

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)**

COMPANY APPEAL (AT) (CH) (INS.) No. 357 / 2023

in

(IA No. 1084, 1085 & 1087/2023)

(Filed under Section 61 of the Insolvency and Bankruptcy Code, 2016)

**(Against the Impugned Order dated 09.08.2023 in
IA (IBC) / 978 (CHE) / 2023 in IBA / 812 / 2020 passed by the
'Adjudicating Authority', National Company Law Tribunal,
Division Bench – II, Chennai)**

In the matter of:

LICHFL Trustee Company Private Limited,
Acting as trustee for LICHFL Urban Development
Fund,
Acting through its investment manager,
LICHFL Asset Management Company Limited,
Bombay Life building, 2nd Floor, 45/47,
Veer Nariman Road,
Mumbai – 400 001.

... Appellant

Versus

1. Lakshita Jain

No. 86, Walltax Raod,
TVN Square, 1st Floor,
Near SBI Bank,
Chennai – 600 003.

...Respondent No. 1

2. Mr. Venkataraman Subramanian

Liquidator of JBM Homes Private Limited,
Flat No. A4, Ramar Kutil, 3/5
2nd Main Road, Gandhi Road,
Adyar, Chennai – 600 020.

...Respondent No. 2

3. Mr. Tharuvai Ramachandran Ravichandran

Erstwhile Resolution Professional of
JBM Homes Pvt. Ltd.,
No. 27, 3rd Floor, 15, Kasturbai Nagar,
51 Main Road, Adayar,
Chennai – 600020.

... Respondent No. 3

Present:

**For Appellant : Mr. E. Om Prakash, Sr. Advocate
For Mr. Srinivasan, Advocate**

**For Respondent : Mr. PH. Arvinth Pandian, Sr. Advocate
Mr. C.V. Shailendran and Ujjwal Jain,
Advocates for R1
Ms. D. Elamathi, Advocate for R2**

ORDER
(Virtual Mode)

[Per: Shreesha Merla, Member (Technical)]

1. IA No. 1085 / 2023 is filed in CA (AT) (CH) (Ins.) No. 357/2023 seeking Condonation of Delay of 15 days in filing the Appeal against the Impugned Order dated 09.08.2023 passed by National Company Law Tribunal, Division Bench-II, Chennai in IA (IBC)/978(CHE)/2023 in IBA/812/2020.
2. Learned Senior Counsel, Mr. E. Om Prakash, appearing for the Applicant/Appellant submitted that the Impugned Order was pronounced on 09.08.2023 and a copy of the Impugned Order was made available on the website of the Adjudicating Authority on 10.08.2023; that the Applicant was not a party to the proceedings and therefore did not apply for a certified copy of the Order

and was not a privy to the pleadings in the Application; that the Liquidation Application of the Corporate Debtor IA/919/2023 was reserved for Orders on 11.08.2023 and therefore the Third Respondent waited for the outcome of the Liquidation Application in order to decide whether to prefer an Appeal against the Impugned Order; that the Liquidation Order of the Corporate Debtor was passed on 12.09.2023 and the same was made available on 13.09.2023, by which Order the Second Respondent was appointed as Liquidator and not the Third Respondent, subsequent to which this Appellant decided to file the Appeal.

3. It is submitted that the Applicant/Appellant had placed the e-copy of the Impugned Order before the management to take a decision and since it was not able to obtain the certified copy of the Impugned Order on time, the Appeal could not file on time.

4. This Tribunal on 18.10.2023 issued Notice in IA No. 1085/2023 and permitted the Respondents to file their reply. Learned Senior Counsel appearing for the First Respondent submitted that the instant Appeal has been filed beyond the statutory period of 30+15 days in terms of the Section 51 of the Code, without showing any sufficient or valid cause and therefore the instant Appeal deserves to be dismissed on this ground alone. It is submitted that the Appellant was aware of the Impugned Order a day after it was pronounced on 10.08.2023 and still did not chose to prefer an Appeal within the limitation of 30 days as postulated under Section 61 (3) of the Code. It is argued that requesting the Resolution Professional

to obtain the certified copies of the Impugned Order is not tenable. There are no grounds given for the Appellant to have waited for the outcome in the Liquidation Application of the Corporate Debtor. Learned Senior Counsel drew our attention to the observations made by the Adjudicating Authority in the Liquidation order pronounced on 12.09.2023 which contain the following observations:

"25. It is to be noted here that this Tribunal has recently adjudicated an application i.e. IA(IBC)/978(CHE)/2023 filed by one Ms Lakshita S Jain. This Tribunal vide its order dated 09.08.2023 directed the RP to admit the claim of Ms. Lakshita S Jain to the tune of Rs. 84,36,000/- and further directed the RP to take steps to register respective UDS on her behalf. It is also seen that Lakshita S Jain has paid the entire amount for two flats, i.e., one at 8th floor and the other at 9th floor.

26. If the claim of Ms. Lakshita S Jain is admitted, then the number of sold flats would be revised to 71 and the number of unsold flats would be revised to 30. The RP/Liquidator shall treat the two flats of Ms. Lakshita S Jain as 'Sold Flats' under 'Excluded Assets' and as such the same shall be dealt with accordingly."

5. It is submitted that after the Order was pronounced on 12.09.2023 the Appellant preferred an Appeal against the Impugned Order on 23.09.2023 which shows that the Appellant had waited for the outcome of the Liquidation Application before filing the instant Appeal and this cannot be treated as a sufficient cause for condoning the undue delay in filing the Application.

6. Reliance is also placed on Rule 114 of the NCLAT Rules which is reproduced here under:

“(1) The parties to any case or their authorised representative may be allowed to inspect the record of the case by making an application in writing to the Registrar and by paying the fee prescribed thereof.

(2) Subject to such terms and conditions as may be directed by the President by a general or special order, a person who is not a party to the proceeding, may also be allowed to inspect the proceedings after obtaining the permission of the Registrar in writing.”

7. It is contended by the first Respondent’s Counsel that in terms of the above Rules enumerated under Part XIV of the NCLAT Rules, the Appellant could have made an Application for the inspection of pleadings before the Registry but did not make any endeavour to do so, despite the fact that the Appellant has 85% voting share in the CoC of the Corporate Debtor.

8. It is seen from the record that the Impugned Order is dated 09.08.2023 and it is admitted by the Applicant/Appellant that the Order was uploaded on 10.08.2023. The 30 day period from 10.08.2023 ends on 08.09.2023. The Appeal was e-filed on 23.09.2023 thereby, with a delay of 15 days. Section 61 of the Code deal with Appeals and Appellate Authority and reads as hereunder:

"Section 61. 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."

9. Section 61(2) provides a period of 30 days within which the Appeal under Section 61(1) is to be filed before the Appellate Authority, however section 61(2) Proviso further provides for a period of 15 days for the purpose of extension of time in case the Applicant is able to satisfy the Appellate Authority that there was a ‘sufficient cause’ for not approaching in time, but in no case, the period of 15 days can be further extended. At this juncture, we examine whether the Applicant/Appellant has given a ‘sufficient cause’ for filing the Appeal on the 15th day.

10. In the Application seeking Condonation of Delay, the Applicant /Appellant has pleaded as follows:

“5. The Impugned Order was pronounced on 9.8.2023 by the Adjudicating Authority. A copy of the Impugned Order was made available on the website of the Adjudicating Authority on 10.08.2023. Since the Applicant was not a party to the proceedings, it did not apply for certified copy of the order and was not privy to the pleadings in

the Application. However, the Applicant had requested the 3rd Respondent / erstwhile RP to apply for certified copy and also to share the pleadings/documents relied on in the Application.

6. After the Impugned Order was pronounced in the Application, the liquidation application of the Corporate Debtor with no. IA/IBC/919/CHF/2023 was reserved for orders on 11.8.2023. In view of the same, the 3rd Respondent waited for the outcome of the liquidation application in order to decide on preferring an appeal against the Impugned Order. The liquidation order of the Corporate Debtor was passed on 12.9.2023 and the same was made available on 13.9.2023. In the liquidation order, the 3rd Respondent was not appointed as the liquidator and the 2nd Respondent was appointed. In view of the same, the 3rd Respondent did not prefer any appeal. Therefore, the Appellant decided to prefer the appeal.

7. Immediately, upon e-copy of the Impugned Order was made available and the documents relating to the Application was shared by the 3rd Respondent, the Applicant had placed the same before the management of the Applicant to take a decision on preferring an appeal. The Applicant submits that it had time again informed the 3rd Respondent regarding preferring an appeal. However, owing to the above, the appeal could not be preferred by the 3rd Respondent.

8. The Applicant/Appellant states that, since it was not able to obtain the certified copy of the Impugned Order in time and due to the above reasons, the appeal could not be filed in time. Hence, the Applicant/Appellant is filing the present application. Assuming the e-copy of the Impugned Order was uploaded on the website of the Adjudicating Authority on 9.8.2023, the 45 days' time period expires on 23.9.2023 (Saturday),

which is a non-working day. Therefore, the 45 days' time period expires on 25.9.2023 being the next working day."

(Emphasis Supplied)

11. It is apposite to rely on the Judgement of Hon'ble Supreme Court ***Sheo Raj Singh V. Union of India, AIR 2023 SC 5109*** in which it is observed as follows:

"29. Considering the aforementioned decisions, there cannot be any quarrel that this Court has stepped in to ensure that substantive rights of private parties and the State are not defeated at the threshold simply due to technical considerations of delay. However, these decisions notwithstanding, we reiterate that condonation of delay being a discretionary power available to courts, exercise of discretion must necessarily depend upon the sufficiency of the cause shown and the degree of acceptability of the explanation, the length of delay being immaterial.

Sometimes, due to want of sufficient cause being shown or an acceptable explanation being proffered, delay of the shortest range may not be condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable. Of course, the courts must distinguish between an 'explanation and an 'excuse'. An 'explanation' is designed to give someone all of the facts and lay out the cause for something. It helps clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault. Care must however be taken to distinguish an 'explanation' from an 'excuse'. Although people tend to see 'explanation' and 'excuse' as the same thing and struggle to find out the difference between the two, there is a distinction which, though fine, is real. An 'excuse' is often offered by a person to deny responsibility

and consequences when under attack. It is sort of a defensive action. Calling something as just an 'excuse' would imply that the explanation proffered is believed not to be true. Thus said, there is no formula that caters to all situations and, therefore, each case for condonation of delay based on existence or absence of sufficient cause has to be decided on its own facts. At this stage, we cannot but lament that it is only excuses, and not explanations, that are more often accepted for condonation of long delays to safeguard public interest from those hidden forces whose sole agenda is to ensure that a meritorious claim does not reach the higher courts for adjudication.”

(Emphasis Supplied)

12. The aforementioned ratio clearly specifies that the discretion lies with the Courts to distinguish between an ‘explanation’ and an ‘excuse’ and only then to exercise discretion to condone the delay. In the instant case, it is crystal clear that the Appellant was aware of the Impugned order on 10.08.2023 itself and the justification given that the Appellant had requested the Third Respondent/The erstwhile RP to apply for a certified copy of the Impugned Order since it was not a party to the proceedings is rejected as Rule 50 read with Clause 31 of the Schedule of Fees of the NCLAT Rules, 2016 provides for the Registry to send a certified copy of the final Order to the parties concerned free of cost and the certified copies may be made available with costs as per schedule of fees, in all cases. Hence, it is clear that the Appellant itself could have applied for a certified

copy by making an Application with the requisite fee, therefore, the contention of the Appellant that it was a Third party to the proceedings, is of no relevance.

13. The Hon’ble Supreme Court in the case of **V. Nagarajan vs. SKS Ispat & Power Limited & Ors.** cited in **(2022) 2 SCC 244** has addressed the issue of the commencement date of the period of limitation for filing an Appeal under Section 61 of the Code. In this aforementioned Judgment, the Hon’ble Supreme Court answered the question as to when the clock for calculating the limitation period would begin to run for Appeals filed under the Code and recorded the same in Paras 33 through 35, after taking into due consideration the provisions of Rule 22(2) of the NCLAT Rules, 2016, Section 12 of the Limitation Act, and Section 421 of the Companies Act. The relevant paragraphs are reproduced as hereunder:

“33. The answer to the two issues set out in Section C of the judgement- (i) when will the clock for calculating the limitation period run for proceedings under the IBC; and (ii) is the annexation of a certified copy mandatory for an appeal to the NCLAT against an order passed under the IBC – must be based on a harmonious interpretation of the applicable legal regime, given that the IBC is a Code in itself and has overriding effect. Sections 61(1) and (2) of the IBC consciously omit the requirement of limitation being computed from when the “order is made available to the aggrieved party”, in contradistinction to Section 421(3) of the Companies Act. Owing to the special nature of the IBC, the aggrieved party is expected to exercise due diligence and apply for a certified copy upon pronouncement of the order it seeks to assail, in consonance with the requirements of Rule 22(2) of

the NCLAT Rules. Section 12(2) of the Limitation Act allows for an exclusion of the time requisite for obtaining a copy of the decree or order appealed against. It is not open to a person aggrieved by an order under the IBC to await the receipt of a free certified copy under Section 420(3) of the Companies Act 2013 read with Rule 50 of the NCLT and prevent limitation from running. Accepting such a construction will upset the timely framework of the IBC. The litigant has to file its appeal within thirty days, which can be extended up to a period of fifteen days, and no more, upon showing sufficient cause. A sleight of interpretation of procedural rules cannot be used to defeat the substantive objective of a legislation that has an impact on the economic health of a nation.

34. On the second question, Rule 22(2) of the NCLAT Rules mandates the certified copy being annexed to an appeal, which continues to bind litigants under the IBC. While it is true that the tribunals, and even this Court, may choose to exempt parties from compliance with this procedural requirement in the interest of substantial justice, as re-iterated in Rule 14 of the NCLAT Rules, the discretionary waiver does not act as an automatic exception where litigants make no efforts to pursue a timely resolution of their grievance. The appellant having failed to apply for a certified copy, rendered the appeal filed before the NCLAT as clearly barred by limitation. on limitation. Accordingly, the present appeal under Section 62 of the IBC stands dismissed.”

(Emphasis Supplied)

14. Learned Senior Counsel appearing for the Appellant submitted that since the Liquidation Order was passed on 12.09.2023 and the ERP was replaced by the Liquidator, the certified copy could not be obtained on time. We are of the

considered view that neither the provisions of the NCLAT Rules, 2016 nor the Code bars the Appellant from filing an Appeal within the statutory limitation period provided for under Section 61(3) of the Code and requesting the erstwhile RP to seek a certified copy and awaiting the outcome of the Liquidation Application, further renders the argument of the Learned Counsel for the Appellant, that the delay may be condoned for the foregoing reasons, unsustainable. We find force in the contention of the Learned Senior Counsel for the First Respondent that the Appellant, having 85% of the voting share in the CoC of the Corporate Debtor, ought to have taken effective steps within the limitation period, which they have failed to do so.

15. 16. After thoroughly examining the material on record and hearing the parties at length, we are of the earnest view that the reasons given by the Applicant/Appellant do not constitute ‘sufficient cause’ for the Appellant to have filed the Appeal on the 45th day.

16. We are not satisfied with the reasons given as we do not find them valid or substantial enough to condone the 15 - day period over and above the 30 days. Hence, this Application IA No. 1085/2023 in CA (AT) (CH) (Ins). No. 357/2023 is dismissed and hence, the Appeal is also dismissed accordingly.

**[Justice Rakesh Kumar Jain]
Member (Judicial)**

**[Shreesha Merla]
Member (Technical)**

21/12/2023
RO/TM

