

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
CHENNAI BENCH

Company Appeal (AT) (CH) (Ins) No. 377 of 2023
IA Nos. 1150, 1151 of 2023

IN THE MATTER OF:

Anish Lawrence & Anr.
Versus

...Appellants

Renahan Vamakesan

...Respondent

Present

For Appellants : Mr. Krishna Dath M, Mr. MS Viswanathan, Advocates

For Respondent : Mr. Chandramouli Prabhakar-Resp/Caveator

ORDER
(Virtual Mode)

01.11.2023: This appeal is filed along with an application bearing I.A. No. 1151 of 2023 seeking condonation of delay of 15 days in filing of the appeal. Since, it is well settled that the appeal cannot be filed without deciding the application for condonation of delay, therefore, we have heard Counsel for the Appellant on the application itself.

The impugned order was passed on 23.06.2023. As per the averment made in the application, the appellant received the free certified copy of the impugned order of the Tribunal on 26.06.2023. However, the appeal has been filed on 11.08.2023 exactly on the last day of limitation i.e. 15th day.

Counsel for the Appellant has submitted that the reasons assigned in the application is in paragraph (e) which read as under:

“That the Appellant after obtaining the certified copy of the impugned order had to had to obtain a legal opinion, to approach this Hon’ble Appellate Tribunal and had to approach the counsel in chennai for filing the appeal, against the impugned order and the same resulted in delay of 15 days in filing the present appeal”.

We have heard Counsel for the Appellant and after perusal of the averment made in paragraph (e) of the application, are of the considered opinion that there is no merit in his contention for the purpose of showing sufficient cause to the satisfaction of the Appellate Authority.

Section 61 of the Insolvency and Bankruptcy Code, 2016 (Code) provides the right to file an appeal against the order of the Adjudicating Authority. Whereas Section 61 (2) prescribes the period of 30 days to file such an appeal. However, in case the period of 30 days expires and the appeal is not filed, proviso to Section 61(2) further opens a window of 15 days for such an appellant to file the appeal but by seeking condonation of delay after assigning sufficient cause for causing such a delay. The appeal has been filed exactly on 45th day i.e. 30+15 days by calculating the period of limitation from 26.06.2023 otherwise if the period of limitation is counted from 23.06.2023, then it shall be deemed to have been filed on 48th day. In the case of *‘National Spot Exchange vs. Mr. Anil Kohli RP for Dunar Foods Limited’* in SCC Online SC 716, 2021 in CIVIL APPEAL NO. 6187 OF 2019 the Hon’ble Supreme Court has held that delay beyond 15 days cannot be condoned in any manner as the Appellate Authority does not enjoy such jurisdiction.

Be that as it may, after examining the reasons given in paragraph (e) of the application we are of the considered opinion that it is not a sufficient cause for the purposes of seeking condonation of delay because the appellant could have easily approached the Appellate Tribunal within the period of 30 days as the appeals are filed through e-filing.

In such circumstances, the reasons assigned in the application for condonation of delay is not acceptable and therefore the application is hereby dismissed. As a consequence of the dismissal of the application, the appeal is also hereby dismissed as it is not duly constituted.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

sr/kashika