

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, CHENNAI
(APPELLATE JURISDICTION)**

**Under section 61 of the Insolvency & Bankruptcy Code 2019)
(Arising out of Order dated 22.11.2019 in I.A.No.543 of 2019 in Company Petition No. CP (IB)
No. 30/BB/2017 passed by the Adjudicating Authority Hon'ble National Company Law
Tribunal, Bengaluru Bench**

IA NO.72 of 2021

in

Company Appeal (AT) (CH) (Insolvency) No. 31 of 2021

Assistant Provident Fund Commissioner, Hubli,
Employees' Provident Fund Organization,
Regional Office: Bhavishya Nidhi Enclave,
New Block No. 10, behind Income Tax Office,
Navanagar, Hubli 580025, Karnataka.

Applicant/Appellant

V

Laxman Digambar Pawar
Plat No. 16, First Floor, Bhakti Complex,
Behind Dr. Ambedkar Statue, Pimpri, Pune
411018. Maharashtra, Phone: 9921516368, 9422327957
Email: cmapawar@gmail.com
(Liquidator of M/s. Infinity Fab Engineering
Company Private Limited)

Respondent/Respondent

And

Company Appeal (AT) (CH) (Insolvency) No. 31 of 2021

Assistant Provident Fund Commissioner, Hubli,
Employees' Provident Fund Organization,
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... Appellant

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... Respondent

Present:

For Appellant : Mr. V. Vengadasalam, Advocate

ORDER
(VIRTUAL MODE)

Heard the Learned Counsel for the Applicant/Appellant.

2. According to the Learned Counsel for the Applicant/Appellant that the Applicant/Appellant was not a party to the proceedings pending before the Adjudicating Authority and further that the Applicant/Appellant was not informed about the impugned order dated 22.11.2019 in IA No. 543/2019 in Company Petition No (IB) O3/BB/2017 passed by the Adjudicating Authority (National Company Law Tribunal, Bangalore).

3. The Learned Counsel for the Applicant/Appellant contends that the Applicant/Appellant was not provided with a copy of the impugned order dated 22.11.2019 in I A No. 5432/2019 in Company Petition No (IB) O3/BB/2017 and as such, the Applicant/Appellant was unaware and kept in dark about the 'On going status' of the case.

4. It is represented on behalf of the Applicant/Appellant that the Applicant/Appellant came to know of the passing of the impugned order only in the month of May, 2020 from the online portal of the Adjudicating Authority (National Company Law Tribunal, Bangalore).

5. The main plea of the Applicant/Appellant is that the Applicant/Appellant was unable to collect relevant information and documents because of the situation worsened to the State of Tamil Nadu and that the Government of India was forced to impose a Nationwide lockdown from 24.03.2020 etc., and therefore, the Learned Counsel for the Applicant/Appellant could not be instructed to draft the 'Appeal' for a long time.

6. The Learned Counsel for the Applicant/Appellant submits that the Hon'ble Supreme Court of India in Suo motu writ petition (Civil 3 of 2020) on 23.03.2020 passed an order extending the limitation as applicable under 'General Law and Special Laws' whether condonable or not with effect from 15.03.2020 till further orders.

7. The Learned Counsel for the Applicant/Appellant contends that the instant appeal has been filed within the permitted time of the date of knowledge and receipt of the impugned order in IA No. 543 of 2019 and that after collecting the order, the Appeal Papers were sent to Delhi and that before the filing of the appeal, the Applicant/Appellant Counsel was informed that the jurisdiction was transferred to NCLAT, Chennai Bench and that the appeal could be filed only in Chennai.

8. It is the stand of the Applicant/Appellant that the present application I A No. 72 of 2021 in Comp App (AT) (Ins) No. 31 of 2021 has been filed seeking to condone the delay of 15 days in preferring the Appeal beyond 30 days from the date of knowledge and the delay that has occasioned is neither wilful nor wanton, but due to the reasons mentioned supra.

9. It is to be pointed out that the Hon'ble Supreme Court in Suo motu writ Petition (Civil No. 3 of 2020) on 23.03.2020 had passed an order to obviate such difficulties and to ensure Lawyers/Litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including the Hon'ble Supreme Court of India stating that a period of limitation in all such proceedings, irrespective of limitation prescribed under the 'General Laws or Special Laws' whether condonable or not shall stand extended with effect from 15.03.2020 till further order/s to be passed by it, in the present proceeding.

10. At this stage, this Tribunal aptly points out the decision of Hon'ble Supreme Court in Mobilox Innovations Private Limited v Kirusa Software Private Limited reported in MANU/SC/1196/2017 wherein at paragraph 26 it is inter alia observed that as under:

“26. ... An appeal can then be filed to Appellate Tribunal under Section 61 of the Act within 30 days of the order of the Adjudicating Authority with an extension of 15 days further days and no more.”

11. Moreover, the Hon'ble Supreme Court in its order dated 8.3.2001 in Suo Motu Writ Petition (Civil) No.3of 2020 IN RE: COGNIZANCE FOR EXTENSION OF LIMITATION, at Paragraph 2, had issued the following directions:

1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.3.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as

on 15.3.2020, if any, shall become available with effect from 14.03.2021.

2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.
3. The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and proviso (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

12. Added further, in the judgment of the National Company Appellate Tribunal, New Delhi dated 28.05.2018 in Comp App (AT) (Ins) Nos. 160 and 258 of 2017, between Pr. Director General of Income Tax (Admn. TPS) and ors v Spartek Ceramic India Limited & ors reported in MANU/NL/0112/2018 at paragraph 50, the relevant portion runs as under:

“... 50. As per sub-section (2) of Section 61, the appeal is required to be filed within thirty days before the NCLAT. The Appellant Tribunal is empowered to condone the delay of ‘another fifteen days’ after the expiry of the period of thirty days in preferring the appeal that too for sufficient cause. It has no power to condone the delay if appeal under Section 61 is preferred beyond fifteen days from the date of expiry of the period of thirty days. Meaning thereby, no appeal under sub--section (1) of Section 61 can be entertained after forty-five days of knowledge of the order passed by the Adjudicating Authority”.

13. Further, this Tribunal worth recalls and recollects the decision of Hon’ble Supreme Court in Assistant Commissioner (CT) LTU, Kakinada & ors v Glaxo Smith Kline Health Care Limited reported in 2020 SCC OnLine SC 440 wherein at paragraph 15 it is observed as under:

“15. ... It is clear as crystal that the Constitution Bench in Supreme Court Bar Assn V Union of India, (1998) 4 SCC 409, has ruled that there is no conflict of opinion in Antulay Case (A. R. Antulay v R. S. Nayak, (1988) 2 SCC 502) or in Union Carbide Corpn. Case (Union Carbide Corpn. V Union of India, (1991) 4 SCC 584) with the principle set down in Prem Chand Garg v Excise Commr., AIR 1963 SC 996. Be it noted, when there is a statutory command by the legislation as regards limitation and there is the postulate that delay can be condoned for a further period not exceeding sixty days, needless to say, it is based on certain underlined, fundamental, general issues of public policy as has been held in Union Carbide Corpn. Case (Union Carbide Corpn. V Union of India, (1991) 4 SCC 584). As the pronouncement in Chhattisgarh SEB v Central Electricity Regulatory Commission, (2010) 5 SCC 23, lays down quite clearly that the policy behind the Act emphasising on the constitution of a special adjudicatory forum, is meant to expeditiously decide the grievances of a person who may be aggrieved by an order of the adjudicating officer or by an appropriate Commission. The Act is a special legislation within the meaning of Section 29(2) of the Limitation Act and, therefore, the prescription with regard to the limitation has be the binding effect and the same has to be followed regard being had to its mandatory nature. To put in in a different way, the prescription of limitation is a case of further delay not beyond 60 days, it would come within the ambit and sweep of the provisions and policy of legislation. It is equivalent to Section 3 of the Limitation Act. Therefore, it is uncondonable and it cannot be condoned taking recourse of Articles 142 of the Constitution”.

14. It transpires that the main Company Petition CP (IB) No. 03/BB/2017 was filed by M/s. Sunline Suppliers Private Limited under section 9 of the I & B Code, 2016, which was admitted by the Adjudicating Authority (National Company Law Tribunal, Bengaluru) as per the order dated 27.06.2017 by initiating the ‘CIRP’ etc., and an Interim Resolution Professional was appointed and later a ‘Liquidator’ was appointed.

15. It is pertinently pointed out that the Applicant/Appellant in the ‘List dates of Events’ furnished in the present Comp App (AT) (CH) (Ins) 31/2021 had mentioned that on 07.09.2018 in reply to EPF CP -1 a mail was received from the Employer Shri. Ravindra Ganamukhi that the matter was admitted by the Adjudicating Authority in CP (IB)/BB/17 on 20.02.2018 and further the

Applicant/Appellant's office had sent a submission of claim and proof of claim in Form C and letter to Mr. Laxman D Pawar 'Interim Resolution Professional' on 25.09.2018 and on 13.11.2018, since no response was received from the 'Interim Resolution Professional', the matter was taken with the Regional Office Akrudi, Pune. Further, on 26.11.2018, in response the Regional Office, Akrudi had submitted a copy of claim to the 'Interim Resolution Professional' etc.,

16. According to the Applicant/Appellant on 06.12.2018 EPF CP/25 was issued to Shri. Ravindra Ganamukhi, MD in r/o Infinity Fab Engineers Private Limited and on 14.12.2018, a letter was received from the employer requesting to withdraw the notice against him and further he had requested to pursue the matter with Liquidator.

17. The version of the Applicant/Appellant is that 18.07.2019 a letter was sent to Shri. Laxman Digambar Pawar, 'Interim Resolution Professional' to update the present status of the case to the Applicant/Appellant's office, which was acknowledge by the 'Interim Resolution Professional' and further that since no response was received from the 'Interim Resolution Professional' on 22.11.2019, the Applicant/Appellant obtained the order of the Adjudicating Authority from its website and noticed that the Liquidator had submitted his final report and came to know that the sale of assets was realized and disbursed to the 'Secured Financial Creditors'.

18. The Applicant/Appellant on 03.01.2020 had addressed a letter to the Liquidator informing about the 'Priority of Dues' and requested him to submit Form H for information and that on 25.02.2020 a reminder was sent to the Liquidator because of the fact that no response was received from him. Also that, a letter was mailed to the Registrar of the Tribunal on 08.05.2020, since no response was received from the Liquidator that on 10.06.2020 a letter was received from the Registrar of National Company Law Tribunal, Bangalore requesting to prefer an appeal against the impugned order legally.

19. The Learned Counsel for the Applicant/Appellant contends that the certified copy of the impugned order in IA No. 543 of 2019 passed by the Adjudicating Authority was not served to the Applicant/Appellant by the 'Registry' of the Tribunal as per Rule 50 of the NCLT Rules, 2016 and as such, the Applicant/Appellant was unaware about the status of the case.

20. In regard to the plea of the Applicant/Appellant that the Adjudicating Authority (NCLT, Bengaluru) had not served the copy of the impugned order to it, it is to be pointed out that as per Rule 50 of the NCLT, Rules, 2016 the Registry shall send a certified copy of the final orders passed to the parties concerned free of cost and the certified copies may be made available with costs as per Schedule of fees in all other cases. Since, the Applicant/Appellant was not a party to the proceedings in IA No. 543 of 2019 in Company Petition No. CP (IB) No. 03/BB/2017, on the file of the Adjudicating Authority, the question of sending copy of impugned order to the Applicant/Appellant does not arise, in considered opinion of this Tribunal.

21. In view of the fact that the impugned order in IA No. 543 of 2019 in CP (IB) No. 03/BB/2017 was passed by the Adjudicating Authority on 22.11.2019, the Applicant/Appellant cannot seek the assistance of the Hon'ble Supreme Court's order 23.03.2020 in Suo Motu in (Civil) (s) No. 3/2020, as opined by this Tribunal.

22. Be that as it may, in the light of the decision of Hon'ble Supreme Court in Mobilox Innovations Private Limited v Kirusa Software Private Limited reported in MANU/SC/1196/2017 to the effect that 'an appeal then can be filed to the Appellant Tribunal under section 61 of the Act within 30 days of the order of the Adjudicating Authority with in extension of 15 days and no more', coupled with the decision of Hon'ble Supreme Court in Assistant Commissioner (CT) (LTU) , Kakinada & ors V Glaxo Smith Kline Consumer Health Care Limited 2020 SCC OnLine SC 440, and in the teeth of the judgment of this Appellate Tribunal in Comp App (AT) (Ins) No. 160 and 258 of 2017 dated 28.05.2018 in Pr. Director General of Income Tax (Admn, & TPS) and ors v Spartek Ceramics India Limited and Ors reported in MANU/NL/0112/2018, that no appeal under sub-section (1) of Section 61 can be entertained after 45 days of knowledge of order passed by the 'Adjudicating Authority', this Tribunal comes to a resultant conclusion that the I A No. 72 of 2021 in Comp App (AT) (CH) (Ins) No. 31 of 2021 filed by the Applicant/Appellant before this Tribunal seeking to condone the purported delay of 15 days beyond 30 days from the date of knowledge during the month of May, 2020 about the passing of the impugned order in IA No. 543 of 2019 dated 22.11.2019 is perse not maintainable in the eye of Law, especially when the Applicant/Appellant himself had mentioned in the 'List of Dates and Events'

of the instant Appeal that it received a mail on 07.09.2018 from the employer Shri. Ravindra Gnanamukhi that the matter was admitted by the Adjudicating Authority in case No. CP (IB) No. 03/BB/2017 on 20.02.2018 etc and certainly, this aspect being an adverse one to it. Viewed in that perspective, the IA No. 72 of 2021 in Comp App (AT) (CH) (Ins) No. 31 of 2021 fails.

23. In fine, I A No. 72 of 2021 in Comp App (AT) (CH) (Ins) No. 31 of 2021 is dismissed. No costs.

COMP APP (AT) (CH) (INS) No. 31 OF 2021

In view of the fact that this Tribunal has dismissed the IA No. 72 of 2021 in Comp App (AT) (CH) (Ins) No. 31 of 2021, the instant Comp App (AT) (CH) (Ins) No. 31 of 2021 filed by the Applicant/Appellant is not entertained and the same is rejected. No cost. IA No.71/2021 and IA No.73/2021 are closed.

[Justice Venugopal M]
Member (Judicial)

[V.P.Singh]
Member (Technical)

9.4.2021

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