

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins) No. 531 of 2023

&

I.A. No. 1732 of 2023

IN THE MATTER OF:

Punjab State Power Corporation Ltd.
Versus

...Appellant

Sham Udyog Ltd.
Through its Liquidator & Anr.

...Respondents

Present

For Appellant : Mr. Kshitiz Garg, Mr. Naveen S. Bhardwaj, Advocates

For Respondents : CS Gaurav Joshi, Advocate for liquidator.

O R D E R

22.09.2023: Heard Mr. Kshitiz Garg, Ld. Counsel for the Appellant and CS Gaurav Joshi, who has appeared on behalf of the Respondent.

The present appeal has been preferred under Section 61 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as 'Code') against an order dated 30.01.2023 passed by National Company Law Tribunal, Chandigarh Bench, Chandigarh (herein after referred to as Adjudicating Authority) in I.A. No. 117/2022 in CP (IB) No. 73/Chd/Pb/2017. Since the appeal was filed belatedly and 15 days delay has occurred, an Interlocutory application vide I.A. No. 1732/2023 was filed for condonation of delay. It is better to reproduce the condonation of delay application which is as follows:

“1. The accompanying Appeal is being filed by the Appellant against order dated 30.01.2023 passed by the Learned Adjudicating Authority. National Company Law Tribunal, Chandigarh Bench, Chandigarh in I.A. No.117 of 2022 in Company Petition bearing CP(IB) No. 73/Chd/Pb/2017 filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (Code). By way of the Impugned Judgment, NCLT Chandigarh has dismissed the Application filed by the Appellant and refused to pass directions against the Respondent.

2. The present application is being filed seeking condonation of the delay in filing the accompanying Appeal. It is submitted that, as per Section 61(1) of the Insolvency and Bankruptcy Code, 2016 (Code), an appeal against an order of the Adjudicating Authority/NCLT may be filed within 30 days from the date of the order. However there has been a delay of 10 days in filing the present appeal.

3. It is submitted that the Impugned Judgment was made available to the Appellant/signed and uploaded on the website of NCLT only on 01.02. 2023 Further, since the matter dates back to 2017-18 and owing to the voluminous nature of the files in the matter, there were certain delays in finalising the draft of the appeal.

4. It is submitted that the delay is neither deliberate nor intentional. Hence, in view of the facts and circumstances of the present case, the Appellant prays that this Hon'ble Court may consider the reasons cited above and allow this Application for condonation of delay.

5. It is submitted that no prejudice would be caused to the Respondent herein if this Application is allowed. However, if the same is not accepted and the delay is not condoned by this Hon'ble Court, grave prejudice and irreparable injury will be caused to the Appellant.

6. That the instant application is being filed bona fide in the interest of justice”.

After filing, the appeal was firstly taken up on 04.05.2023. The order dated 04.05.2023 indicates as if this Tribunal was not informed as to whether appeal has been filed belatedly. On the same date an interim order was also passed whereby it was directed that in the meanwhile the Adjudicating Authority shall not take any final decision on the application under Section 54 filed by the liquidator. Thereafter, the appeal was taken up on 18.07.2023 and 29.08.2023, however, on none of the date it was intimated that appeal was not ripe for hearing in absence of any order passed on condonation of delay application. Today, when the appeal was taken up and court enquired from the Ld. Counsel for the Appellant as to whether any condonation of delay application was filed, Ld. Counsel for the Appellant admitted that such petition is filed vide I.A. No. 1732/2023 and till date no order has been passed. Ld. Counsel for the Appellant requested to address the court on the condonation of delay application which was permitted.

Ld. Counsel for the Appellant tried to persuade the court that since the appeal was old and voluminous it took time in filing the appeal and as such 15 days delay has occurred for which prayer has been made for condoning the same.

For filing an appeal under Section 61, the period of limitation is 30 days and thereafter after only within 15 days this Tribunal is competent to condone the delay provided there is satisfactory reason for delay in filing the appeal. Normally, in condonation of delay application party is required to explain the delay on day-to-day basis. However, in the present Interlocutory application which we have quoted herein above no such specific reason has been assigned.

The conduct of the Appellant also appears not to be in accordance with law, since right from the very beginning, despite filing of the condonation of delay application earlier it was never mentioned or delay was got condoned.

In such view of the matter as well as in the absence of showing any plausible reason which prevented the appellant to file appeal within time, we do not find any reason to allow the application. Accordingly, Interlocutory application i.e. I.A. No. 1732/2023 stands dismissed. Consequently, the appeal too is dismissed.

It goes without saying that in view of dismissal of the condonation of delay application and consequently dismissal of the appeal interim order earlier granted stands automatically vacated.

[Justice Rakesh Kumar]
Member (Judicial)

[Dr. Alok Srivastava]
Member (Technical)