

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
Principal Bench, New Delhi

Comp. App. (AT) (Ins) No. 1112 of 2023 &
IA No. 3837, 3839 of 2023

IN THE MATTER OF:

Shyam Arora

...Appellant

Vs.

C-Tel Infosystems Pvt. Ltd.

....Respondents

Present:

For Appellants : Sharad Tyagi, Adv

For Respondent : Safal Sethi, Akshay Kumar, Adv

O R D E R

Per : Justice Rakesh Kumar Jain (Oral)

04.09.2023 This appeal is directed against the order dated 27th April, 2023 passed by the 'National Company Law Tribunal, New Delhi Court –IV (for short 'The Adjudicating Authority).

2. This appeal is filed with an application bearing IA No. 3837 of 2023 seeking condonation of delay of 13 days in filing of the appeal.

3. Counsel for the Appellant has submitted that the delay has been caused due to illness of the Appellant because of which he could not meet the Advocate to discuss the matter for filing the appeal.

4. It is also submitted that the delay is bona fide and not intentional, therefore, the same may be condoned.

5. We have heard counsel for the Appellant and perused the record.

6. Section 61 the Insolvency and Bankruptcy Code, 2016 (for short 'the Code') deals with the 'Appeal and Appellate Authority'. Section 61(1) provides for a right

to file an appeal before the Appellate Authority by an aggrieved person against the order passed by the Adjudicating Authority. Section 61(2) prescribes a period of 30 days for filing of appeal. Proviso to Section 61(2) further provided a period of 15 days for filing the appeal by assigning a sufficient cause to the satisfaction of the Appellate Authority for condonation of delay.

7. For quick a reference, Section 61 of the Code is reproduced as under:

"Section 61: Appeals and Appellate Authority.

61. (1) Notwithstanding anything to the contrary contained under the Companies Act 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 days¹ 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.

(3) An appeal against an order approving a resolution plan under section 31 may be filed on the following grounds, namely:—

(i) the approved resolution plan is in contravention of the provisions of any law for the time being in force; (ii) there has been material irregularity in exercise of the powers by

the resolution professional during the corporate insolvency resolution period;

(iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;

(iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or

(v) the resolution plan does not comply with any other criteria specified by the Board.

(4) An appeal against a liquidation order passed under section 33, or sub-section (4) of section 54L, or sub-section (4) of section 54N, may be filed on grounds of material irregularity or fraud committed in relation to such a liquidation order.

(5) An appeal against an order for initiation of corporate insolvency resolution process passed under sub-section (2) of section 54-O may be filed on grounds of material irregularity or fraud committed in relation to such an order.”

8. Besides the fact that there is a delay in filing, the Appellant has also filed an application bearing IA No. 3839 of 2023 under Rule 11 of the NCLAT Rules, 2016 (for short ‘the Rules’) seeking condonation of delay of 48 days in re-filing the appeal.

9. It is needless to mention that once the appeal is returned with the defects, the Appellant is required to re-file the same within a period of seven days.

10. Be that as it may, the Hon'ble Supreme Court in the case of '*National Spot Exchange Vs. Dr. Anil Kohli, in Civil appeal No. 6187 of 2019 decided on 14.09.2021*' has held that the Adjudicating Authority does not have the jurisdiction to condone the delay beyond a period of 15 days which is provided in proviso to Section 61(2) of the Code.

11. The reason given by the Appellant in the application is that due to illness of the Appellant he could not meet the Advocate for the purpose of filing the appeal. Except the averment made in para 4 of the Application, no other details have been given in the application. The Appellant has not disclosed his illness which took so much of time that the Appeal was not filed within time prescribed. No details have been given as to whether the Appellant fell sick within the time prescribed or after that.

12. Thus the reason given in para 4 of the application is a concocted story for getting the delay condoned which does not fall within the ambit of sufficient cause for the purpose of seeking extension of period of limitation.

13. In view of the aforesaid facts, we are satisfied that there is no sufficient cause assigned by the Appellant for the purpose of condonation of delay in filing of the appeal. Consequently, the application bearing IA no. 3837 of 2023 is hereby dismissed.

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14. Since the application for condonation of delay in filing has been dismissed by us by an order of even date, therefore, the present appeal is not duly constituted and the same is hereby dismissed as well.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

Raushan/Ravi