

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.1222 of 2023
& I.A. No. 4284 of 2023

IN THE MATTER OF:

Kamlesh Mehta

...Appellant

Versus

Mirage Ceramics Pvt. Ltd. & Ors.

...Respondents

Present:

**For Appellants : Mr. Shatadru Chakraborty and Ms. Surbhi Anand,
Advocates.**

For Respondents : Ms. Usha Singh, Advocate for R-3.

O R D E R

06.10.2023: **I.A. No. 4284 of 2023:** This is an application praying for condonation of delay in filing the present appeal. This appeal has been e-filed on 24.08.2023 against order dated 15.06.2023. Learned counsel for the Appellant submits that order dated 15.06.2023 allowing I.A. No.1487 of 2023 was not passed on the same date which is clear from the order sheet of the same date at page 749 of the paper book, which is as follows:

“ORDER

*Mr. Nevil M. Chopra Ld. Counsel appearing for the
Resolution Professional is present.*

IA 1487/2021

*This Interlocutory application is allowed. Detailed
order will follow.*

IA 935/2021, IA 3788/2022

Cont'd.../

List these applications on Board on 27.07.2023”

2. Learned counsel for the Appellant submits that the order sheet also notice that the detailed order will follow and detailed order on the I.A. was in fact uploaded on the system on 31.07.2023 and was uploaded on the website on 02.08.2023 and the Appellant was communicated the order by the Liquidator on 02.08.2023.

3. Learned counsel for the Respondent submits that Appellant was prosecuting the proceedings and on the date when order was passed counsel for the Appellant was present.

4. We have considered submissions of learned counsel for the parties and perused the record.

5. We are of the view that when order dated 15.06.2023 itself notes that “*Detailed order will follow*”, it is clear that order was not available on the said date and the order as submitted by the Appellant was uploaded on 31.07.2023, hence, appeal filed on 24.08.2023 cannot be said to be barred by time. We, thus, hold that appeal is within time.

6. Heard learned counsel for the Appellant. This Appeal has been filed against order dated 15.06.2023 by which order the Adjudicating Authority has allowed the application for liquidation. Appellant before us has submitted a Resolution Plan which plan was not approved by the CoC by requisite majority since other member of the CoC opposed the Resolution Plan. Appellant has only 56.86% vote share in the CoC, hence, plan could not be

approved. The order of the Adjudicating Authority clearly indicates that there was no other Resolution Plan in the CIRP. When the Resolution Plan of the Appellant has not been approved and there is no other Resolution Plan in the CIRP, we are of the view that no infirmity can be found in the order of the Adjudicating Authority directing for liquidation.

7. We observe that the Appellant who was eligible to submit plan is also eligible to submit its Expression of Interest in the Liquidation Proceeding when notice is issued for selling the Corporate Debtor as a going concern. Endeavour shall be made by the Liquidator to sell the Corporate Debtor as going concern in the Liquidation Proceeding in which Appellant may also be permitted to submit its plan. With these observations, Appeal is disposed of.

**[Justice Ashok Bhushan]
Chairperson**

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

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

Archana/nn