
(2025) 02 NCLAT CK 0980

In the National Company Law Appellate Tribunal

Case No : Comp. App. (AT) (Ins) No. 1630 of 2024 & I.A. No. 5949, 5950 of 2024

Everlight Electronics Co. Ltd.

APPELLANT

Vs

HQ Lamps Manufacturing Co. Pvt Ltd

RESPONDENT

Date of Decision : 19-02-2025

Acts Referred:

Insolvency and Bankruptcy Code 2016 — Section 61, 4, 9
Limitation Act 1963 — Section 12

Citation : (2025) 02 NCLAT CK 0980

Hon'ble Judges : Rakesh Kumar Jain, Member (T); Naresh Salecha, Member (T); Arun Baroka, Member (T)

Bench : Full Bench

Advocate : Ankit Parhar, Sneha Dey, Vipin Singh Bansal, Maynak Singh, Azeem A Dost, Subramaniam S., Amrita Verma

Final Decision : Dismissed

Judgement

Per: Justice Rakesh Kumar Jain:

I.A No. 5949 of 2024: This application is filed by the Appellant for condonation of delay of 19 days in filing the present appeal.

2. The present appeal has been filed under Section 61 of the Code to challenge the order dated 14.06.2024 passed by the Tribunal by which an application filed by the Appellant under Section 9 of the Code bearing CP (IB) No. 17/ALD/2020 has been dismissed.

3. Section 61 of the Code deals with the appeals and appellate authority. The relevant part of the Section 61 of the Code is reproduced as under:-

"61. Appeals and Appellate Authority.

(1) Notwithstanding anything to the contrary contained under the Companies Act 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."

4. As per Section 61 of the Code the period prescribed for filing the appeal before the Appellate Tribunal is 30 days. However, in terms of the proviso to Section 61(2) the Appellate Authority has the jurisdiction to allow the appeal to be filed even after the expiry of prescribed period of 30 days if it is satisfied that there was sufficient reason for not filing the appeal within prescribed period but such period cannot be extended more than 15 days.

5. As per the decision of the Hon'ble Supreme Court in the case of National Spot Exchange Limited Vs. Anil Kohli, the Appellate Authority does not have the jurisdiction to condone the delay beyond the period of 15 days in any case.

6. In the present case, the impugned order was passed on 14.06.2024. The Appeal was required to be filed by the appellant within the prescribed period of 30 days which has to be computed from 15.06.2024 in terms of the Section 12(1) of the Limitation Act, 1963. The period of 30 days counted from 15.06.2024 expired on 14.07.2024.

7. The period of 15 days provided in the proviso to Section 61(2) counted from 14.07.2024 expired on 29.07.2024. The appeal has been e-filed on 02.08.2024 i.e after the period of 4 days of expiry even of the period of 15 days on 29.07.2024.

8. Counsel for the Appellant has submitted that the Court should exclude the period of two days spent by the Appellant in obtaining certified copy of the impugned order which was applied on 01.07.2024 and was received on 02.07.2024.

9. Even if the aforesaid period of two days are excluded in view of Section 12 of the Act, the appeal would still be barred by two days.

10. Counsel for the Appellant has then argued that before 14.07.2024, when the prescribed period of 30 days expired there were three holidays i.e. on 17.06.2024, the Court was closed because of public holiday, on 29.06.2024 it was closed because of 4th Saturday and 13.07.2024 it was again closed because of second Saturday. He has though not denied that the appeal has been filed after the expiry of period of 45 days. Counsel for the Appellant has referred to a decision of this Court passed in I.A No. 2587 of 2023 (Sandeep Anand Vs. Gopal Lal Baser) decided on 03.07.2023. This decision is not applicable because it has been held by this Court that the benefit of closer of court is only available in

respect of prescribed period of limitation i.e. 30 days. In this regard, reference may be had to Section 4 of the Act in which it is provided that where the prescribed period for any suit, appeal or application expires on a day when the court is closed the suit, appeal or application may be instituted, preferred or made on the day when the court reopens. The term used in Section 4 of the Act is "prescribed period" which as per Section 61 of the Code is 30 days and not 45 days. In this background, the application which was sought to be filed for condonation of delay in the case of Sandeep Anand (Supra) was dismissed by this Court and thus, the said decision is not of any help to the Appellant.

11. Similarly, the holidays on 17.06.2024, 29.06.2024 and 13.07.2024 which fell before 14.07.2024 (during the prescribed period) is no help to the Appellant because it is not the case where the Appellant has filed the appeal just on the reopening of the Court when the prescribed period of limitation was to expire rather the appellant has filed the appeal after the expiry of 45 days i.e. 15 days prescribed as the extended period in proviso to Section 61(2) for which the Appellant has to show sufficient cause for condonation of delay and is not part of the prescribed period of limitation.

12. Thus, in view of the aforesaid discussion, there is hardly any merit in the present application which calls for any interference as the appeal has been clearly filed after the expiry of period of 45 days and therefore, this Court does not have the jurisdiction to condone the delay.

13. The application is hereby dismissed.

Comp. App. (AT) (Ins) No. 1630 of 2024

Since, we have dismissed the application for condonation of delay, therefore, the appeal is not found to be duly constituted and the same is hereby dismissed as such.