

NATIONAL COMPANY LAW APPELLATE TRIBUNAL AT CHENNAI**(APPELLATE JURISDICTION)****Company Appeal (AT) (CH) (Ins) No. 207/2023****(IA Nos. 681, 682, 683 & 684/2023)****(Filed under Section 61 of the Insolvency and Bankruptcy Code, 2016)****Arising out of the Impugned Order dated 03.03.2022 in IANo.1341/ IB/2020
in IBA/243/2019, passed by the 'Adjudicating Authority', (National
Company Law Tribunal, Special Bench II, Chennai)****In the matter of:****DCB Bank Limited****...Appellant****V****Ramakrishnan Sadasivam & 3 Ors.****...Respondents****Present :****For Appellant : Mr. Krishnan Venugopal, Sr. Adv. Mr. Lakshana
Viravalli, Advocate.****For Respondents : Mr. B Dhanaraj, Advocate for R1****ORDER****Per: Justice Rakesh Kumar Jain:****I.A. No. 681 of 2023**

This appeal is directed against the order dated 03.03.2022, passed by the Adjudicating Authority (National Company Law Tribunal, Chennai (Special Bench-II) by which an application i.e. I.A. No. 1341/IB/2020 filed in IBA No. 243/2019 by the Liquidator has been allowed.

2. The Respondent in the aforesaid application and the present Appellant was proceeded against ex-parte while passing the aforesaid order.

3. Counsel for the Appellant has submitted that the Adjudicating Authority had passed the order to proceed against the present Appellant ex-parte on 03.03.2022 and on the same day allowed the application ex-parte against the Appellant.

4. It is submitted that the Appellant has challenged the order dated 03.03.2022 by which it was proceeded against ex-parte by filing an application which was dismissed on 18.10.2022. The Appellant filed an appeal i.e. CA (AT) (Ins) No. 446 of 2022 against the order dated 18.10.2022 before this Tribunal which was dismissed on 25.01.2023. Aggrieved against the order dated 25.01.2023, the Appellant filed Civil Appeal No. 1995 of 2023 before the Hon'ble Supreme Court which was also dismissed on 06.04.2023, however, it is submitted that the Appellant has filed a review application against the order dated 06.04.2023 before the Hon'ble Supreme Court which is still pending.

5. Counsel for the Appellant has submitted that the Appellant has now challenged the order dated 03.03.2022 by which ex-parte order has been passed allowing the application of the Liquidator but the appeal has been filed alongwith an application i.e. I.A. No. 681 of 2023 for seeking condonation of delay of 400 days in filing of the appeal.

6. Since, the appeal has been filed alongwith an application for condonation of delay, therefore, before the appeal could be constituted as duly filed within the period of limitation, the application for condonation of delay has to be decided

one way or other, therefore, we have heard Counsel for the Appellant on the merit of the application for condonation of delay at the first instance.

7. Counsel for the Appellant has submitted that the Appellant was pursuing its remedy for setting aside the order by which they were proceeded against ex-parte which can be separately challenged besides the order by which ex-parte order has been passed allowing the application of the Liquidator.

8. Since, both the orders were passed on 03.03.2022, therefore, the Appellant first challenged the order by which it was proceeded against ex-parte and reached up to the Hon'ble Supreme Court when their appeal was dismissed on 06.04.2023, however, after filing the review application, it decided to challenge the order dated 03.03.2022 by which the application itself has been allowed to ex-parte. It is thus submitted that the period spent in pursuing the other remedy in which the Appellant has remained unsuccessful till the Hon'ble Supreme Court in Civil Appeal No. 1995 of 2023 which was dismissed on 06.04.2023, there is a delay of 400 days since 18.04.2022 which period is within the extended period provided under Section 61 of the Code.

9. We have heard Counsel for the Appellant and perused the record.

10. Section 61 of the Code deals with the appeals and the appellate authority.

Section 61 is reproduced as under:-

“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.”

11. Section 61(1) provides a statutory right to any person who is aggrieved by an order of the Adjudicating Authority to prefer an appeal to the appellate authority. Section 61(2) prescribes a period of 30 days within which the appeal under Section 61(1) is to be filed before the Appellate Authority, however, Section 61(2) proviso further provides for a period of 15 days for the purpose of extension of time in case the Applicant is able to satisfy the Appellate Authority that there was a sufficient cause for not approaching the Appellate Authority in time with the appeal but in no case the period of 15 days can further be extended. In this regard, the Hon’ble Supreme Court, in the case of National Spot Exchange Limited Vs. Mr. Anil Kohli, RP for Dunar Foods Limited, Civil Appeal No. 6187 of 2019 decided on 14.09.2021 has held that:-

“11.2 In the case of Teri Oat Estates (P) Ltd. v. U.T. Chandigarh, reported in (2004) 2 SCC 130, in paragraphs 36 & 37, it is observed as under:

“36. We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right. It is further trite that despite an extraordinary constitutional jurisdiction contained in Article 142 of the Constitution of India, this Court ordinarily would not pass an order which would be contravention of a statutory provision.

37. As early as in 1911, Farwell, L.J. In *Latham v. Richard Johnson & Nephew Ltd.* (1911-12) All ER Rep 117 observed: (All ER p. 123E)

“We must be very careful not to allow our sympathy with the infant plaintiff to affect our judgment. Sentiment is a dangerous will o’ the wisp to take as a guide in the search for legal principles”

Thus, considering the statutory provisions which provide that delay beyond 15 days in preferring the appeal is uncondonable, the same cannot be condoned even in exercise of powers under Article 142 of the Constitution.

12. In view of the afore-stated settled proposition of law and even considering the fact that even the certified copy of the order passed by the adjudicating authority was applied beyond the period of 30 days and as observed hereinabove there was a delay of 44 days in preferring the appeal which was beyond the period of 15 days which maximum could have been condoned and in view of specific statutory provision contained in Section 61(2) of the IB Code, it cannot be said that the NCLAT has committed any error in dismissing the appeal on the ground of limitation by observing that it has no jurisdiction and/or power to condone the delay exceeding 15 days.”

12. Now, the question is as to whether there is a sufficient cause assigned by the Appellant for the purpose of condoning the delay. Although the limitation to challenge the impugned order started w.e.f. 03.03.2022 but even if it is presumed that the Appellant was pursuing its other remedy to challenge the order of ex-parte itself and had remained unsuccessful till the Hon’ble Supreme Court when its Civil Appeal was also dismissed on 06.04.2023 and the period of limitation is to be counted from 06.04.2023, the period of 30 days for the purpose of filing of this appeal had expired on 06.05.2023. If 15 days more are added which are prescribed under Section 61(2) proviso then the period of 45 days would have expired on 21.05.2023 whereas the present appeal has been filed on 22.05.2023, even after the expiry of period of 15 days as well which cannot be condoned in

any manner in view of the decision of the Hon'ble Supreme Court in the case of National Spot Exchange Limited (Supra).

13. Looking from any another angle, even if it is taken then that the appeal has been filed on 15th day of the extended period of 15 days even then there is no sufficient cause assigned by the Appellant as to why it had taken exactly 45 days in filing the appeal against the order dated 03.03.2022. The reasons are conspicuous by its absence especially when the Appellant is a Bank who had huge machinery at its disposal for the purpose of preparing the appeal and filing the same within the statutory period of 30 days.

14. Thus, looking from any angle, we do not find any reason to interfere in this application because of the absence of sufficient cause for condonation of delay to our satisfaction. Consequently, the application is dismissed. No costs.

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Since, we have dismissed the application for condonation of delay by an order of even date, therefore, the present appeal is not found to be duly constituted and the same is thus hereby dismissed. No costs.

**[Justice Rakesh Kumar Jain]
Member (Judicial)**

**[Shreesha Merla]
Member (Technical)**

**New Delhi
27th July, 2023**

Sheetal