

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 1524 of 2024
& I.A. No. 5382, 5524 of 2024**

IN THE MATTER OF:

Govardhan Nirman Pvt. Ltd. ...Appellant

Versus

Vaibhav Khandelwal & Anr. ...Respondents

With

**Company Appeal (AT) (Insolvency) No. 1567 of 2024
& I.A. No. 5613, 5682 of 2024**

IN THE MATTER OF:

Trinity Vanijya Pvt. Ltd. ...Appellant

Versus

Vaibhav Khandelwal ...Respondent

With

**Company Appeal (AT) (Insolvency) No. 1684 of 2024
& I.A. No. 6061, 6148 of 2024**

IN THE MATTER OF:

Swaraj Vanijya Pvt. Ltd. ...Appellant

Versus

Vaibhav Khandelwal ...Respondent

With

**Company Appeal (AT) (Insolvency) No. 1686 of 2024
& I.A. No. 6057, 6155 of 2024**

IN THE MATTER OF:

Bihariji Consultancy Pvt. Ltd. ...Appellant

Versus

Vaibhav Khandelwal ...Respondent

With
Company Appeal (AT) (Insolvency) No. 1688 of 2024
& I.A. No. 6051, 6161 of 2024

IN THE MATTER OF:

Mohan Motor Business Pvt. Ltd.

...Appellant

Versus

Vaibhav Khandelwal

...Respondent

Present :

For Appellant/ : Ms. Uttara Babbar, Sr. Advocate with Mr. Manan Bansal, Mr. Rayana Mukherjee, Advocates.

For Respondent : Mr. Rishav Banerjee, Mr. Saikat Sarkar, Ms. Prerna Shaha, Advocates with Mr. Vaibhav Khandelwal, Liquidator in person.

O R D E R
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

I.A. No. 5382 of 2024 is an application filed by the Appellant praying for condonation of 121 days' delay in re-filing of Company Appeal (AT)(Ins) No. 1524 of 2024.

2. Notice was issued in respect of the above IAs 5382 and 5524 of 2024 by this Tribunal vide order dated 27.08.2024 which reads as under:

O R D E R
(Hybrid Mode)

27.08.2024: I.A. No. 5382, 5524 of 2024

"Issue notice on delay condonation of application as well as the condonation of delay in re-filing the appeal.

Reply be filed within two weeks, Rejoinder, if any, may file within two weeks, thereafter.

List on 25.09.2024."

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3. Separate I.A. Nos. 5613 of 2024 (delay of 127 days) in CA (AT) (Ins) No. 1567 of 2024, IA- 6061 of 2024 (delay of 134 days) in CA (AT) (Ins) No. 1684 of 2024 (delay of 134 days), IA- 6057 of 2024 (delay of 134 days) in CA (AT) (Ins) No. 1686 of 2024 and IA No. 6051 of 2024 (delay of 134 days) in CA (AT) (Ins) No. 1688 of 2024 have also been filed seeking condonation of refiling delay.

4. For the present, we propose to deal with the Refiling Delay Condonation Application No. 5382 of 2024 wherein the Applicant has given the following explanation at Paragraph 2.2 of the application justifying the refiling delay which is as reproduced below:

“The delay of 121 days in filing appeal may kindly be condoned as the same is neither intentional or deliberate which have occurred on account of logistical difficulties faced due to the unforeseen health conditions encountered by the clerk. The appellant has therefore filed the present Interim Application seeking condonation of delay in filing appeal by this Hon’ble Appellate Tribunal.”

5. Reply has been filed by the Respondent to the Refiling Delay Condonation Application of the Applicant. In their reply affidavit, the Respondent has opposed the grounds of condonation cited by the Applicant by holding them as untenable, false, vague and unsubstantiated. It was also pressed by the Learned Counsel for the Respondent that the Applicant was all along negligent and lax in curing the defects in their appeal and had catapulted into action only after a notice of contempt was sent to them on 30.06.2024. Refuting the tenability of explanation offered by the Applicant in justification of refiling delay, the Respondent submitted that not only was the

span of delay in refiling inordinately long but the grounds cited were implausible. Elaborating further it was pointed out that the ground relied upon by the Applicant of bad health of the clerk causing delay in the curing of defects cannot be accepted as no proof of any illness of the clerk has been placed on record and during the same period when the clerk was supposedly ailing, the Applicant is found to be actively litigating in other fora of law. Even the alibi of summer vacations of this Tribunal lacks foundation as the Registry was very much functional during this period. In support of their contention that condonation of delay needs to be buttressed by adequate and sufficient reasons, the Ld. Counsel for the Respondent adverted reference to the judgment of this Tribunal in ***Adisri Commercial Pvt. Ltd. V/s Reserve Bank of India & Anr.*** in ***C.A.(AT)(Ins) No. 1293 & 1294 of 2022***. It was emphatically asserted that in the absence of genuine, sufficient and valid grounds, the Refiling Delay Condonation Application of the Applicant deserves to be rejected.

6. The Applicant has filed rejoinder to the reply affidavit of the Respondent. Submission was pressed by the Learned Sr. Counsel for the Applicant that the delay was not intentional or deliberate. It was submitted that the delay had occurred on account of the fact that five connected appeals had been filed with each having multiple applications and hence innumerable defects were required to be removed. This difficulty was further compounded by the fact that the defects were received *enmasse* from the Registry. It was further pointed out that several duplicate emails and SMSs were received from the Registry for the same defects which had added to confusion and

complications in tracking the defects and curing them. To cap it all, the clerk of the filing counsel was not keeping good health which substantially delayed the curing of the defects. Moreover, since this was the first case which was filed by the counsel through the medium of e-filing portal and the counsel not being familiar with the filing process on the e-portal, he had failed to keep proper record of the defects and its removal. Another reason that was pleaded for causing delay was that there was the intervening period of summer vacations from 03.06.2024 to 30.06.2024. It was also vehemently contended that most of the defects were cured in the months of April and May 2024 and hence the contention of the Respondent that the Applicant was stirred into action only after a notice of contempt had been issued on them on 13.06.2024 lacks foundation.

7. We have heard the rival contentions of both the parties and perused the records carefully.

8. At the outset, we would like to point out that it is well recognised that while dealing with refiling delay condonation applications, a liberal approach is expected to be normally taken and as long as sufficient cause is shown, such delays in refiling are to be condoned. Be that as it may, it also goes without saying that the delay in refiling can be condoned only if the Tribunal is satisfied that there was reasonable and justifiable cause for not refiling the appeal on time. In other words, the delay has to be tested on the parameters of reasonableness so that the objectives of IBC of time-bound resolution is not

diluted and the interest of either of the parties involved is not prejudicially affected in any manner.

9. The question of condoning any delay in refiling would have to be seen in the context of the explanation offered to find out whether the reasons cited were beyond the control of the Applicant and all efforts were made to overcome the delay with due diligence and utmost despatch. There is no hard and fast rule to measure due diligence and due despatch. However, due diligence and despatch can always be assessed from how a prudent person would act or can be expected to act in a timely manner in similar circumstances. We would now like to examine whether the present Applicant has been able to adduce cogent grounds to satisfy us that there were circumstances beyond their control which led to the delay in clearing the defects. When we look at the history of filing, we find that the Appeal along with application seeking condonation of delay was filed in March, 2024 and defects were intimated soon thereafter by the Registry in the same month. Since the time of intimation of defects, the Applicant has taken four months to remedy the defects. One of the principal explanations attributed for the delay by the Ld. Counsel for the Applicant was that there were five inter-connected appeals with each of them having multiple applications and hence the defects which had to be corrected were quite a few. The Applicant has also attributed the delay in correcting the defects on account of a sudden barrage of emails and SMSs on the defects in the petition having been received from the NCLAT Registry. It was stated that the clerk of the counsel who was conversant with dealing with such defective petitions was ailing and as he was not able to attend to the defects, it led to the delay. We however find that the ill health of the clerk

has not been substantiated by placing on record any proof of his illness which puts a question mark on the plausibility of this excuse. Even if we accept that the clerk was suffering from some ailment, this impediment was not that formidable that it could not have been overcome. The Applicant could have always substituted this clerk with some other team-member. This scapegoat also appears to be a humbug since ample evidence has been placed by the Respondent to show that the counsel of the Applicant was pursuing various litigations before other forums of law during the same period of time when the clerk was purportedly ailing. The Ld. Counsel for the Respondent in their additional affidavit at pages 19 to 41 has placed on record that the counsel for the Applicant had been filing cases before the Hon'ble Supreme Court of India during the same time period. This has not been controverted by the Applicant. That being the case when the counsel for the Applicant was at ease in contemporaneously filing litigations in other courts, if he was sufficiently diligent, he could have displayed similar level of alacrity in dealing with defects in the present set of appeals filed before this Tribunal to render them defect-free. It becomes clear that the Applicant was actively litigating before other judicial forum while being clearly negligent in following-up the present matter before the Tribunal. This is indicative of negligence and inaction on the part of the Applicant. We therefore do not find that sufficient cause has been made out which would warrant overlooking the delay caused in curing the defects on the grounds of ill-health of the clerk.

10. This brings us to some of the other grounds cited to explain the delay in rectifying the defects. One such ground was that as several duplicate

emails/SMSs were received from the NCLAT Registry, this had hampered them in effectively attending to the defects in a timely manner. This is a facile explanation as the Registry was duty-bound to convey the defects and since there were admittedly five related appeals with a host of applications, there was nothing unusual for the Registry in communicating the defects to the Applicant by sending bunched automated emails and SMSs. Interestingly, on the one hand, the Applicant has relied on this plea to explain the delay in redressing the defects while on the other hand they have admitted their failure to place on record the duplicate emails/SMSs which impeded their swift action. The lackadaisical approach of the Applicant is further borne out from the fact that it has admitted that their counsel was unable to access these communications sent by the Registry from their own clerk. Further, the challenges faced by the Applicant in dealing with curing of defects on the e-portal is also not a credible excuse since this e-portal arrangement was a common platform which is used by all litigants. Even the attribution of court vacations as a ground for delay lacks credence since the Registry was open and working even during vacation time. Nothing has been shown on record to establish that the Registry of this Tribunal was not operational or not e-functional during the vacations. We find all these excuses to be perfunctory in nature. The Applicant has clearly failed to indicate any circumstance beyond his control which warranted 121 days to clear the defects. This renders all their explanations for delay to be bald and facile. Since the time of intimation of defects, the Applicant was prevaricating over the defects for nearly four months. No credible, genuine endeavours were made by the Applicant to correct the defects. This shows that the Applicant was casual,

callous, careless and negligent in refiling the appeal on time and such inaction or dereliction cannot be countenanced. We are of the view that the Applicant cannot be shown indulgence keeping in view that the IBC proceedings have stringent timelines to be followed and the adjudicatory proceedings have to be completed in a prompt, expeditious and time bound manner.

11. We are thus of the considered view that sufficient grounds have not been made out for condonation of 121 days' delay in refiling of the CA (AT)(Ins) No. 1524 of 2024. Having rejected this application, consequently all related I.As stand closed and the Memo of Appeal is rejected. Since the same grounds for condonation of refiling delay have also been indicated in IA No. 5613 of 2024 in CA (AT) (Ins) No. 1567 of 2024, IA No. 6061 of 2024 in CA (AT)(Ins) No. 1684 of 2024, IA No. 6057 of 2024 in CA (AT) (Ins) No. 1686 of 2024 and IA No. 6051 of 2024 in CA (AT)(Ins) No. 1688 of 2024, these IAs are also rejected and consequentially the related Memos of Appeal are also rejected.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

Place: New Delhi

Date: 06.12.2024

Harleen/Abdul