties for non-compliance and where substantive rights would otherwise be defeated.

10. In ***State Tax Officer v. Rainbow Papers Ltd. [(2023) 9 SCC 545]***, the Hon'ble Supreme Court held that the timelines stipulated in IBC, even for completion of proceedings, are directory and not mandatory in nature.

11. It is important to note that a plain reading of sub-section (2) of Section 121 of the Insolvency and Bankruptcy Code, 2016, which states that an application for bankruptcy "shall" be filed within a period of three months



from the date of the order passed by the Adjudicating Authority under the sections referred to in sub-section (1), may prima facie appear mandatory. However, the provision is conspicuously silent as to any consequence or penalty for non-compliance with this timeline. In the absence of such consequences, the use of the word “shall” in this context may be construed as directory rather than mandatory. The underlying intent behind prescribing the three months appears to be to ensure expeditious proceedings, rather than to create a rigid limitation that would defeat substantive justice. Accordingly, compliance with Section 121(2) should be considered directory in nature, especially when delays are justified and do not prejudice the rights of the parties involved.

12. The National Company Law Tribunal has time and again held that the timeline given under section 121(2) of the Code is directory and not mandatory in nature and the delay can be condoned for an application filed under this provision. In ***Kerala Financial Corporation vs. Dr. Bharath Chandran [CP(IBC)/23/KOB/2022]***, the NCLT Kochi Bench had held that use of the word ‘shall’ in Section 121(2) of IBC may be construed as directory rather than mandatory and the delay was condoned. Similar stand was taken by NCLT Ahmedabad Bench in ***Canara Bank vs. Mr. Jugal Kishor Jhavar [C.P.(IB)/305(AHM)2024]***.

13. However, this Adjudicating Authority, with concern observes that the Applicant, being a financial institution ought to have acted with greater



diligence and in a time-bound manner, particularly considering that the Insolvency and Bankruptcy Code, 2016, is a special legislation enacted to ensure expeditious resolution and avoid undue delays.

14. In view of the above discussion, the delay of 201 days in filing the present bankruptcy application is hereby condoned. As aforesaid, the present Interlocutory Application bearing **I.A. No. 2731/ND/2025** in **C.P. (IB) 726/ND/2020** is **allowed** and hence stands **disposed of** accordingly.

Sd/-

(ATUL CHATURVEDI)

MEMBER (TECHNICAL)

Sd/-

(MANNI SANKARIAH SHANMUGA SUNDARAM)

MEMBER (JUDICIAL)