

**(2020) 02 NCLT CK 0049**

**In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi**

**Case No :** Company Petition No. IB-303/(ND) Of 2020

Elektronik Lab India Pvt. Ltd. And Ors

APPELLANT

Vs

Pinnacle (Air) Private Limited

RESPONDENT

---

**Date of Decision :** 25-02-2020

**Acts Referred:**

Code Of Civil Procedure, 1908 — Order 21 Rule 21  
Limitation Act, 1963 — Section 5, 14, 14(2), 18  
Constitution Of India, 1950 — Article 137  
Insolvency And Bankruptcy Code, 2016 — Section 9

**Citation :** (2020) 02 NCLT CK 0049

**Hon'ble Judges :** Abni Ranjan Kumar Sinha, J;Dr. V.K. Subburaj, Member (Technical)

**Bench :** Division Bench

**Advocate :** Jaikiriti Jadeja, S. Hariharan, Manan Batra, Manan Malik

**Final Decision :** Dismissed

---

## **Judgement**

Abni Ranjan Kumar Sinha, J

1. The applicant filed the present IA, which is registered as 1073 of 2020 and by filing this application, the applicant prayed to condone the delay of 400 days in filing the present petitions under Section 9.
2. We have heard the learned counsel appearing for the applicant as well as learned counsel appearing for the respondents.
3. Learned counsel appearing for the applicant, in course of his argument submitted that the applicant has filed an application under Section 9 for the outstanding amount of Rs/- 37,02,761 alongwith the interest at the rate of 24 per cent per annum till date of payment, concluded from the respective due dates of the invoice and when the matter was listed during the hearing the petitioner was directed to substantiate on the point of limitations, accordingly, the present petition is filed under Section 5 of the Limitation Act.

4. She further submitted that originally the operational-creditor has filed a company petition before the Hon'ble Allahabad High Court which was registered as Company Petition No. 6 of 2015 for the claim of Rs/- 37,02,761 alongwith the interest at the rate of 24 per cent per annum, but the same was dismissed on 19.11.2018 on the ground that said company petition was filed only against M/s. Bajaj Hindustan Sugar Limited and the respondent corporate-debtor was not included as a party.

5. She further submitted that that said order was communicated to the petitioner by the conducting counsel of the petitioners vide e-mail dated 27th November 2018.

6. She further submitted that in the meantime, the authorized signatory of the petitioner company was admitted in the Hospital on 18.4.2019 and was undergone for surgery at Apollo Hospitals Chennai and also advised to take bed rest for 3 months.

7. She further submitted that again the authorized signatory fallen sick and admitted in the hospital on 22nd September 2019 and a second surgery was done in the said hospital on 23rd September 2019 and subsequently he was discharged on 3rd October 2019 and due to this the proper application was not presented before this Tribunal, although the order of the Hon'ble Allahabad High Court was communicated to him on 19th November 2018.

8. She further submitted that under such circumstances delay of 400 days may be condoned.

9. She further submitted that although she filed an application under Section 5 of the Limitation Act to pray to condone the delay under Section 14 of the Limitation Act.

10. On the other hand, learned counsel appearing for the corporate-debtor submitted that the present application is barred by limitations and if delay is condoned then he may be permitted to file the reply. She placed the reliance upon a decision reported in (2019) 10 Supreme Court Cases 750.

11. In the light of submissions raised on behalf of the parties. We have gone through the averments made in the application as well as the application filed under Section 5 of the Limitation Act. The applicant has filed an application under Section 9 of the IB Court, which is registered as CP(303) 2020 and in part 4 of the application at page 12 the application mentioned the default period is from April 2012 and May 2012 and at page 16, the applicant mentioned the date from which the debt became due that is 12th July 2012 to 6th January 2020.

12. In the light of that averment, when we have gone through the documents enclosed with the application then we find, last invoice is dated 3rd July 2012 and the last payment was made in the month of July 2012 as mentioned at page 12 of the application. We further find, thereafter in the year 2015, a company petition being Company Petition No. 6 of 2015 was filed before the Hon'ble

Allahabad Bench which was disposed of 19.11.2018 and the present application is filed on 16.01.2020.

13. At this juncture, we would like to refer the arguments advanced on behalf of learned counsel appearing for the petitioner, who in course of argument submitted that although there is no specific date for filing of the Company Petition No. 6 of 2015 before the Hon'ble Allahabad Bench is mentioned in the application but it was filed on 10th July 2015. We further find at page 13, the petitioner claim exclusion of time under Section 14 of the Limitation Act and subsequently filed an application under Section 5 of the Limitation Act for condoning the delay.

14. On the basis of the facts referred in the aforementioned para, we find that the right to apply accrues in the month of July 2012, when the last payment was made by the corporate-debtor to the applicant.

15. At this juncture, we would like to mention this facts that although no specific date of receiving the payment is made in the applications but during the course of argument learned counsel appearing for the applicant submitted that the last payment was made on 12th July 2012. If we placed reliance on this contention, we are of the view that right to apply accrues on 12th July 2012, when the last payment was made, and in view of Article 137 the application is required to file an applications within three years when the right to apply accrue therefore, in our view the limitations runs from 12th July 2012.

16. At this juncture, we would like to refer argument advanced on behalf of learned counsel appearing for the applicant, who in course of his argument submitted that although no specific date is mentioned, when the Company Petition No. 6 of 2015 was filed before the Hon'ble Allahabad High Court but during the course of argument, she submitted that it was filed on 10th July 2015, if we was accept that contention of the petitioner's counsel the company petition was filed on 10th July 2015, then we find that without producing any document to corroborate the date of filing of company petitions before Hon'ble Allahabad High Court and the date regarding the last payment, the learned counsel appearing for the applicant try to convince us that the petition is filed within three years when the right to file accrue. If we accept this contention then we find, the petitioner is entitled to claim the exclusion of the period, which has been spent with due diligence in another proceedings. As per the contention of the learned counsel appearing for the applicant, the company petition was filed on 10th July 2015 and the said proceeding was terminated on 19.11.2018, whereas the present petition is filed on 16.1.2020, that is much after more than one year of the disposal of the company petition by the Hon'ble Allahabad High Court.

17. We have already referred that, as per the contention of the learned counsel appearing for the applicant the company petition was filed, on 10th July 2015, whereas the right to apply accrue on 12th July 2012 which means the company

petition was filed, according to the submissions of the learned counsel appearing for the applicant, one day prior to the limitation period of three years comes to an end, and if we shall exclude the period spent during that proceeding under Section 14(2) of the Limitation Act, then, the applicant was required to file the present applications on 20th November 2018 that is on the next date of disposal of the company petition by the Hon'ble Allahabad High Court. But the same is filed on 16.01.2020, therefore, we are of the considered view that even we shall exclude the period spent by the petitioner in the legal proceeding before the Hon'ble Allahabad High Court from 10th July 2015 to 19th November 2018, the present petition is barred by limitation.

18. At this juncture, we would also like to refer the contention of learned counsel appearing for the applicant that the said delay may be condoned under Section 5 of the Limitation Act as the authorized signatory was bed ridden during the period.

19. At this juncture, we would like to refer Section 5 of the Limitation Act and the same is quoted below: Extension of prescribed in certain cases Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation- The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this Section.

20. Mere plain reading of the provisions shows that Section 5 of the Limitation Act is not applicable in condoning the period, where, there is a specific provision under the Limitation Act, which prescribe the period for filing any applications, which relates to recovery of money within such period the same can be condoned only either Under Section 14 or 18 of the Limitation Act, as we have already held that even if we shall exclude the period spent in the litigations before the Hon'ble Delhi High Court, the present application is barred by limitations, therefore, we are unable to accept the contention of the applicant that the delay is liable to be condoned under Section 5 of the Limitation Act. Under the facts and circumstances of the case it is not applicable.

21. For the reasons discussed above, we have no option but to reject the condonation application of the applicant to condoning the delay either under Section 5 of the Limitation under Section 14 of the Act, accordingly, we hereby reject the prayer of the applicant but condone the delay under Section 5 of the Limitation Act, and so far exclusion of the period spent during the proceedings before the Hon'ble Allahabad High Court is concerned, we have already held that even if we shall exclude that period, the present application is barred by limitation, accordingly, the application filed by the applicant under Section 9 of

the Act, is not maintainable since it is barred by limitation, hence the same is hereby dismissed.