

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

**Company Appeal (AT) (Insolvency) No. 123 of 2021**

**IN THE MATTER OF:**

**Avail Financial Services Ltd.**

**...Appellant**

**Versus**

**Sun World City Pvt. Ltd.**

**...Respondent**

**Present:**

**For Appellant:           Mr. Sarvaswa Chhajer, Mr. Kartikeya Singh and Mr. Samarth Shandilya, Advocates.**

**For Respondent:**

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

**22.02.2021:** I.A. No. 279 of 2021 is disposed of with direction to the Appellant to file certified copy of the impugned order within two weeks of the same being made available by the Adjudicating Authority, if the appeal survives for consideration.

2. It appears that impugned order dated 4<sup>th</sup> October, 2019 has been passed by the Adjudicating Authority (National Company Law Tribunal) Allahabad Bench dismissing Appellant's application under Section 7 of the I&B Code on the ground that the application is barred by limitation, debt did not fall within the purview of financial debt and default was not established. The issue raised by the Appellant in this appeal is that the Respondent has deducted TDS on interest accrued on

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loan advanced to it which amounts to admission bringing default within the period of limitation and default being computed on its basis, initiation of Corporate Insolvency Resolution Process sought in terms of application filed under Section 7 of I&B Code is well within limitation.

2. After hearing learned counsel for the Appellant, we find that the impugned order has been passed on 4<sup>th</sup> October, 2019. Appellant seeks condonation of delay of 434 days in filing this appeal primarily on the ground that prior to imposition of lockdown counsel for the Appellant Company had asked for certain documents which Appellant Company failed to provide to learned counsel owing to Nationwide Lockdown imposed by the Government and thereafter due to intervention of lockdown and festival / court holidays there was delay in finalizing the draft of appeal paper book. The ground projected is bereft of merit. There is a huge delay of 434 days. Even if it be taken as true, failure to furnish documents necessary for filing of the appeal by the Appellant Company to its learned counsel does not constitute a sufficient ground to condone delay at least till 25<sup>th</sup> March, 2020 when in the wake of outbreak of COVID 19 nationwide lockdown was imposed by the Government. Under Section 61(2) of the I&B Code, every appeal under section 61(1) has to be filed within 30 days before this Appellate Tribunal which has jurisdiction, on a sufficient cause being assigned, to condone delay not exceeding 15 days. As the appeal was required to be filed within a maximum period of 45

days, even if the cause assigned would be sufficient cause within the meaning of Section 61(2) proviso, from the date of order, that period of 45 days expired on 19<sup>th</sup> November, 2019. The nationwide lockdown was imposed on 25<sup>th</sup> March, 2020. Of course limitation has been extended from 25<sup>th</sup> March, 2020 in terms of directions given by the Hon'ble Apex Court as also by this Appellate Tribunal in suo moto jurisdiction which continue to be in force till date. However, there is huge delay of 140 days beyond the ordinary period of limitation prescribed for filing of appeal under Section 61 of I&B Code which is not within the jurisdiction of this Appellate Tribunal to condone.

3. The Appellant's application for condonation of delay is rejected and appeal is also dismissed as being barred by limitation.

**[Justice Bansi Lal Bhat]**  
**Acting Chairperson**

**[Dr. Ashok Kumar Mishra]**  
**Member (Technical)**

*am/gc*