

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 360 of 2024 &
Interlocutory Application Nos.1223 of 2024

IN THE MATTER OF:

Dhiren Shantilal Shah
RP of High Ground Enterprise Ltd. ... Appellant

Versus

Swastik Productions Pvt. Ltd ... Respondent

Present:

For Applicant : Mr. Aniruth Purusothaman, Advocate.

**For Respondents : Mr. Jagdev Singh and Mr. Sachin Saini,
Advocates.**

J U D G M E N T

ASHOK BHUSHAN, J.

This is an application praying for condonation of delay of five days in filing of the Appeal. In paragraph (ii) of the application, the Applicant has given reasons, which are as follows:

- “ii. The Applicant states that he was unable to file the present Appeal against the order dated 19.12.2023 within the limitation period due to the below-mentioned reasons:
 - a. That the Applicant/Appellant/Resolution Professional of High Ground Enterprise Limited is living in Mumbai and due to health ailments, he was unable to seek timely legal advice for filing the Appeal before this Hon’ble Appellate Tribunal.

- b. It is submitted that the Applicant could access and read the impugned order dated 19.12.2023 only after a week or two after the impugned order uploaded.
- c. That upon becoming aware of the impugned order, the Applicant due to his health ailments, could not immediately seek legal guidance and advice.
- d. That after having a conference with his advocate, the Applicant decided to file an Appeal in this Hon'ble Appellate Tribunal.
- e. It is submitted that one of the annexures in the Company Petition No.696 of 2020 is a copy of the bank statement of High Ground Enterprise Limited from the account maintained by High Ground Enterprise Limited with Karnataka Bank.
 - i. It is submitted that the copy of the aforesaid bank statement annexed to the Company Petition is not clear and is illegible.
 - ii. I endeavored to find a clear copy of the said annexure as the same bank statement shows the payments as mentioned in paragraph no.7.13 in the present appeal.
 - iii. However, I could not find a clear/legible copy of the bank statement.
 - iv. Hence, the delay in filing the present appeal is partly due to the time taken to search for legible/clear copy of the bank statement.”

2. Notices were issued on the delay condonation application vide order dated 04.03.2024. Reply has been filed by the Respondent, opposing the delay condonation application.

3. It is submitted by the Respondent that the Courts must decide the application seeking condonation of delay within the parameters laid down

by the Hon'ble Supreme Court of India. It is submitted that Applicant in the present application has nowhere mentioned good and sufficient/justifiable cause, as to why the delay should be condoned. Learned Counsel for the Respondent in support of his submission relied on the judgments of the Hon'ble Supreme Court in **(2023) 1 SCR 449 – Ajay Dabra vs. Pyare Ram & Ors.**; **(2021) 9 SCR 476 – Majji Sannemma @ Sanyasirao vs. Reddy Sridevi & Ors.** and also the judgment of this Tribunal in **Anish Lawrence & Anr. Vs. Renahan Vamakesan in IA No.1151 of 2023 in Company Appeal (AT)(CH) (Ins.) No.377 of 2023.**

4. Under Section 61, sub-section (2) proviso of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**IBC**”), the Court has jurisdiction to condone the delay of only 15 days after expiry of period of limitation. In the present Appeal the order impugned was passed on 19.12.2023 and this Appeal has been efiled on 23.01.2024, i.e. with a delay of five days only. The judgment relied by learned Counsel for the Respondent in **Anish Lawrence & Anr.** was a case where there was prayer for condonation of delay of 15 days in filing of the Appeal. In the facts of that case, this tribunal took the view that no sufficient cause has been shown for condoning the delay. The condonation of delay in filing of the Appeal is on facts of each case, no inflexible rule can be laid down while exercising jurisdiction to condone the delay. In Appeals filed under the IBC, the jurisdiction of this Tribunal to condone the delay in filing of the Appeal after expiry of the limitation period, is only 15 days, which jurisdiction can be exercised.

5. The judgment of the Hon'ble Supreme Court in ***Pathupati Subba Reddy (Died) by LRs & Ors. vs. The Special Deputy Collector (LA) – (2024) 4 S.C.R. 241***, relied by learned Counsel for the Respondent was a case where the Hon'ble Supreme Court had occasion to consider the expression 'sufficient cause' occurring in Section 5 of the Limitation Act, 1963. In the above case, after lapse of 5/6 years, an Appeal was proposed to be filed in the High Court under Section 54 of the Land Acquisition Act challenging an Award given by the Deputy Collector Land Acquisition. While dealing with Section 5 of the Limitation Act, following was laid down in paragraphs 12 and 13:

“**12.** In view of the above provision, the appeal which is preferred after the expiry of the limitation is liable to be dismissed. The use of the word 'shall' in the aforesaid provision connotes that the dismissal is mandatory subject to the exceptions. Section 3 of the Act is peremptory and had to be given effect to even though no objection regarding limitation is taken by the other side or referred to in the pleadings. In other words, it casts an obligation upon the court to dismiss an appeal which is presented beyond limitation. This is the general law of limitation. The exceptions are carved out under Sections 4 to 24 (inclusive) of the Limitation Act but we are concerned only with the exception contained in Section 5 which empowers the courts to admit an appeal even if it is preferred after the prescribed period provided the proposed appellant gives 'sufficient cause' for not preferring the appeal within the period prescribed. In other words, the courts are conferred with discretionary powers to admit an appeal even after the expiry of the prescribed period provided the proposed appellant is able to establish 'sufficient cause' for not filing it within time. The said power to condone the delay or to admit the appeal preferred after the expiry of time is discretionary in nature and may not be exercised

even if sufficient cause is shown based upon host of other factors such as negligence, failure to exercise due diligence etc.

13. It is very elementary and well understood that courts should not adopt an injustice-oriented approach in dealing with the applications for condonation of the delay in filing appeals and rather follow a pragmatic line to advance substantial justice.”

6. In paragraph 16, the Hon’ble Court reiterated that a liberal approach should be adopted in condoning the delay, if there is sufficient cause.

Paragraph 16 of the order is as follows:

“**16.** Generally, the courts have adopted a very liberal approach in construing the phrase ‘sufficient cause’ used in Section 5 of the Limitation Act in order to condone the delay to enable the courts to do substantial justice and to apply law in a meaningful manner which subserves the ends of justice. In **Collector, Land Acquisition, Anantnag and Ors. vs. Katiji and Ors.**, this Court in advocating the liberal approach in condoning the delay for ‘sufficient cause’ held that ordinarily a litigant does not stand to benefit by lodging an appeal late; it is not necessary to explain every day’s delay in filing the appeal; and since sometimes refusal to condone delay may result in throwing out a meritorious matter, it is necessary in the interest of justice that cause of substantial justice should be allowed to prevail upon technical considerations and if the delay is not deliberate, it ought to be condoned. Notwithstanding the above, howsoever, liberal approach is adopted in condoning the delay, existence of ‘sufficient cause’ for not filing the appeal in time, is a condition precedent for exercising the discretionary power to condone the delay. The phrases ‘liberal approach’, ‘justice-oriented approach’ and cause for the advancement of ‘substantial justice’ cannot be employed to defeat the law of limitation so as to allow stale matters or as a matter of fact dead matters to be revived and re-opened by taking aid of Section 5 of the Limitation Act.”

7. Another judgment relied by learned Counsel for the Respondent in **Ajay Dabra** (supra), which was also a case where the Hon'ble Supreme Court noticed the scope of Section 5 of the limitation Act. Another judgment relied by learned Counsel for the Respondent is in **Majji Sannemma @ Sanyasirao** (supra), which is also a case where Hon'ble Supreme Court was considering a case where second Appeal was preferred in the year 2021 against an order passed by First Appellate Court on 01.02.2017. There was delay of 1011 days in filing the second Appeal. In the facts of the above case, the Hon'ble Supreme Court held that there was no sufficient cause for condonation of delay. In paragraph 6.2 of the judgment, following was held:

“6.2 We have gone through the averments in the application for the condonation of delay. There is no sufficient explanation for the period from 15.03.2017 till the Second Appeal was preferred in the year 2021. In the application seeking condonation of delay it was stated that she is aged 45 years and was looking after the entire litigation and that she was suffering from health issues and she had fallen sick from 01.01.2017 to 15.03.2017 and she was advised to take bed rest for the said period. However, there is no explanation for the period after 15.03.2017. Thus, the period of delay from 15.03.2017 till the Second Appeal was filed in the year 2021 has not at all been explained. Therefore, the High Court has not exercised the discretion judiciously.”

8. The above were the cases, where the Hon'ble Supreme Court was considering the sufficient cause for condoning the inordinate delay in filing the matter. There is no quarrel with the proposition of law laid down while interpreting Section 5 of the Limitation Act, which principles are to be applied on the facts of each case.

9. Coming back to the facts of the present case, the delay in filing of the Appeal is only five days and sufficient explanation was given by the Appellant/ Applicant in paragraph (ii) as extracted above. The Appeal has been filed by the Resolution Professional (“**RP**”), who is living in Mumbai and in the application, it was pleaded by the RP that due to health ailments, he was unable to seek timely legal advice in filing the Appeal and further it is stated in paragraph (ii) (e) that one of the annexures filed in the Company Petition No.696 of 2020 was dim and an endeavour was taken to file clear and legible copy, for which certain time was taken.

10. In view of the above, we find that sufficient cause has been shown for condonation of five days delay in filing of the Appeal. Delay condonation application (IA 1223 of 2024) is allowed.

List the Appeal for admission on **14th November, 2024.**

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

NEW DELHI

8th November, 2024

Ashwani