

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

Company Appeal (AT) (Insolvency) No.1343 of 2023

IN THE MATTER OF:

Tecpro Systems Ltd.

...Appellant

Versus

NTPC Ltd.

...Respondent

Present:

For Appellant: Mr. Nipun Gautam, Advocate.

**For Respondent: Mr. Adarsh Tripathi, Mr. Vikram Singh Baid and
Mr. Ajitesh Garg, Advocates.**

**O R D E R
(Hybrid Mode)**

21.11.2023: **I.A. No. 4764 of 2023:** This is an application praying for condonation of 103 days refiling delay. The ground taken in the application is that there was change of the counsel on record in the month of September, 2023 and the new counsel pursued the matter thereafter. Defects were marked by the Registry and it took time in clearing the defects. Learned counsel for the Respondent submits that there was no change of counsel because the application for condonation of refiling delay has been signed by same counsel who has also signed memo of appeal on 01.06.2023.

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

3. We have hooked into the Vakalatnama filed by Mr. Nipun Gautam who has filed the application for condonation of delay which Vakalatnama is dated 18.09.2023 which clearly is in accord with the claim made in the application

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that the new counsel was appointed in September, 2023 who pursued the appeal and cleared the defects which was reason for refiling the appeal with delay. We are of the view that the delay is neither deliberate nor wilful and sufficient cause has been shown to condone refiling delay. Refiling delay of 103 days is condoned. I.A. No. 4764 of 2023 is allowed.

4. Heard learned counsel for the Appellant as well as learned counsel appearing for the Respondent. This Appeal has been filed against order dated 10.05.2023 passed by the Adjudicating Authority in Appeal No. 39 of 2021. The appeal was filed by the Respondent – NTPC Ltd. against the rejection of their claim as communicated by email dated 17.07.2021 by the Liquidator. The Adjudicating Authority by the order dated 10.05.2023 issued following directions on the application of the Respondent:

“In the wake, the present application is disposed of with a direction to the Liquidator to take a view regarding the claim of the applicant with due deference to the provisions of Section 39 read with Regulation 23 & 30 of IBBI Liquidation Process Regulation, 2016 within 2 weeks without prejudice to the rights and contentions of the CD/Liquidator in the Arbitral proceedings on merits.”

5. Appellant aggrieved by the said order has come up in this Appeal.

6. Learned counsel for the Appellant submits that earlier Adjudicating Authority by order dated 22.02.2023 in Appeal No.39 of 2021 has passed following order:

“Appeal-39/2021: *In terms of the E-mail dated 17.07.2021, the Liquidator had rejected the claim of the Applicant, on the ground, inter alia, that the matter is under consideration before the Arbitrator and the application was filed after thought. Today during the course of hearing, Ld. Counsel for the Liquidator submitted that the arbitral proceedings are about to be culminated and the Liquidator will honour the arbitral award as and when received. In view of the statement made by the Ld. Liquidator, hearing in the Appeal stand deferred to **20.03.2023.**”*

7. Learned counsel for the Appellant submits in view of the order dated 22.02.2023, the order impugned could not have been passed since it shall amount to review of the earlier order.

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

9. The earlier order dated 22.02.2023 passed in Appeal No.39 of 2021 was for deferring the hearing to 20.03.2023. There was no decision taken by the Adjudicating Authority regarding claim of the Respondent in the said order on merits. We are satisfied that the said order cannot be reason to say that the Adjudicating Authority could not have passed order on 10.05.2023. The order dated 10.05.2023 is not a review or modification of the earlier order as contended by learned counsel for the Appellant. We, thus, are of the view that there is no error in the order dated 10.05.2023 passed by the Adjudicating Authority issuing directions as extracted above.

10. Learned counsel for the Respondent submits that the order has not yet been complied by the Liquidator in which the Adjudicating Authority has granted two weeks' time to the Liquidator to take appropriate steps. We extend the time granted to the Liquidator for further period of two weeks from today to comply with the order of the Adjudicating Authority. Appeal is dismissed subject to above.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Archana/md