

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

I.A.No.373/2024

in

Company Appeal (AT) (CH) (Ins) No.138/2024

**[Appeal filed under Rule 31 National Company Law Appellate Tribunal
Rules, 2016]**

In the matter of:

**Chandy John Samuel
S/o Samuel Chandy John,
CAdivanalthra, Kodukulanji P.O.,
Chengannure, Alappuzha – 689508
Kerala, India.**

rep by his Power of Attorney

Dr. John Mathew

S/o Baby Mathew,

TC 27/856, Arambankudiyil House,

Kannanthodath Lane, Opp. Chengampuzha Park,

Edappally District, Ernakulam P.O. 682033

**... Petitioner/
Appellant**

V

1) Piramal Capital & Housing Finance Limited

601, 6th Floor, Amity Bldg,

Agastya Corporate Park,

Kamani Junction,

Opp. Fire Station, LBS M*g,

Kurla (W), Mumbai-400 070.

2. Rajendran P R
Resolution Professional of
Asten Realtors Private Limited
186/7, Padinjare Parippil,
Kulayettikkara P.O.,
Ernakulam, Kerala - 682317

...Respondents

Present :

For Appellant : Mr. Jolly John, Advocate
For Respondent : Mr. Saurabh Nikalje, Advocate

ORDER
(Hybrid Mode)

29.04.2024:

IA/373/2024 in Comp. App. (AT)(CH)(Ins) No.138 of 2024 (Condone Delay Application)

Heard the Learned Counsel for the 'Petitioner/Appellant' in IA/373/2024 in Comp. App. (AT)(CH)(Ins) No.138 of 2024.

According to the 'Petitioner/Appellant', in November 2023, he was working in Dubai and his wife and kids were in Kerala, had to urgently visit Kerala, for a 'personal emergency' and further that he was busy with the 'personal issue' and could not get time to check his emails or any 'official communications' in detail.

It is the version of the 'Petitioner/Appellant', that on 14.12.2023 when he received the e-mail (vide Annexure A3) requiring, him to make the payment, he took notice and requested the Learned Advocate on Record, for more information and thus, came to know about the 'court matter' and the decision of the 'Adjudicating Authority' in directing the 2nd Respondent, to classify the 1st Respondent, as a 'Secured Financial Creditor'.

The plea taken on behalf of the 'Petitioner/Appellant', is that under Section 5 of the Limitation Act, 1963 provides that any application' may be admitted after

the prescribed period, if the 'Appellant/Petitioner', satisfied the Court that he had 'sufficient cause' for not making the 'Application' within such period.

To fortify his submission, the Learned Counsel for the 'Petitioner/Appellant' relies upon the decision in the matter of Krishna vs. Chathappan (1890 ILR 13 mad. 269) wherein it is observed as follows. "*The words 'sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant*".

The Learned Counsel for the 'Petitioner/Appellant' prays that the 'Delay of 35 days' in preferring the instant 'Appeal' before this 'Appellate Tribunal' may please be condoned in the 'interest of justice', since the 'Appeal' was filed on 14.01.2024 and that the 'Impugned Order' was passed on 10.11.2023.

Section 61(2) of the Insolvency and Bankruptcy Code, 2016, envisages that every 'Appeal' under subsection 1 of Section 61, shall be filed within 30 days before the National Company Law Appellate Tribunal and after that the Appellate Tribunal may allow the 'Appeal', to be filed after the expiry of the said period of 30 days, if it is satisfied that there was 'sufficient cause', for not filing the 'Appeal' in time, but such period shall not exceed 15 days.

Therefore, a reading of Section 61(2) of the Insolvency and Bankruptcy Code, 2016, 'latently' and 'patently' indicates that the outer limit for preferring an 'Appeal' by an aggrieved person is given as (30 + 15 = 45 days). In fact, after the expiry of 30 days from the date of order being passed by the 'Adjudicating Authority/Tribunal' a leverage of another 15 days is given to this 'Appellate Tribunal' to exercise its 'judicial discretion' provided 'sufficient cause' is exhibited by the 'Petitioner/Appellant', to approach this 'Tribunal' in preferring the 'Appeal'.

In so far as the aspect of Section 5 of the Limitation Act, 1963 is concerned, the same has to be interpreted by giving a liberal meaning, so as to advance substantial cause of justice. Indeed, there shall be no negligence or want of bona fide attributed on the part of the ‘Petitioner/Appellant’ this ‘Tribunal’ pertinently points out that the Insolvency and Bankruptcy Code, 2016, is a complete and inbuilt code and the general ‘law’ of Section 5 of Limitation Act, 1963 will not over ride over the special statute viz. Insolvency and Bankruptcy Code, 2016.

In the instant case, after the expiry of 30 days from the date of pronouncement of order of the ‘Adjudicating Authority’/‘Tribunal’, which came to be passed on 16.11.2023 and before the ‘Appeal’ was filed on 14.01.2024.

Furthermore, this ‘Tribunal’ keeping in mind, the mandate envisaged under Section 61(2) of the Insolvency and Bankruptcy Code, 2016 whereby and whereunder, the maximum outer limit of 45 days’ time is granted by the code, comes to an inevitable and irresistible conclusion that the delay in the instant case comes to 35 days after expiry of 30 days in the instant case which is well beyond the outer limit of 45 days (30 + 15 = 45 days) as provided under the Insolvency and Bankruptcy Code, 2016. As such there is no power enjoined by this ‘Tribunal’ to condone the delay of 30 days by the ‘Petitioner/Appellant’ in I.A.373/2024 in Comp. App. (AT)(CH)(Ins) 138 of 2024.

Viewed in the above perspective and looking at from any point of view, I.A. No.373 of 2024 in Comp. App. (AT)(CH)(Ins) No.138/2024 is devoid of merits and the same is ‘Dismissed’ but without costs.

Comp. App. (At)(CH)(Ins) No.138/2024

In view of the fact that I.A. No.373 of 2024 in Comp. App. (AT)(CH)(Ins) No.138/2024 is 'Dismissed' by this 'Tribunal', the main Comp. App. (AT)(CH)(Ins) No.138/2024 is not entertained and is hereby 'Rejected'. Connected IAs if any, are closed.

[Justice M. Venugopal]
Member (Judicial)

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

SE/TM