

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI
Company Appeal (AT) (Insolvency) No. 348 of 2023 &
I.A. No. 1174 of 2023

IN THE MATTER OF:

Harish Kumar

...Appellant

Versus

Solitaire Infomedia Pvt. Ltd. & Anr.

...Respondents

Present:

For Appellant : **Mr. Javed Khan, Advocate**

For Respondent : **Mr. Shikhil Suri, Ms. Wamika Chadha, Ms. Nidhi Kapoor, Advocates for R-2**

ORDER

23.08.2023: This is an application praying for condonation of delay in filing the appeal. The order was passed on 22.12.2022 by which an application u/s 7 has been dismissed, as non-maintainable

2. This appeal has been e-filed on 01.03.2023. There is a delay of 38 days. The application is filed for condonation of delay. Shri Javed Khan appearing for Appellant submits that after the order dated 22.12.2022, restoration application no. 24/2023 was filed which could be disposed of as withdrawn on 13.02.2023 which application was filed on 18.01.2023. Hence, the period from 18.01.2023 to 13.02.2023 be excluded by giving the benefit of Section 14 of Limitation Act.

3. Learned Counsel for the Appellant has placed reliance on the judgement of **Hon'ble Supreme Court in Sesh Nath Singh & Anr. in Civil Appeal No. 9198 of 2019 Vs. Baidyabati Sheoraphuli Co-operative Bank Ltd. & Anr.** and the judgement of this Tribunal in **IA no. 2315/2023 in Company Appeal (AT) Insolvency No. 694 of 2023 in the matter of Vikram Bhawanishankar Sharma, Member of the Suspended Board of Directors of Supreme Vasai Bhiwandi Tollways Pvt. Ltd. Versus SREI Infrastructure Finance Ltd. & Anr.** The order on the basis of which the Appellant claims exclusion of time u/s 14 dated 13.02.2023 is to the following effect:-

“Heard the submissions made by Ld. Counsel for the Applicant. Ld. Counsel for the Applicant has prayed for grant of liberty to withdraw the present application i.e. Rest.A/24/20223 and to prefer an appeal against the order dated 22.12.2022. Prayer is granted and application stands disposed of as withdrawal.”

4. The present is a case where we cannot hold that the application filed for restoration was in a wrong forum which could not be decided for the defect of jurisdiction or of like nature. Conditions as contemplated u/s 14 are not Company Appeal (AT) (Insolvency) No. 348 of 2023 & I.A. No. 1174 of 2023

attracted to extend the benefit u/s 14 to the Appellant. The judgement of Hon'ble Supreme Court in Sesh Nath Singh & Anr. in Civil Appeal No. 9198 of 2019 Vs. Baidyabati Sheoraphuli Co-operative Bank Ltd. & Anr. was a case where the benefit was extended u/s 14 of the Limitation Act with regard to period during which writ petition was pending challenging the proceedings under **SARFAESI Act**. Hon'ble Supreme Court in the said judgement has taken the view that the benefit of the proceedings could have been extended for the purpose. In paragraph 85 following has been observed: -

“85. In the instant case, the proceedings under the SARFAESI Act may not have formally been terminated. The proceedings have however been stayed by the High Court by an interim order, on the prima facie satisfaction that the proceedings initiated by the financial creditor, which is a cooperative bank, was without jurisdiction. The writ petition filed by the Corporate Debtor was not disposed of even after almost four years. The carriage of proceedings was with the Corporate Debtor. The interim order was still in force, when proceedings under Section 7 of the IBC were initiated, as a result of which the

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Financial Creditor was unable to proceed further under SARFAESI Act.”

5. It was held that since **SARFAESI** proceedings which were stayed by the High Court which proceedings by the Cooperative Bank were without jurisdiction due to which the Financial Creditor was unable to proceed further under the SARFAESI Act. Para 86 and 87 following has been held:-

“86. In the instant case, even if it is assumed that the right to sue accrued on 31.3.2013 when the account of Corporate Debtor was declared NPA, the financial creditor initiated proceedings under SARFAESI Act on 18th January 2014, that is the date on which notice under Section 13(2) was issued, proceeded with the same, and even took possession of the assets, until the entire proceedings were stayed by the High Court by its order dated 24th July 2017. The proceedings under Section 7 of the IBC were initiated on 10th July 2018.

87. In our view, since the proceedings in the High Court were still pending on the date of filing of the application under Section 7 of the IBC in the NCLT, the entire period after the

initiation of proceedings under the SARFAESI Act could be excluded. If the period from the date of institution of the proceedings under the SARFAESI Act till the date of filing of the application under Section 7 of the IBC in the NCLT is excluded, the application in the NCLT is well within the limitation of three years. Even if the period between the date of the notice under Section 13(2) and date of the interim order of the High Court staying the proceedings under the SARFAESI Act, on the prima facie ground of want of jurisdiction is excluded, the proceedings under Section 7 of IBC are still within limitation of three years.”

6. The facts of the case Sesh Nath Singh & Anr. are entirely different and are not attracted in the present case.

7. Coming to the judgement of this Tribunal in Vikram Bhawanishankar Sharma which was a case where appeal was filed with delay in this Tribunal and delay was caused due to the reason that after the order of the Adjudicating Authority, the Appellant had filed a writ petition in Punjab and Haryana High Court on the ground that there being the winter vacation of the Appellate Tribunal, the Court is closed. The High Court passed an interim

order and permitted the Appellant to withdraw the writ petition to file an appeal. In the said circumstances this Tribunal held that the Appellant was entitled for the benefit of Section 14 of the Limitation Act..

8. Learned Counsel for the Appellant has placed reliance on another judgement of the **Hon'ble Supreme Court in M/s Laxmi Srinivasa R and P Boiled Ricel Mill Vs. The State of Andhra Pradesh & Anr.** In the case before the Supreme Court, the writ petition was filed in High Court and thereafter proceedings were initiated and the appeal was filed before the Appellate Tribunal for exclusion of the period. The Hon'ble Supreme Court directed the Appellate Authority to examine the appeal on merits. The order of the Supreme Court is as follows: -

“Order – Leave granted.

The impugned order passed by the High Court affirming the order dated 27.04.2018 passed by Appellate Deputy Commissioner(CT)(FAC), Vijayawada, holding that the delay is beyond condonable period is unsustainable in law.

It is an accepted position that the appellant had filed a writ petition before the High Court on 24.02.2018, which was not entertained vide the order dated

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07.03.2018 on the ground that the appellant should approach the Appellate Authority. The appellant is entitled to ask for exclusion of the said period in terms of Section 14 of the Limitation Act, 1963. Exclusion of time is different, and cannot be equated with condonation of delay. The period once excluded, cannot be counted for the purpose of computing the period for which delay can be condoned. Of course, for exclusion of time under Section 14 of the Limitation Act, 1963, the conditions stipulated in Section 14 have to be satisfied.

In the facts of the present case, we find that the period from the date of filing of the writ petition on 24.02.2018 and the date on which it was dismissed as not entertained viz. 07.03.2018, should have been excluded. The writ proceedings were maintainable, but not entertained. Bona fides of the appellant in filing the writ petition are not challenged. Further, immediately, after the dismissal of the writ

petition, the appellant did file an appeal before the Appellate Authority. On exclusion of the aforesaid period, the appeal preferred by the appellant would within the condonable period. Accordingly, we direct that the application for condonation of delay filed by the appellant would treated as allowed. The delay is directed to be condoned.

Recording the aforesaid, the appeal is allowed with the direction that the Appellant Authority would examine the appeal on merits.

We clarify that have not expressed any opinion on the merit of the case.

Pending application(s) if any, shall stand disposed of.”

9. The above case was again the case where benefit of section 14 was allowed due to the proceedings of writ petition, which was held has not maintainable. The facts of the said case are also entirely different. We, thus, are of the view that Appellant is not entitled to the benefit of Section 14 of the Limitation Act.

10. Our jurisdiction to condone the delay is limited to only 15 days. Hence, we are unable to accept the prayer to condone the delay of 38 days beyond the expiry of limitation. ***The application for condonation of delay is rejected. Memo of appeal is rejected.***

**[Justice Ashok Bhushan]
Chairperson**

**[Mr. Barun Mitra]
Member (Technical)**

ss/nn