

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1264 of 2024

&

I.A. No. 4180 & 4510 of 2024

IN THE MATTER OF:

Ram Ratan Modi

(Resolution Professional of Duncans Industries Ltd.)

...Appellant

Versus

Dail Consultants Ltd. & Ors.

...Respondents

Present:

**For Appellant : Ms. Urmila Chakraborty, Mr. Dipankar Das and
Ms. Snajana Nandi, Advocates.**

**For Respondents : Ms. Soumya Dutta and Mr. Siddhant Upmanyu,
Advocates for R-8.**

**Mr. Tadimalla Bhasker Gowtham, Advocates for
R-10.**

**Mr. Abhishek Singh and Mr. Anmol Agarwal,
Advocates for R-11, R-15 & R-16.**

**Ms. Niharika Sharma, Ms. Kiran Sharma and Mr.
Soorjya Ganguli, Advocates for R-12, R-17 & R-
19.**

**Mr. Kunal Mimani, Ms. Shraddha Chirania, Mr.
Shubhang Tandon, Mr. Deeparghya Datta, Mr.
Dipak Varma and Ms. Mahima Cholera, Advocates
for R-22.**

O R D E R
(Hybrid Mode)

12.09.2024: **I.A. No. 4180 of 2024**

1. This is an Application praying for condonation of 278 days delay in
refiling of the Appeal.

2. In the Application, Appellant who is the Resolution Professional (‘RP’) of the Corporate Debtor had given following explanation in Paragraphs 4 to 6, which are as follows:

“4. It is most respectfully submitted before this Hon’ble Appellate Tribunal that in the month of September, 2023 the Clerk of the Counsel for the Appellant went to his Home Town without informing the Counsel as to where the papers of the files along with defects sheet has been kept by him.

5. It is further most respectfully submitted before this Hon’ble Appellate Tribunal that the said Clerk of the Counsel could rejoin the office only in the month of February, 2024. That upon his arrival files along with paper were gathered and constructed the complete case filed in the Month of August, 2023. That in the meantime the earlier Counsel who was dealing with the present appeal has left the office abruptly and abandoned the brief.

6. That thereafter, the present Counsel of the Applicant has taken over the charge of the case files and cured the defects in the appeal. That after curing the defects the present Counsel could arrange to re-file the appeal only on .04.2024.”

3. Reply has been filed by the Respondent to the Refiling Delay Application on Notices issued by this Tribunal.

4. Counsel for the Respondent No. 22 opposing the submissions of the Appellant has made following pleadings in Paragraphs 4 to 6:

“4. In support of the captioned Application, the Appellant has sought to justify the delay on primarily two grounds, viz. the absence of a clerk from September, 2023 to February, 2024 [without specifying the exact dates] and change in Counsel in the office of the Advocates of the Appellant. It is submitted that both the grounds are frivolous and do not make out any sufficient cause for condonation of delay in refiling the Appeal.

5. Assuming that the Appeal was filed on 31.08.2023 [as pleaded in the captioned Application], the defects

would have been notified by the Registry of this Hon'ble tribunal soon thereafter within the first week of September, 2023 itself and such defects ought to have been cured within 7 [seven] days in terms of the Rules of this Hon'ble Tribunal. Therefore, the allegation that the clerk of the Advocate of the Appellant went on his hometown "in the month of September, 2023" is blissfully vague for obvious reasons.

6. Even otherwise, the fact that the Appellant did not take any steps for over 6 [six] months from September, 2023 to February, 2024 to trace the papers / files of the Appeal and register the same [whilst awaiting the return of the clerk from his home town], shows a complete lack of diligence and rather demonstrates his negligence. The Application does not disclose any steps taken by the Appellant to trace or reconstruct the papers of the Appeal during this period including any efforts made to contact the clerk."

5. When we look into the explanation given by the Appellant, it is clear that Appellant has not been vigilant in prosecuting the Appeal which was filed as earlier in August 2023 and refiled on May 2024 with huge delay of 278 days, the explanation given in the Application are not sufficient to condone the inordinate delay of 278 days. In the IBC Proceedings litigant who are negligent in prosecuting the proceedings cannot be given any indulgence especially when the Appeal was filed by the RP who is well aware the importance of the timelines and necessarily of conclusion of all proceedings in a timeline.

6. Counsel for the Respondent further submitted that RP was litigating in various forums in different Appeals and before the Adjudicating Authority and he has been clearly negligent in prosecuting the Appeal.

We thus are of the view that no sufficient ground has been made out for condonation of 278 days delay in refiling. Refiling delay Application is

rejected. Consequently, other IAs as well as the Memo of Appeal is also rejected.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

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