

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)
Company Appeal (AT)(CH)(Ins) No.179/2022 (IA NO. 405, 406 &
404/2022)
(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)
(Arising out of the Impugned Order dated 06.12.2021 in
IA(IBC)/1032/(CHE)/2021 in IBA/622/2019
passed by the ‘Adjudicating Authority’ (National Company Law
Tribunal, Bench -II, Chennai)

In the matter of:

The Regional Provident Fund Commissioner V Mr.Arunava Sikdar Resolution Professional M/s.The National Sewing Thread Company Ltd	... Appellant ... Respondent
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Present :

For Appellant	: Mr. M. Palanimuthu, Advocate
For Respondent	: Mr. Karan Valecha, Advocate

ORDER
(VIRTUAL MODE)

01.07.2022: The Learned Counsel for the Petitioner / Appellant in IA/404/2022 in Company Appeal (AT)(CH)(Ins) No.179/2022 prays for ‘Condonation of Delay’ of ‘20 days’ (after deducting the permissible limit of 45 days from and out of 65 days delay aggregating in all) in preferring the

Instant Company Appeal (AT)(CH)(Ins) No.179/2022 on the file of this 'Tribunal' (although he is not a party to the Proceedings in IBA/IA).

It is to be noted that although the Instant Company Appeal (AT)(CH)(Ins) No.179/2022 was filed before the 'Office of the Registry' of this 'Tribunal' on 10.03.2022 through 'E-filing' (vide Diary No.0903220018533) , there is a delay of 65 days (aggregating in all) and after deducting 45 days being the permissible one, there is still a delay of '20 days' that has occasioned in preferring the 'Instant Company Appeal'.

The reason assigned on behalf of the Petitioner / Appellant in IA/404/2022 in Company Appeal (AT)(CH)(Ins) No.179/2022 for the delay that is occurred in preferring the 'Instant Appeal' before this 'Tribunal' is that the Petitioner / Appellant had only received the communication dated 22.12.2021 from the 'Resolution Professional' on 04.01.2022 and, therefore, the delay in question is prayed to be condoned on behalf of the Petitioner / Appellant.

It is pointed out that the Insolvency & Bankruptcy Code, 2016 prescribes the filing of an 'Appeal' shall be within a period of 30 days, as per Section 61 (2), and another 15 days time is provided, as the maximum time

that can be given to a 'Party', of course, the sufficient cause being made out by the concerned party to the satisfaction of this 'Tribunal', in this regard.

It cannot be again said that the Instant Company Appeal (AT)(CH)(Ins) No.179/2022 on the file of this 'Tribunal' is admittedly filed, with a delay of 65 days, which is more than the permissible limit of 45 days, as envisaged under Section 61 of the Insolvency & Bankruptcy Code, 2016.

To be noted, that 'Condonation of Delay' is not a matter of 'Right' or 'Routine'. There is no difference between a 'Good Cause' / 'Sufficient Cause' in Law. The discretion of the 'Tribunal' / 'Court of Law' to condone the delay in a given case is to be exercised by a 'Tribunal' / 'Court of Law' based on 'sound exercise of prudent discretion' and by application of 'Judicial Mind'.

Be that as it may, considering the fact that there has occasioned a delay of '20 days' (after deducting the permissible limit of 45 days) in filing of the Instant Company Appeal (AT)(CH)(Ins) No.179/2022, this 'Tribunal' finds that the reasons assigned on behalf of the Petitioner / Appellant to the effect that a copy of the communication dated 22.12.2021 was received from the Resolution Professional only on 04.01.2022 and further that the Petitioner / Appellant is not a 'Party' to the Proceedings in IBA/IA are not Good / Sufficient Cause and they are a futile one. As such this 'Tribunal' is not

inclined to extend its ‘Judicial Arm of Generosity’, in condoning the delay of ‘20 days’, in question, based on the facts and circumstances of the present case in an encircling manner.

Suffice it, for this ‘Tribunal’ to point out that the Petitioner / Appellant has not subjectively satisfied the conscience of this ‘Tribunal’ to condone the delay in issue. Looking at from any angle, the ‘Condone Delay Application’ in IA/404/2022 in the Instant Company Appeal (AT)(CH)(Ins) No.179/2022 is ‘devoid of merits’ and it fails.

In fine, the IA/404/2022 in Instant Company Appeal (AT)(CH)(Ins) No.179/2022 filed by the Petitioner / Appellant is **dismissed**. No Costs.

In view of the fact that IA/404/2022 in the Instant Company Appeal (AT)(CH)(Ins) No.179/2022 is **dismissed** by this ‘Tribunal’, ‘Today’, the main Company Appeal (AT)(CH)(Ins) No.179/2022 is also **dismissed**. No costs. The connected IAs 405 and 406/2022 are **Closed**.

[Justice M. Venugopal]
Member (Judicial)

[Mr. Kanthi Narahari]
Member (Technical)

ghk/tm