

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

I.A. No. 1084 of 2025
in
Company Appeal (AT) (Insolvency) No. 310 of 2025

IN THE MATTER OF:

Lakhani Realty LLP

...Appellants

Versus

**Kailash Shah,
RP of Jaatvedas Construction Co. Pvt. Ltd.**

...Respondents

Present:

**For Applicant : Mr. Akash Chatterjee and Ms. Dyuti Ghai,
Advocates.**

For Respondents : Mr. Tanmey Kelkar, Advocate.

O R D E R
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present application IA No. 1084 of 2025 is an application praying for condonation of 152 days delay in refiling of the Company Appeal (AT)(Ins) No. 310 of 2025.

2. Notice was issued in respect of the above IA by this Tribunal vide order dated 10.03.2025 which reads as under:-

*“10.03.2025: Issue notice on the I.A. No.1084 of 2025 seeking condonation of 152 days’ delay in refiling the appeal. Reply be filed within three weeks. Rejoinder be filed within two weeks.
List this Appeal on 17.04.2025.”*

3. The Appellant has offered the following explanation in paragraphs 2.8 to 2.12 in their application justifying the refiling delay which is as extracted below:-

“2.8 Thereafter the registry initially pointed out the defects on 06.09.2024 which was removed within the period of 7 days and was refiled on 13.09.2024 after removing the defects.

2.9 The Registry thereafter again informed of few defects with regards to some pages being dim/illegible on 18.09.2024. The Appellant tried its best to trace clearer copies of the said pages however the clearer copies were not found. The Appellant being a contractor also tried to find and trace clearer copies of the concerned dim/illegible pages from its sites which took a lot of time. The Appellant is further based in Mumbai, and hence it was difficult to coordinate with the Advocate for compliances which further contributed to the delay.

2.10 It is pertinent to mention the Appellant made genuine attempts to get clearer copies of the documents. It is further submitted that further delay was caused on account of the festive week of Dusshera and Diwali in October and November and Christmas vacations in December. During this period the concerned persons, counsel and the relevant staff were not available, which lead to further delays.

2.11. That the appeal could only be refilled on 07.02.2025 with another application being made for the dim/illegible pages since clearer copies could not be traced out. That from the date of initial filling, there is re-filing delay of 152 days.

2.12 It is submitted that the delay was neither deliberate nor intentional but purely circumstantial. On the other hand, no prejudice will be caused to the opposite party if the delay is condoned, and the matter is decided on its merits.”

4. Reply has been filed by the Respondent-Resolution Professional (**'RP'** in short) to the refiling delay application filed by the Applicant. The learned counsel for the Respondent after placing reliance on the judgments of this Tribunal in *Dhanlaxmi Bank Limited v. Ritu Rastogi and Ors.* in CA(AT)(Ins) No. 2131 of 2024; *Govardhan Nirman Pvt. Ltd. v. Vaibhav Khandelwal* in CA(AT)(Ins) No. 1524 of 2024 and *Employees Provident Fund Organization Vs. H L Buildwell Pvt. Ltd.* in CA(AT)(Ins) No. 1700 of 2024 has vehemently contended that since no sufficient/justifiable cause has been made out by the Applicant for condonation of delay, the refiling delay condonation application is opposed by them. Further, the grounds given in their Reply Affidavit objecting to the condonation of refiling delay application is as extracted below:-

“4.1 That it is a settled principle of law that there should be sufficient cause for condoning the delay. However, in the present matter the applicant/ appellant has nowhere mentioned good and sufficient/ justifiable cause as to why the delay should be condoned.

.....

4.6 It is submitted that the Applicant has failed to specify which particular document was allegedly illegible, and therefore, the Respondent cannot verify the same against its own records. Furthermore, the Applicant has not placed on record any document or communication evidencing genuine attempts made by it to obtain such records or information from its clients and the difficulty of their client in providing the same.

4.7 It is respectfully submitted that the Applicant is not entitled to the benefit of condonation of delay due to its inability in obtaining clear copies as it has filed an Interlocutory Application seeking exemption from filing legible copies. Such an application ought to have been filed at the earliest, particularly in light of the fact that the Respondent is a company undergoing Corporate

Insolvency Resolution Process (CIRP), which is a time-bound proceeding that does not accommodate or condone unjustified delays.

.....

4.11. In the present facts and circumstances, the Applicant ought not be afforded equitable relief from this Hon'ble Tribunal as the case of the Applicant is unjustified, unsubstantiated, and contrary to the spirit of the Code. The Applicant ought to have either cured the defects as per the National Company Law Appellate Tribunal Rules, 2016, within a period of 7 days from the date of notification of defects by the Registry, or, filed exemption Application citing the difficulties in view of the fact that the Applicant was aware of the NCLAT rules clause 26(4) which reads as "(4) Where the party fails to take any step for the removal of the defect within the time fixed for the same, the Registrar may, for reasons to be recorded in writing, decline to register the appeal or pleading or document."

The Respondent-RP also pressed that the CIRP proceedings having commenced on 16.09.2022 in the present matter, the IBC framework requires a time-bound closure and hence this appeal filed with unjustified refiling delay may not be entertained.

5. We have heard the learned counsels of both parties and perused the records carefully.

6. The question of condoning any delay in refiling has to be seen in the background of the explanation offered by the Applicant. When we look at the two-fold reasons for delay in refiling as put forth by the Applicant, we notice that one ground is that the Registry of this Tribunal had pointed out dim/illegible pages which needed to be cured and the Applicant being a

resident of Mumbai it took time to trace clear copies and coordinate with their counsel. The other reason given is that delay was on due to holidays on account of Dussehra and Diwali festivals and Christmas vacations.

7. What needs to be assessed and evaluated is whether the abovementioned delay was on account of reasons beyond the control of the Applicant which inspite of sincere efforts and endeavors made by the Applicant could not be avoided.

8. Admittedly, the Registry had intimated the defect of dim/illegible copies to the Applicant on 18.09.2024. The Appeal has thereafter been admittedly filed on 07.02.2025 after a long gap of nearly five months. When we see the explanation offered at para 2.9 of their application which has been referred to at para 3 above, we find the contents to be rather bald. There is no explanation offered substantiating the nature of roadblock and complexities faced by the Applicant in tracing the clear copies which led to inability on their part to cure these defects in timely manner. The Applicant has neither given any details on the number of documents which had been marked dim and illegible by the Registry which required to be cured. What is more surprising is that the Applicant has filed the present appeal with IA No. 1182 of 2025 seeking exemption from filing true typed copies of the dim/illegible documents annexed with the appeal. This goes to show that even after taking so much time to purportedly cure the defects, the same defect of dim/illegible documents

continue to subsist. This clearly shows that this ground for refiling delay lacks foundation.

9. The other ground which has been cited is on account of holidays during Dussehra, Diwali and Christmas. Even if we allow a liberal ball- park estimation of the total period of holidays arising on account of Dussehra, Diwali and Christmas, the same would cumulatively not exceed a period of one month. There is no explanation of what efforts were undertaken by the Applicant for the remaining period of four months when the Registry was undisputedly operational and functional. Hence, we find that holidays and vacations as ground for delay is equally feeble and frivolous.

10. We are therefore of the considered view that the delay in the instant case was not caused by reasons beyond the control of the Applicant but manifests lack of earnest and *bonafide* efforts made to correct the defects. Any serious litigant would have been more careful and vigilant in removing the defects on time. When this applicant on his own choosing did not act with due diligence and dispatch to remedy the defects pointed out to it by the Registry within a reasonable period of time, it is a clear case of negligence and callousness. As time is of essence in insolvency proceedings, condonation of refiling delay on the basis of such unsound and implausible pleas cannot be encouraged. In such circumstances, we are of the view that Applicant has failed to effectively demonstrate reasonable and genuine ground to explain the refiling delay.

11. We are of the considered view that sufficient ground has not been made out warranting the condonation of 152 days delay in refiling of the appeal. The refiling delay application is rejected. Consequently, memo of appeal and all related I.As stand rejected.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi

Date: 29.07.2025

Harleen/Abdul