

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1201 of 2024 & I.A. No. 4295,
4296, 4297, 4298 of 2024

IN THE MATTER OF:

Brijesh Haridas Nagar Co-op. Hsg Soc. Ltd. ...Appellant

Versus

VAS Infrastructure Ltd. & Anr.

...Respondents

Present:

For Appellants : Mr. Rajneesh Bansal, Mr. Vandana Sehgal, Adv.

For Respondent : Mr. Anuj P. Agarwala, Adv. for RP

O R D E R

Per: Justice Rakesh Kumar Jain:

This appeal is directed against the order dated 11.03.2024, passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) by which a company petition bearing CP (IB) No. 314/MB/2023 filed by Canara Bank under Section 7 of the Insolvency and Bankruptcy Code (in short 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (in short 'Rules') for the initiation of Corporate Insolvency Resolution Process (in short 'CIRP') against M/s Vas Infrastructure Ltd., for the default of an amount of Rs. 301,06,84,507.23/-, has been admitted and Ashok Kumar Golechha was appointed as the Interim Resolution Professional.

2. This appeal is filed by the society under Section 61 of the Code alleging that the Corporate Debtor has mortgaged the land on which the residential flats have been constructed and are owned by the society.

3. The Appellant has filed this appeal alongwith an application bearing IA No. 4298 of 2024 seeking condonation of delay of 51 days in filing the present appeal.

4. We have heard arguments of the counsel for the parties on the application for condonation of delay because until and unless the delay in filing of the appeal is condoned the appeal cannot be heard on merits.

5. The impugned order was passed on 11.03.2024 whereas the appeal has been filed on 31.05.2024.

6. It is averred in the application that the Appellant came to know about the order of CIRP on 10.05.2024 when form G was published. It is therefore, submitted that if the limitation is to be counted from 10.05.2024 and appeal having been filed on 31.05.2024 then there is no delay but if the limitation is to be counted from 11.03.2024 till date of filing the appeal i.e. 31.05.2024 then there is a delay of 51 days. It is also averred in the application that the appellant was not a party before the Tribunal but an application for intervention was filed by it which was not considered and therefore, the order dated 11.03.2024 was not communicated. Counsel for the Appellant has relied upon a decision in the case of Rajeev Goel Vs. Mansfield Cables Company Ltd., CA (AT) (Ins) No. 351 & 352 of 2023.

7. On the other hand, Counsel for Respondent has submitted that firstly, in the IBC, the limitation is to be counted not from the date of knowledge but from the date of pronouncement of the order, secondly, the Appellant cannot plead ignorance about the order dated 11.03.2024 because the Appellant was present before the Tribunal as it had filed the intervention application, thirdly,

the Court does not have the jurisdiction to condone the delay beyond the period of 15 days whereas in the present case, the appellant has approached this court beyond the period of 15 days after excluding the statutory period of 30 days available to it and lastly the public announcement was made about the CIRP on 13.03.2024, therefore, the Appellant had the deemed knowledge. In support of his submissions, he has relied upon a decision of the Hon'ble Supreme Court in the case of M/s PRS Infrastructure Ltd. Vs. Mukul Kumar & Anr. CA No. 5590 of 2021 and referred to para 19 and 20 of the said order which read as under:-

“19. The second question is whether the delay in the filing of claim by the appellant ought to have been condoned by respondent no. 1. The IBC is a time bound process. There are, of course, certain circumstances in which the time can be increased. The question is whether the present case would fall within those parameters. The delay on the part of the appellant is of 287 days. The appellant is a commercial entity. That they were litigating against the Corporate Debtor is an undoubted fact. We believe that the appellant ought to have been vigilant enough in the aforesaid circumstances to find out whether the Corporate Debtor was undergoing CIRP. The appellant has been deficient on this aspect. The result, of course, is that the appellant to an extent has been left high and dry.

20. Section 15 of the IBC and Regulation 6 of the IBBI Regulations mandate a public announcement of the CIRP through newspapers. This would constitute deemed knowledge on the appellant. In any case, their plea of not being aware of newspaper pronouncements is not one which should be available to a commercial party.”

8. He has also relied upon a decision of the Hon'ble Supreme Court in the case of National Spot Exchange Limited Vs. Mr. Anil Kohli, AIR 2021 SC 4339 and pressed para 16 of the said order which read as under:-

“16. It is also required to be noted that even Shri Maninder Singh, learned senior counsel appearing on behalf of the appellant has, as such, fairly conceded that considering Section 61(2) of the IB Code,

the Appellate Tribunal has jurisdiction or power to condone the delay not exceeding 15 days from the completion of 30 days, the statutory period of limitation. However, has requested and prayed to condone the delay in exercise of powers under [Article 142](#) of the Constitution of India, in the facts and circumstances of the case and submitted that the amount involved is a very huge amount and that the appellant is a public body. We are afraid what cannot be done directly considering the statutory provisions cannot be permitted to be done”

9. In reply to the judgment relied upon by the appellant, in the case of Rajeev Goel (Supra), it is submitted that there was a delay of 6 days in filing the appeal and that was within the period of 15 days prescribed in proviso to Section 61(2) of the Code whereas in the present case the delay is beyond the period of 45 days which cannot be condoned as this Court has no jurisdiction.

10. We have heard Counsel for the parties and perused the record with their able assistance.

11. The appeal before this court can be filed under Section 61 of the Code against the order passed by the Tribunal. Section 61 of the Code is reproduced as under:-

“Appeals and Appellate Authority

(1) Notwithstanding anything to the contrary contained under the Companies Act 2013 (18 of 2013), any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.

(2) Every appeal under sub-section (1) shall be filed within thirty days before the National Company Law Appellate Tribunal:

Provided that the National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed fifteen days.”

12. There are four parts of the aforesaid provisions, namely, firstly, an appeal can be filed by a person who is aggrieved by the order of the Tribunal, secondly, the appeal has to be filed within a period of 30 days, thirdly, in case the appeal is not filed within a period of 30 days then it can still be filed within a further period of 15 days by assigning sufficient cause for not filing the appeal within 30 days and lastly, the period of 15 days cannot be extended at any cost.

13. Undisputedly, the Appellant has made the prayer for condonation of delay of 50 days in filing the appeal, meaning thereby, if the limitation period is counted from the date of passing of the order i.e. 11.03.2024 and it is to be counted from the next day i.e. 12.03.2024 then it would come to 80 days till it is filed on 31.05.2024. Thus, besides statutory period of 30 days, the Appellant has consumed another 50 days for filing the appeal though there is a window of only 15 days for considering the appeal by condoning the delay on sufficient cause assigned by the Appellant. In no case, the delay can be condoned beyond the period of 15 days i.e. $30 + 15 = 45$ days whereas in this case it is $30+50=80$ days, therefore, in view of the decision of the Hon'ble Supreme Court in the case of National Spot Exchange Limited (Supra), this court has no jurisdiction to condone the delay. In so far as the argument of the Appellant that the limitation is to be counted from the date of knowledge is concerned, the Hon'ble Supreme Court in the case of V. Nagarajan Vs. SKS Ispat Power Limited, (2022) 2 SCC 244 has held that the limitation has to be counted, under the Code, from the date of pronouncement of the order. As regards the case of the Appellant that it had no knowledge of the order having

been passed, the appellant itself was an intervenor in that case pending before the Tribunal, therefore, the Appellant had knowledge of the matter which was pending and cannot be allowed to show ignorance. Even otherwise, after the impugned order was passed on 11.03.2024, notice was published on 13.03.2024 in the newspaper and in this regard, the Appellant had the deemed knowledge in view of the decision of the Hon'ble Supreme court in the case of M/s PRS Infrastructure Ltd. (Supra).

14. Thus, looking from any angle, there is hardly any merit in the present application for considering the application for condonation of delay as it is totally barred by time and beyond the period of 45 days.

15. In view of the aforesaid, the application is thus hereby dismissed and since we have dismissed the application, therefore, the main appeal is also found to be not duly constituted and the same is also hereby dismissed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Indevar Pandey]
Member (Technical)

New Delhi

09th September, 2024.

Sheetal