

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**CHENNAI BENCH**

**Company Appeal (AT) (CH) (Ins.) No. 233 / 2023**

**IA Nos. 752, 753, 754 & 755 / 2023**

**IN THE MATTER OF:**

**Mathew Mylakulath Jose**

**..... Appellant**

**Versus**

**Kizhakkekara Kuriakose Jose,  
RP of ITMA Hotels India Pvt Ltd & Anr.**

**..... Respondents**

**Present:**

**For Appellant** : Mr. B. Ramana Kumar, Advocate

**For Respondents** : Mr. Sankar P. Panicker, Advocate for R1  
Mr. Avinash Krishnan Ravi, Advocate for R2

**ORDER**  
**(Virtual Mode)**

**Per: Justice Rakesh Kumar Jain:**

**12.12.2023:** This order shall dispose of I.A. No. 752 of 2023 filed under Rule 11 r/w Rule 31 of the NCLAT Rules, 2016 for condonation of delay.

2. The Appellant has prayed for condonation of delay of 15 days in filing of the appeal. It is alleged that the impugned order was passed on 29.03.2023 and the appeal was filed on 11.05.2023 i.e. on the 45<sup>th</sup> day counted from the date when the order was passed.

3. The reason for seeking condonation of delay is given in Para 2 of the application in which it is averred that the Appellant is a resident of Kerala and the appeal had to be filed through some advocate in Chennai. It is further stated that

there was some delay in collating and filing the documents as some of the documents were very old and there was some difficulty in procuring legible copies. It is further averred that owing to the nature of the matter, advocate took two weeks' time to draft the current matter, therefore, delay has been caused.

4. We have examined the reason given by the Appellant in the application on the anvil of sufficient cause and found that it is merely an excuse and not an explanation for not filing the appeal within the prescribed time.

5. It is needless to mention that right of appeal is the statutory right which has been provided with a caveat that the Appellant shall file the appeal within the period of 30 days and in case, the period of 30 days expire, he could file the appeal within a further period of 15 days but not beyond that. In this regard, reference may be had to Section 61 which is reproduced as under:-

“Section 61. Appeals and Appellate Authority

(1) Notwithstanding anything to the contrary contained under the Companies Act 2013 (18 of 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 days 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.”

6. On a cursory look of the above provisions, it lays down four conditions, namely,

first, the appeal can be filed by any person who is aggrieved by the order of the Adjudicating Authority, second, the period for filing the appeal is 30 days., third,

the period of 15 days can further be extended after the expiry of 30 days as prescribed and fourth, no further period can be extended after the expiry of 15 days. The Hon'ble Supreme Court in the case of National Spot Exchange Limited Vs. Anil Kohli, Civil Appeal No. 6187 of 2019 has categorically held that the Tribunal does not enjoy the jurisdiction to condone the delay beyond the period of 15 days. Meaning thereby, if the appeal is filed on 46<sup>th</sup> day then the application cannot be entertained by the Tribunal as it has been held that such delay cannot be condoned by resorting even to Article 142 of the Constitution of India. In such a scenario, when the timeline is so strict, it is always incumbent upon the person who wanted to challenge the order of the Adjudicating Authority before the Appellate Authority to remain vigilant regarding his rights to file the appeal. The legislature has provided only 30 days for this purpose and then granted 15 days window to file the appeal but by assigning a sufficient cause that too to the satisfaction of the Appellate Tribunal. In the present case, however, the sufficient cause is conspicuous by its absence as it would not be a sufficient cause to hold that the Appellant is a resident of Kerala and the appeal had to be filed at Chennai and the Advocate took time in drafting the appeal etc. These are all lame excuses which cannot be considered as a sufficient cause, otherwise, in all appeals, this type of grounds shall be taken by the Appellant and there would be no end to file the appeal with condonation of delay that too on the 45<sup>th</sup> day as it happened in the present case. The Hon'ble Supreme Court has also held that sufficient cause should be an explanation and not an excuse, therefore, in our

considered opinion, there is no merit in the present application and the same is hereby dismissed.

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Since, the application for condonation of delay has been dismissed by an order of even date, therefore, the appeal is not found to be duly constituted and the same is hereby dismissed.

**[Justice Rakesh Kumar Jain]**  
**Member (Judicial)**

**[Shreesha Merla]**  
**Member (Technical)**

Sheetal