

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) No.55/2025
(IA Nos.602, 603, 604, 605, 606 & 607/2025)

In the matter of:

Mr. Harsha Vardhan Reddy
E 7 I 11, Second Floor,
Malviya Nagar,
New Delhi – 110017.

... Appellant

V

- 1. Merit Inn Southern Star Private Limited**
Having its registered office at: -
New No. 24, Old No. 19, Lake Area,
1st Cross Street, Vallur Kottam,
Nungambakkam, Chennai,
Tamil Nadu - 600 034.
- 2. Mr. M.R. Sarangapani Reddy**
S/o. Ramanandam Reddy
R/o. New No. 24, Old No. 19, Lake Area,
1st Cross Street, Vallur Kottam,
Nungambakkam, Chennai,
Tamil Nadu- 600 034.
- 3. Mrs. Saalini Sarangapani (Since Deceased)**
Through her Legal Representative
 - a) Mrs. Vishnu Van dana Sarangapani**
24, Old No. 19, Lake Area,
1st Cross Street, Vallur Kottam,
Nungambakkam, Chennai,
Tamil Nadu – 600 034.
- 4. Sunil Sharma**
Company Secretariat
Having its registered office at: -
T-1, Sant Nagar,
Rani Bagh,
New Delhi – 110 092.
- 5. Vipin Sharma & Associates,**
Chartered Accountants
Having its registered office at: -

**TF- 2, 3(B) 3rd Floor,
Block- 1, Plot-4, East Patel Nagar,
New Delhi - 110 008.**

**6. Praveen S. Rastogi & Co.,
Companies Secretaries
Having its registered office at: -
Floor No. 3, Sood Building,
Teil Mill Marg, Ram Nagar,
New Delhi – 110 055.**

**7. Lalit Mohan & Co.,
Chartered Accountants
Having its registered office at: -
I-3C/2, Baljeet Nagar,
New Delhi – 110 008.**

**8. Shyam Narayan Malviya,
Director,
Resident of: D-48, Retreat Apartment,
I.P. Extension, Delhi – 110 092.**

**9. Gurbachan Singh Chhatwal,
Director,
Resident of: 8/ 137, TF,
Block - 8, Ramesh Nagar,
New Delhi- 110 015.**

**10. Babu Lal
Director,
Resident of: E-16/ 1029,
Bapa Nagar, Karol Bagh ,
New Delhi – 110 005.**

**11. Tata Consultancy Services Limited
Through its authorized director
Having its registered office at: -
9th Floor, Nirmal Building,
Nariman Point, Mumbai,
Maharashtra - 400 021.**

...Respondents

Present :

For Appellant : Mr. Yogesh Kumar Jagia, Advocate

For Respondents : Mr. P.R. Raman, Senior Advocate

For Mr. Anupam Raghuraman, Advocate for R2 & R3

Judgment
(Hybrid Mode)

Per: Justice Sharad Kumar Sharma, Member (Judicial)

The instant Company Appeal has been preferred by the Appellant, expressing his grievances being aggrieved as against the Impugned Order, as it has been rendered as back as on 27.09.2017, by the Learned Adjudicating Authority of Chennai Bench in TCP/110/2016 (CP/107/2012), which were the proceedings drawn under Section 111, 397, 398, 402 & 403 of the Companies Act, 1956, by Respondent Nos.2 & 3, in relation to the affairs of Respondent No.1, i.e., Merit Inn Southern Star Private Limited.

The instant Company Appeal is listed, along with various other Interlocutory Applications and primarily we would be required to consider the Condone Delay Application, being IA No.604/2025 which has preferred by the Appellant seeking Condonation of Delay in a Appeal, which was e-filed before the Registry of this Tribunal only on **08.01.2025** putting a challenge to the Impugned Order of **27.09.2017**.

In the Condone Delay Application, thus preferred by the Appellant, it has been contended that as a matter of fact, there happens to be only 25 days of delay in filing of the Appeal, and as such the delay deserves to be condoned and the Company Appeal deserves to be decided on merits. Section 421 of Sub-Section

(3) of the Companies Act, 2013, which contemplates the filing of an Appeal, however it is a self-contained provision, pertaining to the aspect of limitation as prescribed under Sub-Section (3) and the proviso contained therein, which reads as under: -

“(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period”.

In fact, if the proviso to Sub-Section (3) of Section 421 is taken into consideration for filing of principal Appeal, the limitation has been prescribed under Sub-Section(3) of Section 421 of the Companies Act, 1956, is 45 days, but an additional powers has been granted to the Appellate Tribunal, to entertain an Appeal beyond the period of 45 days as prescribed under proviso to Sub-Section (3) of Section 421 of the Companies Act, by granting an extension of yet another 45 days time from the date of expiring of limitation, as contemplated under Sub-Section (3) of Section 421 of the Companies Act. But the restriction, which has been imposed therein is that no further extension could be permitted to be granted

beyond that period. Meaning thereby the maximum period of limitation for preferring of an Appeal under Section 421 of the Companies Act, including the extension which has been contemplated under the proviso to Sub-Section (3) of Section 421 of the Companies Act would be for a maximum period of **90 days**.

In the Condone Application which has been thus preferred by the Appellant, few very remarkable features are required to be considered for the purposes of dealing with an aspect of seeking Condonation of Delay in filing the Appeal. The facts which could be apparently borne out from the pleadings raised in the Appeal are that, when the Company Petition was instituted, the Appellant herein had already put an appearance and was contesting the proceedings before the Tribunal, till the same was dismissed in default on 31.08.2016. One of the arguments of the Learned Counsel for the Appellant is that, the order of 31.08.2016, dismissing the Company Petition for want of prosecution, was restored behind his back on 17.10.2016, in an *ex parte* manner without the knowledge of the Appellant and the second limb of the argument is that despite there being a direction issued by an order of 17.10.2016 while restoring the petition to supply the copy of the restoration order to the Appellant, the same was not complied with by the Respondent. The issue would be whether this factor could at all have any bearing in the instant Appeal at this stage, particularly when it is under altogether a different complexion, when the Delay Condonation Application is being

considered. On a simpliciter determination of the period of limitation the same would be expiring on 26.12.2017, but however admittedly no appeal was preferred within the aforesaid period.

Knowledge is not a factor which can be taken as to be a rescue for Condonation of Delay, owing to the principles laid down by the Principal Bench, in the Judgment reported in **2024 SCC Online NCLAT 383, Deepak Dahyalal Vs Steel Resources and Another**, Para 16, which is extracted hereunder: -

*“16. A clear distinction has been drawn in the Nagarajan judgment supra that unlike Section 421(3) of the Companies Act which provides that the appeal is to be filed “from the date on which a copy of the order of the Tribunal is made available to the person aggrieved”, there is a conscious omission of these words from IBC. This makes it strait-jacketed and explicitly clear that no such benefit as available in Section 421(3) of the Companies Act is available to any Appellant in IBC proceedings. Relying on this judgment it is rightly contended by the Learned Counsel for Respondent No. 1 that it is therefore not open for the Appellant to take the defence that they were not aware of the order and hence not able to adhere to the time-lines prescribed for filing an appeal under the IBC. We are also not convinced by the contention of the Appellant that the Nagarajan judgment supra does not apply in the present case since in that case the impugned order had not been passed ex parte. **The Hon'ble Supreme Court having held that limitation is to be counted from the date of the order and not date of knowledge of the order, it is irrelevant whether the impugned order was issued ex parte or in the presence of the parties**”.*

Another important feature which is apparent from the pleading, is that admittedly the Appellant got the knowledge of the Judgment on 06.08.2024, when he alleges that he had gone to his place of residence, in order to attend a post-cremation ceremony. Even if that is taken into consideration, that the knowledge of the Impugned Order dated 27.09.2017 was given to the Appellant at least on 06.08.2024, then, too he ought to have applied for procuring the Certified Copy of an Impugned Order in order to prefer an Appeal within the prescribed period of limitation prescribed under the statute, but the same has not been done; rather to the contrary, the Application for getting the Certified Copy was preferred on 25.10.2024 i.e., 80 days of his knowledge of order on 06.08.2024. Under the given legal precedents, at least the application for procuring the Certified Copy of the order was required to be preferred within the principal period of limitation prescribed under law for preference of an Appeal. Admittedly, that was not done in the instant case; the application for procuring the Certified Copy was filed only on 25.10.2024 i.e., after 80 days from the date of knowledge, which is well beyond the limitation period.

There is yet another date which would be relevant for considering the Delay Condonation Application, which is the date of receipt of the Certified Copy of the Order. The Appellant received the Certified Copy of the Order on 30.10.2024. At the most, exclusion permissible under Section 12 of the Limitation Act, would be

only for a period of 5 days, that is, from 25.10.2024 to 30.10.2024. But even after exclusion of the said period, no benefit will accrue to the Appellant, as the Appeal was preferred only on 08.01.2025 i.e., after the expiry period of normal period of limitation of 45 days prescribed under Sub-Section (3) of Section 421 of the Companies Act.

But if the entire aspect of the limitation is taken into consideration, it has to be determined from the date when the principal order was rendered on 27.09.2017, as the Appellant being a party to the proceedings has already put an appearance in the proceedings before the NCLT. A diligence in participating in the proceedings was expected from him and it was rather his responsibility to ascertain as to up to what stage the proceedings of Company Petition has reached, which was absolutely lacking on part of the Appellant as he was appearing in the proceedings, in the Company Petition, even prior to its dismissal in default on 31.08.2016.

In these eventualities, it was the responsibility of the Appellant to track the status of the proceedings and to file Appeal within the stipulated time. But now there happens to be about 2659 days of delay i.e., with effect from the year 2017 to 2025 from the date of impugned order to the date of filing the Appeal. That cannot be permitted to be exonerated for granting an extension of limitation which is far beyond the scope as subscribed under the statute. Thus, the alleged prayer that, there happens to be a delay of 25 days as prayed for by the Appellant in his

Application being IA No.604/2025, is not acceptable by us because the limitation cannot be permitted to be calculated from date of receipt of Certified Copy and it has to be determined from 27.09.2017, because the Certified Copy of the Order itself was not applied within the period of limitation. Hence, the delay would be of 2659 days and not 25 days as pleaded by the Appellant.

Thus, for the reasons given above, the Condone Delay Application being IA No.604/2025, is not borne out to be justifiable from the facts, which have been placed on record, and the delay being inordinate, falling outside the scope of the proviso of Sub-Section (3) of Section 421 of the Companies Act, 1956, the same cannot be condoned. Hence, the Delay Condonation Application being **IA No.604/2025** would stand rejected, and consequently, all the pending Interlocutory Applications would too stand rejected.

As a result of the above order of rejection of the Condone Delay Application being **IA No.604/2025**, the Appeal too would stand dismissed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

30.04.2025
VG/MS/RS