

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

COMPANY APPEAL (AT) (INSOLVENCY) NOS. 856 & 857 of 2023

&
I.A. No.2916 of 2023

[Arising out of the Order dated 24th March, 2023 passed by the Learned
Adjudicating Authority (National Company Law Tribunal, New Delhi,
Court – V), in IB – 271/PB/2017 in New IA/1596/2023, in New
IA/1597/2023]

IN THE MATTER OF:

1. Prem Kumar Khatri

S/O Lt. K.L. Khatri
R/O KF – 102, New Kavi Nagar,
Ghaziabad, U.P. – 201001.

...Appellant No. 1.

2. Charu Arora @ Charu Khatri

D/O Prem Kumar Khatri,
R/O 1102, B Wing, 11th Floor,
Ebony Greenage,
Salrpuria Bommanhalli House Road
Near Oxford Engineering College Bangalore,
South Bommanhalli, Bengaluru,
Karnataka – 560068.

...Appellant No. 2.

Versus

1. M/s. Wianxx Impex Pvt. Ltd.

Through RP Gopal Lal Basher
502, 5th Floor, Sahyog Building – 58,
Nehru Palace, New Delhi – 110019.

...Respondent No.1.

2. Mr. Gopal Lal Basher (Resolution Professional)

Resurgent Resolution Professional LLP (IPE)
Unitech Business Zone, 905, 09th Floor, Tower – C,
The Close South, Sector 50, Gurugram,
Haryana – 122018.

...Respondent No.2.

Present

For Appellant:

Mr. Sanjeev Srivastava, Advocate.

For Respondent:

**Ms. Asmita Duggal and Ms. Bhumika Bhardwaj,
Advocates.**

J U D G M E N T

[Per: Ajai Das Mehrotra, Member (T)]

I.A. No. 2916/2023

1. In the present I.A., the Appellant had requested for Condonation of Delay in filing *Comp. App. (AT) (Ins.) Nos.856 & 857/2023*. The Impugned Order was passed by the Learned Adjudicating Authority (National Company Law Tribunal, New Delhi, Court – V) on 24.03.2023. The Appellant submits that he had applied for paid Certified Copy of the Order on 17.04.2023, which was delivered to the Appellant on 03.05.2023. Page 32 & 33 of the Appeal Paper Book contains the Certified Copy of the Order and according to the stamp of Registry of the Adjudicating Authority ('AA'), the Application for copy was given on 17.04.2023, the Certified Copy was prepared on 27.04.2023 and was delivered on 03.05.2023. If we exclude the time period from 17.04.2023 to 03.05.2023, the time taken in filing the present Appeal is 30 days, as the present Appeal was e-filed on 10.05.2023.

2. We have gone through the submissions of the Appellant regarding Condonation of Delay and the Reply of the Respondent on this issue. Sub-Rule (2) of Rule 22 of the National Company Law Appellate Tribunal Rules, 2016, regarding presentation of Appeal provides that every Appeal shall be accompanied by a Certified Copy of the Impugned Order. NCLAT Rules framed under Section 469 of the Companies Act, 2013 also bind the litigants under the IBC. The litigant's efforts to apply for a Certified Copy before filing Appeal cannot be faulted.

3. In Part III of Limitation Act, 1963, in Section 12 it is provided as under:

“12. Exclusion of time in legal proceedings.—

(1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.

(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.

.....”

(Emphasis Supplied)

4. It is clear from the provision of Section 12(2) that the period taken in obtaining the copy of the Order appealed against is to be excluded in calculating the limitation period in filing for any legal proceedings.

5. The issue of exclusion of period spent in obtaining Certified Copy was considered by the Hon’ble Supreme Court in the case of **‘Sanket Kumar Agarwal & Anr.’ Vs. ‘APG Logistics Private Limited’** in **Civil Appeal No.748/2023** and following observations are recorded in Para 28 of the said Order dated 01.05.2023:

“28. In the present case, the application for a certified copy was sent from Delhi to Chennai on 2 September 2022, which was received on 5 September 2022, within the period of limitation of 30 days specified in Section 61(2). This aspect lies in contrast to the facts as they obtained before this Court in the judgment in V Nagarajan (supra) where even the application for obtaining the certified copy was not filed. In the present case, the appellant exercised due diligence and applied for a certified copy upon pronouncement of the order in terms of Rule 22(2) of the NLCAT Rules 2016. The certified copy was provided to the appellant on 15 September 2022. Hence, the period of 10 days between 5 September 2022 and 15 September 2022 taken by the court to provide a certified copy of the order ought to be excluded when determining the period of limitation under Section 61(2) of the IBC.”

(Emphasis Supplied)

6. Excluding the period spent in obtaining Certified Copy of the Impugned Order, the present Appeal has been filed within the period of 30 days. Considering the provisions of Section 12(2) of the Limitation Act, 1963, and the decision of the Hon'ble Supreme Court cited Supra, we condone the delay in filing of the *Comp. App. (AT) (Ins.) No.856 & 857/2023* by allowing benefit of exclusion of period spent in obtaining paid Certified Copy of the Order from AA (National Company Law Tribunal, New Delhi).

7. I.A. No. 2916/2023 is allowed and accordingly disposed of.

Comp. App. (AT) (Ins.) Nos.586 & 587/2023

8. The present Appeal has been filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC, 2016') against the Order dated 24.03.2023, passed in New IA/1596/2023 and New IA/1597/2023 filed in main C.P. (IB) 271/PB/2017, by the Learned Adjudicating Authority (National Company Law Tribunal, New Delhi, Court – V), by '*Prem Kumar Khatri*' (hereinafter called as Appellant No. 1) and '*Charu Arora alias Charu Khatri*' (hereinafter called as Appellant No. 2). The Appellant No. 1 is father of Appellant No. 2.

9. The Appellant No. 1 & Appellant No. 2 have entered into separate Memorandum of Understanding ('MoU') with Respondent No. 1 - '*M/s. Wianxx Impex Pvt. Ltd.*' on 12.07.2014 whereby the Appellants have made payment of Rs.10 Lakhs each by cash as loan to the Respondent No. 1 against which the Respondent No. 1 agreed to earmark Office Block No. 46 for Appellant No. 1 and Block No. 46-A for Appellant No. 2 in their upcoming Project Europark, Sahibabad, Ghaziabad as security towards the repayment of the loan. Respondent No. 1 had agreed to pay interest @ 2.5 p.m. applicable from 12.07.2014 and had issued post-dated cheques as interest of the loan and

one post-dated cheque for the principal amount. The said MoU were extended subsequently by letter dated 27.11.2015 by the Respondent No. 1, mentioning therein that all other terms and conditions mentioned under the MoU dated 12.07.2014 will remain unchanged and shall be binding upon the parties.

10. Similarly, vide letter dated 09.04.2016, the said MoU was further extended for a period of 12 months. According to the Appellant, Respondent No. 1 was admitted in Corporate Insolvency Resolution Process (`CIRP') against which they have filed claims earlier on 23/24.01.2019. However, the said CIRP was terminated as the matter was settled. A new CIRP was initiated in *C.P. (IB) 271/PB/2017* titled as '*SREI Equipment Finance Limited*' Vs. '*Wianxx Impex Pvt. Ltd.*' on 23.08.2019 wherein Gopal Lal Basher (Respondent No. 2) was appointed as the Resolution Professional (`RP').

11. The Appellants herein filed their Claim Application dated 01.03.2023 before the RP via email dated 06.03.2023, which was declined to be entertained by the RP vide their email dated 06.03.2023. Thereafter the Appellants filed Application seeking for Condonation of Delay before the Adjudicating Authority (`AA'). The said Application has been rejected by the AA vide Order dated 24.03.2023. While rejecting the Claim, it is recorded by the AA in the said Order as under:

"....From the contents of the application, it transpires that an amount of Rs.10 lakhs has been paid in the project named Europark. When the Corporate Debtor is subjected to CIRP, the Applicant has not filed the claim and totally about 1270 days is the time delay in this matter. By the time the applicant filed his claim, the Resolution Plan is already approved by CoC and Plan is now for the approval of NCLT and Counsel for the RP has clarified that there is no provision in the plan to accommodate the claim made by the Applicant. Therefore, we do not find any merit in the present application. The application stands dismissed."

12. Identical Orders are made in I.A. No.1596/2023 in the case of 'Mr. Prem Kumar Khatri' and in I.A. No.1597/2023 in the case of 'Ms. Charu Arora alias Charu Khatri' by the AA. The present Appeal has been filed by the Appellants against the said Order by AA, claiming the following reliefs:

“a) The Hon’ble Tribunal may be pleased to set aside the order dated 24/03/2023 passed by the Hon’ble Tribunal in IA 1596/2023, IA/1597/2023 of IB-271/PB/2017.

b) The Hon’ble Appellate Tribunal may be pleased to pass any such further or other order(s) as this Hon’ble Appellate Tribunal may deem fit and proper in the facts and circumstances of the case to grant justice to the appellants.”

13. Learned Counsel for the Appellants submitted that the Appellant No. 1 due to his various old age medical issues and medical treatment of his wife, the mother of Appellant No. 2 could not approach the Interim Resolution Professional ('IRP') in time to file their claim. The Appellant was not aware of the CIRP and became aware of the CIRP only on receipt of Notice for appearance before the Investigating Officer of Economic Offences Wing in August 2022 and that since the Resolution Plan is not yet approved by the Adjudicating Authority, the claim of the Appellant may be accepted.

14. The Respondent in his Reply dated 16.08.2023, stated that the Appeal is not maintainable, that RP has no power to accept delayed claims, that ignorance of law is not an excuse and that the claim has been filed with mala fide intention to derail the CIRP Process and that no sufficient cause has been shown for Condonation of Delay.

15. In the Rejoinder the Appellant submitted that the Respondent nowhere has denied the claim of the Appellant, that claim has been filed with all documents and that it is an error on part of the RP in not including the name of the Appellant while stating liabilities of the Corporate Debtor.

16. Learned Counsel for the Parties were given opportunity to file Written Submissions on or before 03.10.2023. However, the Registry has confirmed on 05.10.2023 that no Written Submission was filed by the Parties in the time given.

17. We have gone through the submissions made by the Appellant and the Respondent. By their own admission, the Appellants were aware of the CIRP in August, 2022 but the claim was filed in March, 2023. We should not lose sight of the fact that Resolution of Corporate Debtor under IBC, 2016 is a time bound process and all Stakeholders should show urgency and discipline in timely Resolution of the Corporate Debtor. The claim of the Appellant was filed with a delay of 1270 days and it was filed after the Resolution Plan was approved by the Committee of Creditors ('CoC') and was pending for approval of the Adjudicating Authority.

18. In similar facts and circumstances, Hon'ble Supreme Court in a recent Judgement in the case of '**M/s. RPS Infrastructure Ltd.' Vs. 'Mukul Kumar & Anr.'** in **Civil Appeal No.5590/2021** in its Order dated 11.09.2023 has stated as under:

"21. The mere fact that the Adjudicating Authority has yet not approved the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process. This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon. As described above, in Essar Steel, 8 the Court cautioned against allowing claims after the resolution plan has been accepted by the COC.

22. We have thus come to the conclusion that the NCLAT's impugned judgment cannot be faulted to reopen the chapter at the behest of the appellant. We find it difficult to unleash the hydra-headed monster of undecided claims on the resolution applicant.

23. The result of the aforesaid is that the appeal is dismissed leaving the parties to bear their own costs."

19. Since there is an inordinate delay of 1270 days in filing the claim and in the meantime, CoC has already approved the Resolution Plan, the reopening of the whole issue regarding the liabilities of the Corporate Debtor will derail the CIRP, thereby making the CIRP an endless process. Following the ratio laid down by the Hon'ble Supreme Court in the case of '**M/s. RPS Infrastructure Ltd.' (Supra)**, we are not inclined to interfere in the decision of the Adjudicating Authority in approving RP's action of rejection of belated claims of the Appellants.

20. In result, the Appeal is dismissed. No order as to costs.

**[Justice Anant Bijay Singh]
Member (Judicial)**

**[Ajai Das Mehrotra]
Member (Technical)**

**Principal Bench,
New Delhi
11th October, 2023**

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