
(2025) 02 NCLAT CK 0966

In the National Company Law Appellate Tribunal

Case No : I.A. No. 3202 of 2024 in Company Appeal (AT) (Insolvency) No. 1700 of 2024

Employees Provident Fund Organization

APPELLANT

Vs

H L Buildwell Pvt. Ltd.

RESPONDENT

Date of Decision : 17-02-2025

Acts Referred:

Citation : (2025) 02 NCLAT CK 0966

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

Bench : Division Bench

Advocate : Saurabh Kansal, Suraj Kumar Jha, Abhishek Anand, Karan Kohli, Palak Kalra

Final Decision : Dismissed

Judgement

Per: Barun Mitra, Member (Technical)

The present application I.A. No.3202 of 2024 is an application filed by the Applicant praying for condonation of 205 days delay in refiling of Company Appeal (AT) (Insolvency) No. 1700 of 2024.

2. Notice was issued in respect of the refiling delay condonation application by this Tribunal vide order dated 01.10.2024 and the Respondent was allowed two weeks' time to file their reply and Applicant was allowed two weeks further time to file their rejoinder.

3. Assertion was made by the Applicant that the refiling delay was caused by genuine and bonafide reasons as time was taken in obtaining the signature of the authorized signatory/government representative for signing of documents; physical file of the appeal having been misplaced by the NCLAT Registry; inability of the clerk to comprehend the defects and suitably cure them besides repeated intimation of the same defect by the Registry. All these factors cumulatively caused delay of 205 days in refiling the defect free appeal. It was vehemently contended that there was no negligence or inaction on the part of the Applicant

and that these above stated grounds were justifiable reasons for delay in refiling the appeal. Submission was also pressed by the Ld. Counsel of the Applicant that Rule 14 of the NCLAT Rules empowers this Tribunal to exempt parties from compliance with any requirement of the Rules. Reliance was also placed on the judgment of the Hon'ble Supreme Court in Mool Chandra Vs. Union of India SCC OnLine SC 1878 wherein it has been observed that irrespective of the length of the delay, if the cause of the delay falls within the four corners of 'sufficient cause', the delay deserved to be condoned. Given the circumstances in the present case, it was pressed that that it would be just and expedient to condone the refiling delay and should be allowed in the interest of furthering the cause of substantial justice in view of the sufficient causes shown.

4. Elaborating their stance, the Applicant has tendered the following explanation justifying their refiling delay in their Rejoinder-Reply which is extracted hereunder:

"3. It is submitted that the Company Appeal (AT) (Insolvency) No. 1700 of 2024 assailing the impugned order dated 17.08.2023 passed by the Ld. Adjudicating Authority, National Company Law Tribunal, New Delhi IB-321/ND/2021 was filed by the Appellant on 27.09.2023.

4. That the registry after scrutiny of the appeal marked the defects and intimated the Appellant on 05.10.2023 to remove the defect within 7 days from receiving notification.

5. That immediately after the receipt of the said notification the Appellant started to remove the defects raised by the Registry however, the said defects include but were not limited to signature and attestation from the appellant however, the Appellant could not refile the appeal in the stipulated time and there was a delay of 22 days from the stipulated time as Appellant is a Government department and signature from Authorized Representative took some time. Thereafter, the Appellant refiled the Appeal on 03.11.2023 with an application to Condonation of delay before the Hon'ble Tribunal.

6. Subsequently on dated 15.12.2023, the Appellant submitted the hardcopy of the Appeal before the Registry which was later misplaced or lost by the Registry. The copy of proof of submission is annexed herein as Annexure A-1.

7. That Appellant waited for some time when there was no intimation from the Registry about the listing, the Appellant visited the registry and followed up time and again and gave repetitive reminders to the concerned person responsible to check the Appeal and let the Appellant know that if anything else needs to rectify or if not than to pass the Appeal before Hon'ble Tribunal.

8. On 02.02.2024, the registry again marked the defects which were new defects including but not limited to "pages of the impugned order and also pages of Annexures are dim & amp; illegible, etc." Again the defects were cured and the Appeal was refiled within the stipulated time frame however, again defects were

marked by the Registry due to some inadvertent error.

9. That on 27.03.2024 the Appellant enquired about the status of the Appeal and subsequently, the registry again marked the same defects. Therefore, the counsel of the Appellant had no other option but to engage a local clerk who has accordingly removed the defects and refiled the appeal. The Appellant was in utter shock and dismay when on 16.04.2024 the registry again marked the same defects. The copies of defects sheets are herein annexed as Annexure A-2(Colly).

12. That on 18.04.2024 and 19.04.2024 the Appellant removed the defect and only the remaining 2 defects were observed on 16.04.2024 by paying fees for 3(Three) IAs and giving an undertaking that page no. 37 to 43 has not been wrongly filed but is a part of the Impugned order.

17. Moreover, the other reason is that the Registry themselves lost/misplaced the physical Appeal file (which has not been found till date) and that is the real reason why the Registry is not able to check the actual defects and just tried to evade their responsibility by raising the same objection again and again."

5. Per contra, it is the contention of the Respondent that the explanation and reasoning given by the Applicant to justify the delay of 205 days lacks substance and fails to establish the matrix of 'sufficient cause' as required for condonation of delay in refiling after such an inordinately long period. It was pointed out that assertion made by the Applicant of mishandling of their file by the NCLAT Registry is dubious. Even the ground raised that they had to engage a local clerk to remedy the defect is baseless since the counsel and the law firm were both located in Delhi. Moreover, the contention that there was need to engage an external local clerk to handle clearing of routine defects in filing lacked credibility. It was pointed out the Hon'ble Supreme Court in Ram Lal and Ors. Vs. Rewa Coal Fields Limited AIR 1962 SC 361 has emphasized the necessity for a party seeking condonation of delay to exhibit diligence and to substantiate their claims with credible evidence. On the other hand, the Applicant herein has failed to show that there was no negligence or inaction on their part. Had the Applicant been more careful and adequately vigilant, the Registry would not have been compelled to point out identical deficiencies/discrepancies over and over again. Thus, the explanations provided not only lack substance but also indicate negligence and a casual approach on the part of the Applicant in the discharge of their legal obligations. It was vehemently contended that allowing the refiling delay in the present case would undermine the integrity of judicial process.

6. We have heard both parties and seen the material on record.

7. Coming to our analysis, we are clearly in agreement with the above ratio laid down by the Apex Court in Mool Chandra judgment (supra) that if there is sufficient cause of the delay, the delay can be condoned. It therefore logically follows that the converse principle is equally applicable that if cause shown is insufficient then the delay may not be condoned. In the present facts of case where delay in refiling is indisputably and unduly prolonged for 205 days, it

becomes incumbent on the Bench to be satisfied with the cogency and plausibility of the reasons set forth by the Applicant to explain the delay.

8. We have perused the defect sheets which have been placed at Annexure- II by the Applicant in their rejoinder reply at pages 14-18. When we peruse the defect sheets, we find that on each of the dates on which scrutiny was undertaken by the NCLAT Registry, the defects noticed by the Registry were intimated on the very same date to the Applicant and seven days' time period was allowed each time to correct the defects. Most of the defects pointed out are clerical and routine in nature such as illegible/dim copies, incorrect indexation, non-pagination, non-filing of caveat clearance, non-filing of declaration and verification supporting of memorandum of appeal etc. When we see the defect sheets, we find that the Registry has repeated on each occasion the presence of more or less the same set of defects which clearly show that no serious endeavour was made by the Applicant in making any perceptible headway in curing the defects. Given this position, we cannot brush aside the fact that the defects were being handled in a rather cavalier manner. The very fact the Registry had to repeatedly intimate the same set of defects each time shows that the Applicant did not take proper interest in pursuing his own application in a timely manner. Neither has any explanation been given to show that the delay was on account of reasons beyond the control of the Applicant. This not only indicates the casual disposition of the Applicant but also their gross indifference towards the need of respecting timeliness in the completion of the insolvency resolution process which is one of the avowed objectives of the IBC. Such a lack-lustre, careless and negligent approach does not meet our countenance.

9. We also notice that the Applicant has further attributed delay on the ground that their appeal petition was misplaced by the NCLAT Registry. However, no supporting documents have been placed on record which show that the physical copy was misplaced or lost by the Registry. No correspondence has been placed on record to show that the Registry was apprised of the misplacement of file by them. Neither have any documents been placed on record to show that the Applicant was seriously pursuing with the Registry for locating the misplaced file and listing of the same. This attempt at deflecting their shortcomings by attributing mishandling of their application on the Registry is an eyewash bereft of any foundational basis.

10. We next come to the contention of the Applicant that since the matter was not being listed, they had followed-up with the Registry by sending reminders. Even this claim of regular follow-up by them is also not supported by any evidence or documentation. We are therefore not persuaded to accept the plea of the Applicant that it was their reminders to the Registry which helped in the recovery of their misplaced file. On all counts, the Applicant has clearly failed to demonstrate any sufficient cause for condonation of delay of 205 days in refiling the appeal.

11. Under IBC, CIRP is envisaged to be a time-bound process which has to be

completed in 330 days. Allowing refiling delay of 205 days without convincing reasons would tantamount to encouraging parties to play havoc with timelines and put unwarranted speed-breakers in the resolution process to allow the Applicant the luxury of 205 days delay in refiling in IBC proceedings.

12. In view of the above, we do not see any merit in the Application filed for seeking condonation of 205 days delay in refiling the appeal. Sufficient grounds have not been made out for condonation of delay in refiling. IA No. 3202 of 2024 is rejected. In view of the dismissal of the application for condonation of delay in refiling, the Memo of Appeal is also rejected.