

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.466/2024
(IA No.1271/2024)

In the matter of:

SANSAR INVESTMENT & FINANCE COMPANY PRIVATE LIMITED

Through its Authorized Signatory Mr. H.S. Shivakumar
1-11-252/19/IMOTILAL NAGAR, BEGUMPET,
HYDERABAD. A.P, Telangana, India, 500003

... APPELLANT

V

ATLANTIC SPINNING AND WEAVING MILLS LIMITED

Through its Liquidator, Ms. Sujata Chattopadhyay
Office at #710, Cosmos Mayuresh,
Plot No. 37, Sector 11, CMD Belapur,
Navi Mumbai – 400614, Maharashtra

... RESPONDENT

Present:

For Appellant : Mr. Ankur Goel & Mr. Saket Singh, Advocates

For Respondent : Mr. V.V. Sivakumar, Advocate

ORDER
(Hybrid Mode)

16.03.2026:

An interesting issue, which has been attempted to be ventured by the Ld. Counsel for the Appellant, is an experiment to attract the provisions contained under Section 5 of the Limitation Act, for the purposes of seeking condonation of delay in preferring of a much belated appeal as provided under Section 42 of the I & B Code.

2. He submits that, unlike the provisions contained under Section 61 of the I & B Code, the provisions contained under Section 42 of the I & B Code has to be tested on different ground and would not be rigidly governed for the purposes of dealing with issues of condonation of delay, because of the fact as argued that an absolute restriction on extension of time as statutorily prescribed and upheld by the various judgments restricting the extension of limitation as contemplated under Section 61 of the I & B Code, the same principles or the proposition laid by precedents will not apply while we are considering the appeals under Section 42 of the I & B Code. Section 42 of the I & B Code reads as under: -

"Section 42: Appeal against the decision of liquidator.

**42. A creditor may appeal to the Adjudicating Authority against the decision of the liquidator [accepting or] rejecting the claims within fourteen days of the receipt of such decision."*

3. Section 42 of the I & B Code in its strict sense, prescribes that it is a judicial remedial avenue prescribed for the Creditor to invoke an appellate jurisdiction before the Ld. Adjudicating Authority, as against the decision of the Liquidator rejecting their claim.

4. The aspect of limitation providing the cut-off period therein is self-contained within the provision, which prescribes for the appeal, as against the rejection of claims, a specific 14 days time has been prescribed from the date of

receipt of the decision, for the purposes of filing of the appeal by involving Section 42 of the I & B Code.

5. The Ld. Counsel for the Appellant submits that, as far as the controversy at hand is concerned, which arises from the impugned order of 04.09.2024, that was passed by the Ld. NCLT Hyderabad Bench in IA No. 1748/2024 that, was preferred in Company Petition (IB) No. 497/7/HDB/2018, that has been wrongly determined by the Ld. Tribunal by holding thereof that the number of days of delay that has chanced in preferring the appeal under Section 42 of the I & B Code, would not be condonable beyond the prescribed 14 days, is a wrong analogy, in view of the observations, which has been made by the Ld. Tribunal, observing thereof that the reason as assigned by the Appellant for seeking condonation of delay, being on the ground that since the CIRP process was already proceeding before this Appellate Tribunal and that in itself was subject matter of consideration, in that eventuality the bar of limitation for the purposes of preferring of an appeal under Section 42 of the I & B Code, has to be liberally construed and that deserves to be extended in the light of the provisions contained under Section 238A of the I & B Code, which is to be read with Section 5 of the Limitation Act.

6. When this question was raised before the Ld. Tribunal, the Ld. Tribunal had answered it in the manner that, the the proceedings of an appeal arising of an order passed, in CIRP proceedings is altogether distinct and independent and

it has got no direct nexus or have any remote bearing so far as preference of an appeal under Section 42 of the I & B Code, is concerned, because that is altogether an independent proceedings, which is initiated by the Creditor after the rejection of their claim by the Liquidator. The two proceedings of CIRP or proceedings of appeal under Section 42 of the I & B Code and not interdependent upon one another.

7. In the case at hand, the Liquidator, after considering the claim of the Creditor, had rejected the same by passing of the order, which was sent to the Appellant by the email communication of 19.02.2020. The receipt of the said communication, which is admitted, becomes a prime factor to be considered for the purposes of determination of the aspect of limitation for the purposes of an appeal, under section 42 of the I & B Code because law contemplates that 14 days, has to be determined from the date of the receipt of the decision. And in that eventuality, the 14 days would be construed from 19.02.2020 onwards when the information of order was imparted to the Appellant, for a period of 14 days and not beyond the said period.

8. However, the Ld. Counsel for the Appellant has submitted that since the proceedings by way of Company Appeal (AT) (CH) (Ins) No.23/2020 Sansar Investment & Finance Company Pvt. Ltd. versus Atlantic Spinning & Weaving Mills Ltd., was already pending consideration before this Appellate Tribunal and the aspect of rejection of the claim by the Liquidator, was also brought to

the knowledge in the proceedings of appeal against CIRP order in itself. Hence, we could safely conclude that at least in the proceeding that was held before this Appellate Tribunal, on 24.02.2020, the Appellant was conscious of his right of preference of an appeal under Section 42 of the I & B Code, as against the decision of the Liquidator of rejecting his claim as informed to him by the email communication of 19.02.2020. However, the Appellant has chosen not to prefer an appeal despite having being imparted with the knowledge of the rejection of the claim, as would be reflected from the order passed on 24.02.020.

9. A very peculiar argument has been raised by the Ld. Counsel for the Appellant for the purposes of seeking an extension of time for preferring of an appeal under Section 42 of the I & B Code, on the ground that, since the appeal as against the CIRP process was pending before the Appellate Tribunal, and no counter-affidavit was filed by the Liquidator for a sufficient long time till, and ultimately when the company appeal was taken by the Tribunal on 16.07.2024, the delayed filing of the counter in the company appeal, by the liquidator was derived by the Appellant as to be the ground for seeking condonation of delay in preferring of an appeal under Section 42 of the I & B Code.

10. Secondly, it was submitted by the Appellant that the aspect of limitation for the purposes of Section 42 of the I & B Code, would attract the provisions contained under Section 238A, and the same has been sought to be attempted to be argued. In the light of the observation made by this Appellate Tribunal in the

order passed on 16.07.2024 in Transfer Appeal No. 219 of 2021, wherein we have observed while closing the company appeal, having dismissed as rendered infructuous, we had left it open that the aspect of limitation so far it relates to proceedings under Section 42 of the I & B Code, would be considered by the Ld. Tribunal in the light of the provisions contained under Section 238A of the I & B Code, as per law. Our direction by order of 16.07.2024, cannot be construed to be a positive determination of applicability of the provisions contained under Section 238A, its applicability will depend upon law..

11. The Ld. Counsel for the Appellant submits that, owing to the observation made by this Appellate Tribunal in the order, dated 16.07.2024, that in itself make the provisions contained under Section 238A applicable to the proceedings under Section 42 of the I & B Code, for the purposes of condonation of delay beyond the period of 14 days, as prescribed under it. If we consider the provisions contained under Section 238A of the I & B Code, the same is extracted hereunder: -

"238A. Limitation. --The provisions of the Limitation Act, 1963 shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be."

12. The said provision prescribes that the provisions of the Limitation Act would apply, "**as far as may be**" to the proceedings of appeal before the Ld.

Adjudicating Authority. On a simplicitor reading of Section 238A, which deals with a general law of limitation which has been to be made applicable to the proceedings or an appeal before the Ld. Adjudicating Authority or the NCLAT. It relates to those proceedings where the aspect of limitation or an aspect of condonation of delay is not a self-contained provision as contained in the appellate provision, and that is why the lawmakers under Section 238A of the I & B Code, have made the provision of limitation applicable by carving out an exception by using an expression "as far as may be", that means it provides a generality to the application of this provision which in itself excludes its applicability to the special statute or provisions of law which itself contains a self-inscribed period of limitation. In that eventuality, the provision contained under Section 5 of the Limitation Act cannot be made to be attracted to be applied for preference of an appeal under Section 42 of the I & B Code, by reading of Section 238A, as it would be a distorted reading, leading to distorted application of law of limitation, which is even not intended by statute.

13. The Appellant contention that his bona fides were quite clear, and that he would be still entitled to be granted the benefit of extension of limitation because delayed filing of the counter by Liquidator in Company Appeal (AT) (CH) (Ins) No.23/2020 in itself will not attribute any malice or ill intention on part of the Appellant of delayed filing of the appeal under Section 42 of the I & B Code.

14. We are in respectful disagreement with the argument extended by the Ld. Counsel for the Appellant for the reason being that, and as rightly observed too by the Ld. Tribunal that, the proceedings of CIRP and the proceedings under Section 42 of the I & B Code they have got no nexus with one another and both the proceedings are independent and they operate in different field of law and they will not have bearing in either manner on the proceedings of one another and thus pendency of the Company Appeal (AT) (CH) (Ins) No.23/2020 itself will not have any effect on the proceedings on Section 42 of the I & B Code which could have at all created any impediment for the Appellant to according to his own conception refrain from preferring of an appeal under Section 42 of the I & B Code, before the Ld. Adjudicating Authority.

15. The provisions of Section 5 of the Limitation Act, which has been attempted to be attracted by the Ld. Counsel for the Appellant for the purposes of seeking condonation of 1616 days of delay, if we look into the provisions of Section 5 of the Limitation Act in itself, the same will not be attracted, particularly when the provisions of Section 42 of the I & B Code in itself does not contain or provides for a scope of extension of time period other than as prescribed therein for the purposes of preference of an appeal that, means the provisions of Section 42 of the I & B Code from the aspect of the limitation is a self-contained provision under a special statute and once it doesn't prescribe for any scope of extension of time period by borrowing or reference to other

provision for condonation of delay i.e., under Section 5 of the Limitation Act or the provisions contained under Section 238A of the of the I & B Code, will not be attracted to override a specific bar of extension of time period in the absence of the same being prescribed under the provisions contained under Section 42 of the I & B Code. Thus, the argument extended by Ld. Counsel for the Appellant that he would be covered by Section 238A of the I & B Code, will not be attracted, owing to the aforesaid reasons, as we have already discussed in the preceding paragraph.

16. Besides that, even if we look into the factual backdrop of the instant case, the number of days of delay that has chanced in preferring the appeal under Section 42 of the I & B Code is too long period to be considered for condonation of delay because that deceives the very object of the preference of an appeal under Section 42 of the I & B Code, as there happens to be a delay of total 1616 days of delay and after exclusion of 895 days of delay, there would still be a delay of 716 days, which is much beyond the statutory object or frame work of law.

17. Under either of the circumstances, the number of days of delay that has been sought to be condoned would be much beyond the ambit of the condonation of delay as prescribed under Section 42 of the I & B Code and the same has been rightly refused to be extended by the Ld. Tribunal while rejecting the appeal preferred under Section 42 of the I & B Code.

18. The Ld. Counsel for the Appellant has lastly argued that he was ignorant of his rights to prefer an appeal under Section 42 of the I & B Code. We are unable to accept this argument, owing to the fact that the Appellant was conscious of his legal rights and had already been pursuing various legal proceedings as prescribed under the of the I & B Code, before different forums that were available to him under law. And if that be the situation when he himself has preferred a claim before the Resolution Professional, and the claim has been rejected by the Liquidator, the preference of the claim in itself will amount to that the Appellant was having the knowledge of his right of appeal, against the rejection of the claim and that too the right of appeal ought to have been invoked within the period of 14 days as provided under Section 42 of the I & B Code, and since the said period is the upper cut-off period prescribed under the statute and that has not been made extendable under the provisions contained under Section 42 in itself by making reference to any other law of limitation, the general law of extension of limitation either by attracting the provisions contained under Section 5 of the Limitation Act which has been attempted to be read with Section 238A of the I & B Code, which itself is restricted in its application will not be applicable.

19. Hence, the impugned order of 04.09.2024, as rendered by the Ld. NCLT Hyderabad Bench in IA No. 1748 of 2024, dismissing the appeal being barred by limitation, doesn't suffer from any apparent error which could call for

interference by this Appellate Tribunal in the exercise of our appellate jurisdiction.

20. Hence, the appeal lacks merit, and the same is accordingly dismissed. All pending interlocutory applications would stand closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Indevar Pandey]
Member (Technical)

SN/MS/AK