

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

**Company Appeal (AT) (Insolvency) No. 780 of 2022**

**IN THE MATTER OF:**

**1. Mr. V R Ashok Rao,**

PAN: AGVPR2580H

R/O: APSARA APARTEMENTS, OLD No. 9,

New No. 13/3 Ponnappa Street, Damodaramurthy

Lane, Kilpauk,

Chennai, Tamil Nadu – 600010

And

**24 other Appellants.**

**...Appellants**

**Versus**

**TDT COPPER LIMITED**

CIN: U27201DL1993PLC056070

**Registered Office At:**

No. 512-512A, Tolstoy House,

Tolstoy Marg, Janpath,

Connaught Place, New Delhi - 110001

**...Respondent**

**Appellant:** Dr. Farrukh Khan, Ms. Akanksha Singh, Mr. Ateendra Saumya Singh, Advocates.

**Respondent:** Ms. Anshula Grover, Advocate.

**J U D G E M E N T**

**Ashok Bhushan, J:**

1. This Appeal has been filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “The Code”) against the Order dated 11<sup>th</sup> March, 2022 passed by the National Company Law Tribunal, New Delhi Bench-V. The Memo of Appeal was presented in the office of this tribunal on 13<sup>th</sup> April, 2022. After scrutiny of the Memo of the Appeal on 19<sup>th</sup> April, 2022, defects were intimated to the Appellant. The Appellant refiled the memo of the Appeal on 08<sup>th</sup> June, 2022 there being

delay of 43 days in refiling the Appeal. The Registrar of this Tribunal vide its “Office Note” dated 12<sup>th</sup> July, 2022 placed the matter before the Bench under the Heading ‘For Admission (Fresh Cases) with defects’.

**2.** Learned Counsel for the parties were heard on 04<sup>th</sup> August, 2022 on the question of delay in refiling of the Appeal.

**3.** Learned Counsel for the Appellant submits that refiling delay of 43 days may be condoned and the Appeal be heard on merits. It is submitted that limitation for filing an Appeal under Section 61 of the Code is 30 days, the Appeal having been filed on 13<sup>th</sup> April, 2022, an Application for condonation of delay of two days in filing the Appeal has also been filed along with the Appeal.

**4.** Learned Counsel appearing for the Respondent No. 1 submitted that refiling delay does not deserve to be condoned. It is submitted that refiling of the Appeal on 08<sup>th</sup> June, 2022 shall be treated as fresh filing of the Appeal and filing of the Appeal on 08<sup>th</sup> June, 2022 being beyond 45 days from date of the Impugned Order neither delay in filing the Appeal can be condoned nor delay in refiling need to be condoned. It is submitted that under Rule 26 of the National Company Law Appellate Tribunal Rules, 2016 only 7 days’ time is allowed to remove the defects and the defects having communicated to the Appellant on 19<sup>th</sup> April, 2022, the said defects could have been removed only till 26<sup>th</sup> April, 2022 whereas after removal of the defect Appeal was refiled on 08<sup>th</sup> June, 2022 hence registration of the Appeal be refused.

**5.** Learned Counsel for the Respondent in support of her submission submits that when the re-presentation of the Appeal is beyond 7 days, the Appeal has to be treated as fresh filing and tribunal could not condone the

delay beyond 45 days relying on the Judgment of this Tribunal in I.A. No. 221 of 2017 in Company Appeal (AT) No. 138 of 2017 in the matter of “**Mr. Jitendra Virmani Vs. MRO-TEK Realty Ltd. & Ors.**”, (2017) SCC Online NCLAT 7, and another three Members Bench Judgment of this Tribunal in I.A. No. 1774 of 2020 in Company Appeal (AT) No. 122 of 2020, (2020) SCC OnLine NCLAT 671, in the matter of “**Arul Muthu Kumaara Samy Vs. Register of Companies**” decided on 30<sup>th</sup> September, 2020. Learned Counsel for the Respondent has also placed reliance on the Judgement of the Hon’ble Supreme Court dated 05<sup>th</sup> April, 2020 in Civil Appeal No. 1013 of 2021 in the matter of “**Arul Muthu Kumaara Samy Vs. Registrar of Companies**” dismissing the Appeal against the Judgement of this Tribunal dated 30<sup>th</sup> September, 2020 noticed above. Learned Counsel for the Respondent has also placed reliance on Judgement of the Hon’ble Supreme Court in Civil Appeal No. 6187 of 2019 in the matter of “**National Spot Exchange Limited Vs. Anil Kohli, RP for Dunar Foods Limited**” (2021) SCC OnLine SC 716.

6. The questions which have come up for consideration are; (i) as to whether the refiling delay of 43 days in refiling the Appeal can be condoned and further the Appeal is to be treated as a fresh Appeal on 08<sup>th</sup> June, 2022 on the date when it was re-presented. (ii) In event, it is accepted, the Appeal which was firstly presented on 13<sup>th</sup> April, 2022 and re-presented on 08<sup>th</sup> June, 2022 is a fresh Appeal filed on 08<sup>th</sup> June, 2022. 08<sup>th</sup> June, 2022 being beyond 45 days, whether this Tribunal shall have no jurisdiction to condone the delay in filing the Appeal. Both the above questions regarding condonation of delay in refiling and condonation of delay in the Appeal needs to be first answered.

7. The NCLAT Rules, 2016 under Chapter I Part III of the Rules deals with “Institution of Appeals – Procedure”. Rule 22 deals with “Presentation of the Appeal”. Rule 21 (1) provides for the Appeal shall be presented in Form NCLAT-1 by the Appellant or Petitioner or Applicant or Respondent, as the case may be, in person or by his duly authorized representative. Rule 22(1) is as follows:

*“22. Presentation of appeal.- (1) Every appeal shall be presented in Form NCLAT-1 in triplicate by the appellant or petitioner or applicant or respondent, as the case may be, in person or by his duly authorised representative duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same.”*

8. Rule 26 deals with “Endorsement and Scrutiny of Appeal and Document. Rule 26 which are relevant for the present case are as follows:

*“26. Endorsement and scrutiny of petition or appeal or document.- (1) The person in charge of the filing-counter shall immediately on receipt of appeal or document affix the date and stamp of the Appellate Tribunal thereon and also on the additional copies of the index and return the acknowledgement to the party and he shall also affix his initials on the stamp affixed on the first page of the copies and enter the particulars of all such documents in the register after daily filing and assign a diary number which shall be entered below the date stamp and thereafter cause it to be sent for scrutiny.*

*(2) If, on scrutiny, the appeal or document is found to be defective, such document shall, after notice to the party, be returned for compliance and if there is a failure to comply within seven days from the date of return, the same shall be placed before the Registrar who may pass appropriate orders.*

*(3) The Registrar may for sufficient cause return the said document for rectification or amendment to the party filing the same, and for this purpose may allow to the party concerned such reasonable time as he may consider necessary or extend the time for compliance.*

*(4) Where the party fails to take any step for the removal of the defect within the time fixed for the same, the Registrar may, for reasons to be recorded in writing, decline to register the appeal or pleading or document.”*

**9.** In the present case, under Rule 26 (2) the Memo of Appeal was scrutinized and defect was communicated to the Appellant on 19<sup>th</sup> April, 2022 and there was failure on compliance regarding removal of the defects within seven days from the date of return and the matter was placed before the Registrar as required by Rule 26 (2). The Registrar noticing the facts of the Appeal directed that matter be placed before the Bench for appropriate Orders.

**10.** The delay in re-presentation has been noticed as 43 days. The first submission of the Learned Counsel for the Respondent is that the re-presentation of the Appeal on 08<sup>th</sup> June, 2022 shall be treated as afresh Appeal and power to condone the delay in filing the Appeal should be considered as on 08<sup>th</sup> June, 2022 when Appeal was re-presented and 08<sup>th</sup>

June, 2022 being beyond 45 days from 11<sup>th</sup> March, 2022 the Appeal is barred by time and deserves to be dismissed on this ground. Secondly it is submitted that the defect as per Rule 26 (2) is required to be removed within seven days as provided in sub-Rule 2 of Rule 26 and in event the defect is not removed within 7 days, the Registrar has to pass an Order declining to register the Appeal. Thus, when defects are not cured within seven days from the date of intimation, the Appeal need to be refused to be registered.

**11.** In respect of the above submissions, one of the Judgements which have been placed and relied on by the Learned Counsel for the Respondent is two Member Judgement in the matter of “**Mr. Jitendra Virmani**” (supra). In the above case, the Appeal was filed against the Order dated 05<sup>th</sup> January, 2017, Copy of the Order was served on the Appellant on 07<sup>th</sup> January, 2017 however the Appellant could file the Appeal (defective) only on 31<sup>st</sup> March, 2017. On 31<sup>st</sup> March, 2017 the Court pointed out the defects which were noticed by the Appellant on 3<sup>rd</sup> April, 2017. Appellant did not cure the defect within seven days as prescribed in Rule, 26(2). This Appellate Tribunal passed an Order on 03<sup>rd</sup> May, 2017 dismissing the Appeal on the ground of the delay. The Order dated 03<sup>rd</sup> May, 2017 is extracted in paragraph 1 of the Judgment which is to the following effect:

*“The Interlocutory Application under Rule 11 of the National Company Law Appellate Tribunal Rules, 2016 (hereinafter referred to as ‘NCLAT Rules 2016’ for short) has been preferred by applicant/ appellant for review and recall of order dated 3<sup>rd</sup> May 2017 passed by Appellate Tribunal in Company Appeal (AT) No. 138 of 2017 which reads as follows: -*

*“This appeal was filed with number of defects on 30<sup>th</sup> March 2017. It was supposed to be re-filed within seven days after removing the defect(s). However, the defect (s) were not removed within seven days and filed as afresh case on 1<sup>st</sup> May 2017.*

*In this appeal, the appellant has challenged the order dated 5<sup>th</sup> January 2017 passed in T.P.No. 88/2016 in C.P. No. 22/2016 by National Company Law Tribunal, Bengaluru Bench whereby certain interim order has been passed. A petition for condonation of delay has been filed to condone delay of 54 days. As we find that as the Appellate has no jurisdiction to condone the delay for more than 45 days, we dismiss the appeal on the ground of delay.”*

**12.** The Appellant thereafter filed an Application to recall the said Order in which Application this Tribunal has occasion to consider the interpretation of Rule, 26(2) and Section 421 and 422 of the Companies Act, 2013. In the above Judgement, the Appellate Tribunal held that if defects are not removed within seven days and the defects are removed after seven days, the Appeal is to be treated afresh Appeal. In paragraph 17 and 20 following has been laid down:

*“17. As per the provisions of the NCLAT Rules 2016 read with Section 422 of the Companies Act 2013, if defects are not removed within 7 days and the defects are removed after 7 days i.e. beyond the period prescribed under the rules, the appeal is*

*treated to be a fresh appeal. Such procedure is followed so that the appellants may get advantage of 'court fee' prescribed under the NCLAT Rules and may use the same 'paper book' which are generally voluminous. If the Registrar General would have refused to register the appeal after 7 days, as per clause (4) of Rule 26, the appellant would have filed a fresh appeal with fresh court fee with separate sets of paper book, separate affidavit, separate vakalatnama which would be disadvantages to the appellants.*

.....

*20. Appeal was filed on 31<sup>st</sup> March 2017, and the defect was to be removed within 7 days i.e. by 7th April 2017. Therefore, no extension of time could have been granted even by the Registrar to remove the defects particularly when the Appellate court has no power to condone delay after 90 days of receipt of judgement which expired on 7th April 2017 in the present case.*

**13.** This Appellate Tribunal ultimately dismissed the Appeal holding that refiling on 01<sup>st</sup> May, 2017 was beyond the period of 90 days from the date of receipt of Judgement and hence the Appellate Tribunal has no jurisdiction to entertain the Appeal. Paragraph 23 and 24 is as follows:

*“23. Curiously, even when defects were pointed out by the registry on 31<sup>st</sup> March 2017, why they sat tight over the matter for 31 days in removing the defects.*

*24. Though it was open to the applicant to file a petition before Appellate Tribunal with prayer to ignore the minor defects, no such application was*



*filed by appellant. The appeal was taken back on 3rd April 2017 and they re-filed on 1st May 2017 i.e. beyond the period of 90 days from the date of receipt of judgement passed by Tribunal, when Appellate Tribunal had no jurisdiction to entertain the appeal.”*

**14.** The next Judgment relied on by the Learned Counsel for the Respondent is “**Arul Muthu Kumaara Samy**” (supra). In the above case, Appeal under Section 421 of the Companies Act, 2013 was filed against the Order dated 27<sup>th</sup> May, 2019 passed by the NCLT, Chennai Bench, Chennai. The Appeal was filed on 28<sup>th</sup> August, 2019. The Registry after scrutiny of the Appeal on 01.10.2019 returned the Appeal to the Appellant for removal of the defect. The Appellant refiled the Appeal on 28<sup>th</sup> July, 2020 and filed an Application for condonation of delay of 338 days in refileing the Appeal. The facts of the case have been noted by this Tribunal in paragraph 9 of the Judgement which is to the following effect:

*“9. Admittedly, the Impugned Order was passed by the Tribunal on 27.05.2019 certified copy of the Order was delivered on 10.07.2019. As per Section 421 of the Act. The Appellant was required to file the Appeal within 45 days i.e. till 24.08.2019. However, the Appellant has filed the Appeal on 28.08.2019 i.e. beyond the period of Limitation. The Office after scrutiny of the Memo of Appeal intimated the defect to the Appellant on 01.10.2019 and on the same day the Memo of Appeal was returned to the Appellant. The Appellant was supposed to cure the defects within 7 days and has to file the Appeal on or before the 08.10.2019. However, the Appellant has refiled the Appeal on 28.07.2020 i.e. a delay of 338 days.”*

**15.** The Tribunal relied on Judgement of “**Mr. Jitendra Virmani**” (supra) and extensively quoted the Judgemnt of the ‘Mr. Jitendra Virmani’ in Paragraph 11 and consequently in paragraph 12 this Tribunal took the view that this Tribunal cannot condone the delay beyond 45 days hence the Application for condonation of delay 338 days is dismissed. The three Member Judgment in “**Arul Muthu Kumaara Samy**” is based on earlier Judgment of “Mr. Jitendra Virmani” (supra).

**16.** Next Judgement relied on by the Learned Counsel for the Respondent is “National Spot Exchange Limited” (supra) where the Hon’ble Supreme Court by considering the provisions of Section 61 (2) of the IBC held that this Tribunal in exercise of its jurisdiction cannot condone the delay exceeding 15 days from the period of 30 days as provided in Section 61 (2). In paragraph 20, following has been laid down:

*“At the outset, it is required to be noted that the appellant herein has challenged the order passed by the adjudicating authority dated 6.3.2019 affirming the decision of the resolution professional of rejection of the claim of the appellant before the NCLAT. The appeal preferred before the NCLAT was under Section 61(2) of the IB Code. As per Section 61(2) of the IB Code, the appeal was required to be preferred within a period of thirty days. Therefore, the limitation period prescribed to prefer an appeal was 30 days. However, as per the proviso to Section 61(2) of the Code, the Appellate Tribunal may allow an 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, but such period shall not exceed 15 days. Therefore, the Appellate Tribunal has no*

*jurisdiction at all to condone the delay exceeding 15 days from the period of 30 days, as contemplated under Section 61(2) of the IB Code. Section 61(2) of the IB Code reads as under:*

*“Section 61(2) – Every appeal under sub-section (1) shall be filed within thirty days before the National Company Law Appellate Tribunal: Provided that the National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal, but such period shall not exceed fifteen days.”*

**17.** We may notice two Judgements relied by Learned Counsel for the Appellant in **“Northern Railway Vs. Pioneer Publicity Corporation Pvt. Ltd.”** (2017) 11 SCC 234, the Supreme Court had occasion to consider the Section 34(3) of the Arbitration and Conciliation Act, 1996. It was laid down by the Hon’ble Supreme Court that re-filing of the Application after curing the defects in Application does not amount to fresh filing of the Application for counting limitation. In paragraph 3 and 4 of the Judgment dated 24.10.2016, following has been laid down:

*“3. Mr. Amarjeet Singh Chandiok, learned senior counsel appearing for the respondent submitted that Section 34(3) of the Act bars re-filing beyond the period stipulated therein. The said sub-Section reads as follows:*

*“34.(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that*

*application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the arbitral tribunal:*

*Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.”*

4. *We find that said section has no application in re-filing the petition but only applies to the initial filing of the objections under Section 34 of the Act. It was submitted on behalf of the respondent that Rule 5(3) of the Delhi High Court Rules states that if the memorandum of appeal is filed and particular time is granted by the Deputy Registrar, it shall be considered as fresh institution. If this Rule is strictly applied in this case, it would mean that any re-filing beyond 7 days would be a fresh institution. However, it is a matter of record that 5 extensions were given beyond 7 days. Undoubtedly, at the end of the extensions, it would amount to re-filing.”*

**18.** Another Judgement relied on by the Learned Counsel for the Appellant is the Judgment of Delhi High Court in the matter of **“Dr. Narender Kumar Sharma & Ors. Vs. Maharana Pratap Educational Center & Anr.”** (2018) SCC OnLine Del 13146. In the above case, Written-objections was filed within time and there was delay in re-filing. The submission was raised before the Delhi High Court that re-filing tantamount to fresh filing. The

Delhi High Court relying on an earlier Judgement of the Delhi High Court and two judgements of the Hon'ble Supreme Court allowed the Appeal.

**19.** We have perused the precedents relied on by Learned Counsel for both the parties and have considered the respective submissions. Section 61 of the Code provides for filing an Appeal within 30 days before the NCLAT. Section 61(1)(2) are as follows:

*“Section 61: Appeals and Appellate Authority.*

*(1) Notwithstanding anything to the contrary contained under the Companies Act 2013 (18 of 2013), any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.*

*(2) Every appeal under sub-section (1) shall be filed within thirty days before the National Company Law Appellate Tribunal:*

*Provided that the National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed fifteen days.”*

**20.** Section 61(2) uses the expression “filed”. When we come to the National Company Law Appellate Tribunal, Rule, 2016 Part-III of Chapter I of the Rules deals with “Institution of Appeals-Procedure”. Rule 22 deals with “Presentation of the Appeal” at the filing counter.

**21.** The question for consideration is as to whether when Appeal is filed in defects and defects are not cured within seven days and the defects are cured after 7 days and the Appeal is refiled whether the refiling shall be a

fresh filing of the Appeal. A plain reading of the Rule 26 does not give any indication that Rules contemplate refiling as fresh filing of the Appeal. When Rule 26(2) provides that when the Appellant failed to remove the defects within seven days it is placed before the Registrar who is to pass an appropriate order. The Registrar is to pass an appropriate order when defect is not cured within seven days for which purpose the Registrar may either grant further time to cure the defects or refuse to grant any further time to cure the defects. Sub-Rule 3 of Rule 26 is specific power to the Registrar to grant reasonable time to party or to extend the time for compliance. Rule 26 (2) and (3) when read together clearly indicate that requirement of curing the defect within 7 days is not mandatory. No penal consequences have been provided in the Rule in event defects are not cured within seven days. The Rule is thus clearly directory and not mandatory. No penal consequences are to be followed if the defects are not cured within seven days. In this context, we may refer to the Judgement of the Hon'ble Supreme Court in the matter of **“Surendra Trading Company Vs. Juggilal Kamlatpat Jute Mills Company Ltd. & Ors.”** (2017) 16 SCC 143 where Hon'ble Supreme Court came to consider the provisions of Code which provided seven days' time for removal of the defect. Hon'ble Supreme Court laid down that provision of Section 9(5) of the Code is not mandatory. Paragraph 20 and 23 of the Judgment are as follows:

*“20) We are not able to decipher any valid reason given while coming to the conclusion that the period mentioned in proviso is mandatory. The order of the NCLAT, thereafter, proceeds to take note of the provisions of Section 12 of the Code and points out*

*the time limit for completion of insolvency resolution process is 180 days, which period can be extended by another 90 days.*

*However, that can hardly provide any justification to construe the provisions of proviso to sub-section (5) of Section 9 in the manner in which it is done. It is to be borne in mind that limit of 180 days mentioned in Section 12 also starts from the date of admission of the application. Period prior thereto which is consumed, after the filing of the application under Section 9 (or for that matter under Section 7 or Section 10), whether by the Registry of the adjudicating authority in scrutinising the application or by the applicant in removing the defects or by the adjudicating authority in admitting the application is not to be taken into account. In fact, till the objections are removed it is not to be treated as application validly filed inasmuch as only after the application is complete in every respect it is required to be entertained. In this scenario, making the period of seven days contained in the proviso as mandatory does not commend to us. No purpose is going to be served by treating this period as mandatory. In a given case there may be weighty, valid and justifiable reasons for not able to remove the defects within seven days. Notwithstanding the same, the effect would be to reject the application.*

.....

*23) Further, we are of the view that the judgments cited by the NCLAT and the principle contained therein applied while deciding that period of fourteen days within which the adjudicating authority has to pass the order is not mandatory but directory in*

*nature would equally apply while interpreting proviso to subsection (5) of Section 7, Section 9 or sub-section (4) of Section 10 as well. After all, the applicant does not gain anything by not removing the objections inasmuch as till the objections are removed, such an application would not be entertained. Therefore, it is in the interest of the applicant to remove the defects as early as possible.”*

**22.** The Judgment of this Tribunal in “Mr. Jitendra Virmani” and “Arul Muthu Kumaara Samy” has taken the view that when defect is not cured within seven days and Appeal is filed thereafter it should be treated as fresh Appeal. In this context, the Judgement of the Hon’ble Supreme Court in “Northern Railway” as noticed above is relevant. Hon’ble Supreme Court clearly held in paragraph 4 of the Judgement that refiling beyond 7 days could not be a fresh institution.

**23.** The Hon’ble Supreme Court had occasion to consider the provisions of Rule 26 of NCLAT, Rules, 2016 in the matter of **“P. Ram Bhoopal & Ors. Vs. Pragnya Riverbridge Developers Limited & Ors.”** Civil Appeal No. 19486 of 2017 decided on 04<sup>th</sup> December, 2017. In the above case also, Judgement of the NCLT was delivered on 13<sup>th</sup> March, 2017, 45 days expired on 27<sup>th</sup> April, 2017 under Section 421 of the Companies Act. Further 45 days can be given for a sufficient cause to be made out to condone the delay which period was to expire on 11<sup>th</sup> June, 2017. Before the expiry of above 90 days, the Appeal was filed on 08<sup>th</sup> June, 2017 and on 12<sup>th</sup> June, 2017 defects were pointed out by the Registry it was cured on 16<sup>th</sup> June, 2017 and this Appellate Tribunal applying Rule 26 held that Appeal was beyond time, reversing the Judgment of this Tribunal, Hon’ble Supreme Court laid down following:



*“On the facts of the present case, it is clear that within a period of seven days, the defect pointed out was cured. This being the case, it is clear that the initial date of lodgement of the appeal is the date on which the appeal should be considered as filed, even though an appeal number may be given to the appeal subsequently.*

*In this view of the matter, we are of the view that the NCLAT's judgment deserves to be set aside, and the appeal that was lodged on 8th June, 2017 must be considered to be within the extended 45 days period.*

*The NCLAT has also noticed that no sufficient cause was made out to condone the delay that falls within the second 45 days period. This is incorrect inasmuch as the appellant has pleaded that as a result of the death of his uncle, the appellant was unable to process the appeal within the initial 45 days and that, therefore, he should be said to have made out sufficient cause to condone the delay of 42 days.”*

**24.** This Tribunal in recent Judgement in Company Appeal (AT) Ins. No. 721 of 2022 in the matter of “Krishan Kumar Basia Vs. State Bank of India” decided on 14<sup>th</sup> July,2022 has taken the view that when Petition is filed before the Adjudicating Authority and filed with defect which defects are subsequently cured and Petition is registered thereafter the date of presentation of the petition shall be the first date when the petition was filed. In paragraph 24 of the Judgment, following has been laid down:

*“24. The above judgment of the Hon’ble Supreme Court also clearly laid down the principal that even if there is any defect in the Application, which is*

*subsequently cured, the date of presentation of the Application shall remain the same and shall not be dependent on the date when defects are cured. We, thus, are of the considered opinion that Adjudicating Authority after due consideration has taken correct view of the matter in holding that filing of the Application under Section 95 by the State Bank of India is on a date when Application was filed and allotted number electronically and the submission of the Appellant that date of filing of the Application shall be the date when Application is numbered has rightly been rejected.”*

**25.** In view of the Judgment of the Hon’ble Supreme Court in “Northern Railway” (supra) and the Judgment in the matter of “P Ram Bhoopal” (supra), we are of the view that view taken by this Tribunal in the matter of “Mr. Jitendra Virmani” (supra) and “Arul Muthu Kumaara Samy” (supra) does not lay down the correct law.

**26.** We have noticed that the issue of delay in re-filing is often coming before this Tribunal for consideration and the Judgment of this Tribunal in the above two cases need to be reconsidered for an authoritative pronouncement on the issue.

**27.** We thus are of the view that following questions need to be considered by a Larger Bench.

(a) Whether the law laid down by this Tribunal in “Mr. Jitendra Virmani Vs. MRO-TEK Realty Ltd. & Ors” and three Member Bench Judgment in “Arul Muthu Kumaara Samy Vs. Registrar of Companies” that when the defect in Appeal is cured and the Appeal

is refiled before the Appellate Tribunal beyond seven days, the date of re-presentation of the Appeal shall be treated as a fresh Appeal, lays down correct law?

(b) Whether the limitation prescribed for filing an Appeal before this Appellate Tribunal under Section 61 of Insolvency and Bankruptcy Code, 2016 or Section 421 of the Companies Act, 2013 shall also govern the period under which a defect in the Appeal is to be cured and this Appellate Tribunal shall have no jurisdiction to condone the delay in refiling/representation if it is beyond the limitation prescribed in Section 61 of the IBC or Section 421 of the Companies Act, 2013.

**28.** Let this Order be placed before the Hon'ble Chairperson (one of us) on administrative side, for listing the matter before a "Larger Bench".

**[Justice Ashok Bhushan]  
Chairperson**

**[Justice M. Satyanarayana Murthy]  
Member (Judicial)**

**[Mr. Barun Mitra]  
Member (Technical)**

**NEW DELHI  
12<sup>th</sup> August, 2022  
Basant B.**