
(2025) 02 NCLAT CK 0947

In the National Company Law Appellate Tribunal

Case No : I.A. No. 8709 of 2024 in Comp. App. (AT) (Ins) No. 2316 of 2024

CA Ramchandra Dallaram Choudhary, Liquidator of Anil Limited	APPELLANT
Vs	
Adani Infrastructure & Developers Pvt. Ltd.	RESPONDENT

Date of Decision : 06-02-2025

Acts Referred:

Citation : (2025) 02 NCLAT CK 0947

Hon'ble Judges : Ashok Bhushan, Chairperson; Barun Mitra, Member (T); Arun Baroka, Member (T)

Bench : Full Bench

Advocate : Ramji Srinivasan , Atul Sharma, Arjun Bhatia , Shefali Munde, Arun Kathpalia , Krishnendu Datta , Siddharth Aggarwal, Anirudh Bhat, Akhil Nene , Aditya Dhupar

Final Decision : Dismissed

Judgement

Per: Barun Mitra, Member (Technical)

The present application I.A. No.8709 of 2024 is an application filed by the Applicant praying for condonation of 115 days delay in refiling of Company Appeal (AT) (Insolvency) No. 2316 of 2024.

2. Notice was issued in respect of the refiling delay condonation application by this Tribunal vide order dated 13.12.2024 which notice was accepted in Court by the Ld. Counsel for Respondent. As prayed, the Respondent was allowed two weeks' time to file their reply and Applicant was allowed the liberty to file their rejoinder.

3. The Applicant has given the following explanation at paragraphs 2.3 to 2.4 of the application justifying their refiling delay which is extracted hereunder:-

"2.3. The Applicant/Liquidator most humbly states and submits that the delay in rectifying the defects in the present appeal has occurred, which is neither intentional nor deliberate but due to some inevitable and unavoidable

circumstances of the case, primarily owing to the fact that the Applicant (original Appellant) as well as the counsel for the Applicant are based out of Ahmedabad, Gujarat and therefore, the deponent could not physically inspect the records of the Appeal in person.

2.4. That the Applicant most humbly submits that he has duly executed the Appeal within prescribed period of limitation alongwith the delay condonation application and had duly dispatched the same for physical filing to the local clerk based in New Delhi, however, due to some unfortunate and unforeseeable circumstances that developed thereafter, there was some delay in physical filing of the captioned appeal and rectifying the defects primarily owing to the reasons as briefly stated herein below:

A. Though the defects were notified by the Ld. Registry on 12.08.2024 which were to be cured by or before 19.08.2024, however, on account of some technical issue or otherwise, the same could not be received in the primary email inbox of the counsel of the Appellant.

B. That pursuant to the receipt of the original paperbook by the local/Delhi based clerk, the same could not be physically filed as the clerk had apprised the deponent that certain documents from physical sets including the certified copy of the impugned order were misplaced by him and that he is in the process of locating the same. Consequently, the original paperbook of the appeal was located however, the original certified copy of the impugned order and the general affidavit accompanying the original delay condonation application could not be located by the clerk in the physical record.

C. Eventually, despite putting in all the efforts and constant coordination/ follow-ups, the deponent re-applied for the certified copy of the impugned order dated 21.06.2024 and had re-executed the general affidavit accompanying the interlocutory application for condonation of delay as well.

D. That amongst other defects, defects pertaining to the translated copies and typed copies were raised by the registry. It is most humbly submitted that the translation of the documents in the vernacular language and obtaining the typed copies of the illegible pages consumed a substantial period of time which was neither intentional nor deliberate.”

4. Reply has been filed by the Respondent objecting to the refiling delay condonation application of the Applicant. In their Reply-Affidavit, the Respondent has vehemently opposed the grounds cited in the refiling delay condonation application besides asserting that the delay was for an inordinately long period and does not deserve condonation as the delay was intentional. Shri Arun Kathpalia and Shri Krishnendu Datta, Ld. Senior Counsels representing the Respondent adverted attention to the glaring mismatch between the grounds cited in the delay condonation application and the subsequent ground raised in the refiling delay condonation application. Submission was pressed that in the application for condonation of delay, the reason for delay depicted was time

taken in seeking legal opinion. On the other hand, in the refiling delay condonation application, an entirely new and specious ground has been created which is "misplacement of documents". Holding misplacement of documents as solely attributable to the wilful negligence and lack of diligence on the part of the Applicant, it has been contended that this cannot constitute a valid ground for condonation of delay at the refiling stage and deserves to be rejected.

5. It was also pressed that the Applicant besides raising indefensible grounds also displayed laxity in remedying the defects even though these defects were pointed out well in time by the NCLAT Registry. In support of their contention that condonation of delay needs to be buttressed by adequate and sufficient reasons, the Ld. Senior Counsel adverted reference to the judgment of this Tribunal in *Adisri Commercial Private Limited vs. Reserve Bank of India* in CA (AT)(Ins) No. 1293 & 1294 of 2022. Reliance was also placed on the judgment of the Hon'ble Delhi High Court in *Dy. CE/C/ Jalandhar City Vs. Spacechem Enterprises* 2023 SCC Online Del 978 to assert that while the courts enjoy jurisdiction to condone refiling delay, the conduct of the Applicant seeking condonation must be tested on the anvil of whether the Applicant acted in this direction with due diligence and dispatch. It was contended that the Applicant has not been able to effectively establish that the delay was on account of reasons beyond its control. It was reiterated that in the absence of genuine and valid grounds the refiling delay condonation application of the Applicant deserves to be rejected.

6. The Applicant has filed Rejoinder to the Reply-Affidavit of the Respondent contending that the delay was unavoidable and unintended and hence the refiling delay be condoned in the interest of justice as there is a good case on merits. Shri Ramji Srinivasan, Ld. Senior Counsel for the Applicant in support of his contention that the delay was neither intentional nor deliberate pointed out that an advance copy of the appeal was duly e-filed on 03.08.2024 after serving an advance copy on the Respondent by email as can be seen at page 15 of the Rejoinder. It was reiterated that the delay was primarily caused by unforeseen and exceptional circumstances beyond the control of the Applicant since the original set of documents had been inadvertently misplaced/lost by the Delhi based local clerk entrusted with the physical filing of the application.

7. At this stage it may be useful to note the explanation offered by the Applicant in the Rejoinder-Reply, relevant excerpts of which are as reproduced below:-

"6. It is most humbly submitted that the captioned Appeal was duly e-filed on 03.08.2024 after serving an advance copy upon the Respondent herein. That thereafter, the physical original sets of the captioned appeal were handed over to the local Delhi based clerk who is routinely and regularly filing the necessary documents, Appeals, Reply, Affidavits on behalf of the deponent as well as on behalf of the counsel of the deponent....

7. It is further submitted that the original document sets, complete and duly

prepared for filing which were already served upon the Respondent on 03.08.2024, were inadvertently misplaced and/ or lost by the Delhi based local clerk entrusted with the physical filing and rectifying the defects therein. It is most respectfully submitted that in the interregnum all throughout, the deponent as well as the counsel of the deponent were regularly following up with the clerk....

8. It is pertinent to highlight that both the Appellant and the counsel for the Appellant are based in Ahmedabad. This geographical factor further underscores the administrative oversight as being devoid of any mala fide intent. The Appellant maintained constant communication and follow-up with the Delhi-based clerk to locate the original set of documents....

9. Subsequently around 7th December, 2024, the deponent was informed that the original set of the missing documents were finally found by the Clerk, however, the original certified copy of the impugned order as well as one original affidavit accompanying the delay condonation application was still missing. That immediately thereafter, the deponent had re-applied for the certified copy of the impugned order on 09.12.2024 as well as re-executed the Affidavit accompanying captioned delay condonation Application on 10.12.2024. It is pertinent to mention that at the time of original filing of the Appeal on 03.08.2024, the certified copy dated 31.07.2024 of the impugned order was originally filed, however subsequently another certified copy dated 09.12.2024 was filed at the time of refiling....

10. It is most humbly reiterated that upon failing to retrieve the entire set of misplaced documents, the Appellant reapplied for a certified copy of the impugned order and reconstructed the missing documents with due diligence. Such actions unequivocally demonstrate the Appellant's bona fide intent and commitment to pursuing the appeal. The Appellant most humbly submits that the present inadvertent lapse was not intentional and was not to disregard procedural timelines or undermine the sanctity of the judicial process.

11. The Appellant's actions throughout these proceedings demonstrate consistent diligence and good faith. The initial filing was completed within the prescribed limitation period....

12. The subsequent delay in re-filing arose purely from an administrative oversight, which was rectified as soon as the issue came to light. The Appellant's conduct does not reflect negligence but rather a commitment.

13. The Appellant submits that the limitation period should be computed from the date of e-filing, which was completed in full compliance with procedural requirements. The act of e-filing constituted a valid initiation of the appeal, and the subsequent administrative delays may not negate the Appellant's bona fides.

14. The misplacement of original document sets by the clerk was an unforeseen and exceptional event beyond the Appellant's control. Upon identifying this issue,

the Appellant acted promptly to reconstruct the necessary documents and re-file the appeal at the earliest possible opportunity.

15. The Appellant's bona fide efforts to locate the original documents, including sustained communication with the Delhi-based clerk, and the subsequent reapplication for certified copies, underscore the exceptional circumstances that justify condonation of the delay. Such exceptional circumstances constitute sufficient cause for condonation of delay, as recognized by established legal principles and judicial precedents.

8. It was also contended by the Ld. Sr. Counsel for the Applicant that the period of 7 days prescribed in Rule 26(2) of NCLAT Rules with respect to removal of defects is directory in nature and not mandatory and hence the delay can be condoned if sufficient grounds are shown. Reliance was placed on the judgment of this Tribunal in the matter of V.R. Ashok Rao & Ors. Vs. TDT Copper Ltd." 2022 SCC OnLine NCLAT 3516 wherein it has been held that a party exercising its rights to file a statutory appeal has not to be shut out on some procedural or some technical defects when defects notified have been removed although with some delay for justifiable cause. It was also stated that the Hon'ble Supreme Court of India in the matter of Mool Chandra vs. Union of India in Civil Appeal No. 8435-8436 of 2024 had observed that if no fault can be laid at the doors of the Applicant and cause for delay shown is sufficient, then a liberal and justice-oriented approach should be adopted to condone the delay. Reliance has also been placed on the judgment of the Hon'ble Supreme Court in the matter of Sheo Raj Singh v. Union of India, (2023) 10 SCC 531 wherein it was held that the expression "sufficient cause" in condoning delay is adequately elastic. It was contended that in the present case the delay was a case of inadvertent and unintended administrative lapse and hence needs to be dealt in a lenient manner. It was contended that the grounds for refiling delay in the present facts of the case were genuine and hence deserved to be viewed in a liberal manner to subserve the ends of justice.

9. We have heard the rival contentions of both the parties and perused the records carefully.

10. At the outset, we would like to make it clear that we are quite conscious that while considering a prayer for condonation of refiling delay, the standard of scrutiny is expectedly less rigorous than the standard applied in condoning delay in filing. At the same time, we are equally conscious that there must be a reasonable, justifiable and sufficient cause on the part of the Applicant for not refiling the appeal on time. More importantly, in adopting a liberal and flexible approach, we cannot allow any compromise of the well settled precept of "timeliness" which constitutes one of the cardinal cornerstones of the statutory framework of IBC.

11. We have no quarrel with the proposition canvassed by the Applicant that the period of seven days stipulated under NCLAT Rules for rectification of defects is

directory and not mandatory. We are also in agreement with the finding of this Tribunal in VR Ashok Rao judgment supra that on removal of defects notified by the Registry within a reasonable period, a liberal approach should be adopted to condone the delay. Be that as it may, it is equally important to note that the same judgment also observes that justifiable cause must be shown for the delay. We also notice that in the Sheo Raj Singh judgment supra, it has been pointed out that there should be sufficient cause to explain the delay. We are therefore of the considered view that this Tribunal is not precluded from scrutinizing the tenability and reasonability of the grounds on which refiling delay condonation has been sought.

12. The question before us that needs to be considered is as to whether there was justifiable cause for delay in refiling or not.

13. In the present case, it is an admitted fact that defects were notified by the NCLAT Registry on 12.08.2024 with directions to cure the defects by 19.08.2024. However, the defects were cured after an efflux of 115 days. The question of condoning this delay in refiling would therefore need to be seen in the context of explanation offered as to whether the reasons causing the delay were beyond the control of the Applicant and that the defects could not be cured inspite of genuine efforts put in by the Applicant.

14. From the submissions and pleadings made by the Applicant, we notice that one of the principal grounds adduced to explain the delay was that since the Applicant and their counsel were based out of Ahmedabad, they could not physically inspect the record in person. The distance between Ahmedabad and Delhi also came in the way as the Applicant was required to coordinate with their clerk located in Delhi who was responsible for filing the appeal. Moreover, though they had e-filed their appeal on 03.08.2024 and also sent an advance copy to the Respondent, their inability to physically file the petition was caused by the fact that their local clerk in Delhi had misplaced the certified copy of the impugned order and could not locate the same. It has been further submitted that after a lot of effort and constant coordination/follow up, the Applicant reapplied for another certified copy of the impugned order which took time and hence the delay in refiling the appeal.

15. What we need to see now is whether administrative oversight leading to misplacement of documents can be viewed as a plausible explanation to justify the delay. The above cited alibi of geographical distance between Ahmedabad and Delhi acting as an impediment in refiling the appeal on time does not meet the reality on ground. Any prudent person would agree that there is no dearth of transport infrastructure and communication network interlinking these two cities. Hence, to our minds, raising the issue of geographical distance between Ahmedabad and Delhi acting as a barrier is a farcical excuse which fails to convince us. Equally facile is the explanation that despite constant coordination and follow up, the process of obtaining a certified copy of the impugned order took a lot of time. This feeble defence is belied by the fact that when we look at

page 62 of Appeal Paper Book ("APB" in short) we find that the date on which the application for certified copy was reapplied was 09.12.2024 and the NCLT Registry had delivered the certified copy on the same date. This clearly demonstrates that had the Applicant been serious and earnest in their efforts in pursuing the matter with the NCLT Registry, there would have been no need to wait for nearly four months to obtain certified copy of the impugned order which was pronounced as early as 21.06.2024. We are, therefore, not persuaded to accept that the Applicant had been prevented by any exceptional reason beyond its control in obtaining certified copy of the impugned order in a timely fashion.

16. Another set of ground taken by the Applicant is that the defects in the Appeal Petition which was notified by the NCLAT Registry on 12.08.2024 were not received in the primary e-mail inbox of the Ld. Counsel of the Applicant on account of "some technical issue or otherwise". It has also been cited that certain documents were in the vernacular language time which required translation. Since the translation exercise took time, it led to delay in refiling.

17. Coming to the plea of the Applicant that the defects notified by the NCLAT Registry was not received in the primary e-mail inbox of the Ld. Counsel leading to delay in refiling we find that no specific details have been placed with any proof to substantiate the nature of technical glitches faced in this regard and as to what steps were taken to overcome the technical bottlenecks. It does not stand to reason that nearly four months' time was required to set right these technical problems. We, therefore, find this to be a rather weak explanation. As regards, the time taken in translation of documents, when we look at the records, we find that there were only two half-pages which needed translation as placed by the Applicant at pages 153-154 of APB. By no stretch of imagination can two pages of translation work consume a period of nearly four months' time. This explanation also fails to inspire our confidence.

18. We also cannot lose sight of the fact that IBC was introduced as a legislative fiat to overhaul the then prevailing insolvency regime and one of the major objectives was to set right the problem of delays which crippled the implementation of the bankruptcy systems in India. It is well recognised that speed is of essence in IBC. It is a given that the need of speed is important both for insolvency as well as for liquidation process. It flows therefrom that once the liquidation process is set into motion, the liquidator is expected to act swiftly and ensure that minimal time is lost in procedural technicalities including curing of defects etc. while conducting the liquidation exercise. The initiation and closure of liquidation is a time-bound process which is to be completed within one year. A liquidator therefore has the principal responsibility of completing the liquidation process as quickly as possible by adhering to the legal regulations and time-frame set therein for conduct of the liquidation process and not allow scope of any unnecessary delay. This element of diligence is clearly amiss in the disposition of the Applicant-Liquidator.

19. Seen against this backdrop and the discussion in the foregoing

paragraphs, we find that the delay in refiling by nearly four months has been occasioned by rather perfunctory reasons. The Applicant is found to have remained nonchalant and callous about the need to correct the defects pointed out in the Appeal Petition by the NCLAT Registry in a timely manner. In such circumstances, allowing refiling delay condonation on such frivolous grounds would be an anathema to the timeliness and integrity of the liquidation process and therefore does not commend us.

20. In view of the above, we do not see any merit in the Application filed for seeking condonation of 115 days delay in refiling the appeal. Sufficient grounds have not been made out for condonation of delay in refiling. Accordingly, IA No. 8709 of 2024 is rejected. In view of the dismissal of the application for condonation of delay in refiling the appeal, the Memo of Appeal is also rejected.