



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

IBC Case Law Capsule

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VR Ashok Rao Vs. TDT Copper Ltd, Stressed Assets Stabilization fund Vs. Delta International Ltd, A'XY Kno Capital Services Pvt Ltd Vs. Rattan India Power Ltd and, Bhagwati Singh Vs. Incab Industries Ltd.
[I.A. No. 2095 of 2022 in Company Appeal (AT) (Insolvency) No. 780 of 2022, IA No 2211 of 2022 in Company Appeal (AT) (Insolvency) No. 823 of 2022, IA No 2499 of 2022 in Company Appeal (AT) (Insolvency) No. 913 of 2022, IA No 2513 of 2022 in Company Appeal (AT) (Insolvency) No.914 of 2022]
DATE OF NCLAT'S JUDGMENT: August 30, 2022.

Refiling after removal of defects will not be considered a fresh filing.

Facts of the Case: -

These appeals were filed against the respective orders passed by different the Adjudicating Authorities. The question involved in all these Appeals is the “Refiling Delay”. In all the cases, after scrutiny of the memo of appeals, defects were intimated to the appellants and the respective appellants subsequently refiled the appeals after a delay of expiry of seven days. Later, the cases matters were placed before the National Company Law Appellate Tribunal (NCLAT) under the heading ‘For Admission (fresh Case). The NCLAT observed significant delay in refiling of the appeals and expressed doubt on two earlier judgments delivered by the Tribunal in the matter of *Mr. Jitendra Virmani Vs. MRO-TEK Realty Ltd. & Ors.*, and *Arul Muthu Kumaara Samy Vs. Register of Companies*, which resulted into reference to larger bench of five judges on the two questions:

- (1) Whether the law laid down by NCLAT in *Jitendra Virmani’s case* and in *Arul Muthu’s case* that when the defect in appeal is cured and the Appeal is refiled before the Appellate Tribunal beyond seven days, the date of re-presentation of the Appeal shall be treated as a fresh Appeal, lays down correct law?
- (2) Whether the limitation prescribed for filing an Appeal before this Appellate Tribunal under Section 61 of Insolvency and Bankruptcy Code, 2016 (IBC, 2016) or Section 421 of the Companies Act, 2013 shall also govern the period under which a defect in the Appeal is to be cured and this Appellate Tribunal shall have no jurisdiction to condone the delay in refiling/re-presentation if it is beyond the limitation prescribed in Section 61 of the IBC or Section 421 of the Companies Act, 2013.



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NCLAT's Observations:-

With respect to the first question, Rule 26 (2) of the NCLAT Rule, 2016 contemplates that if a document is found defective, the same shall be notified to the party which shall cure the same within a period of seven days and on a failure to do so, orders may be passed by the Registrar. When specific power is there under Sub-rule (3) of Rule 26 to extend the time for compliance, the period of seven days cannot be said to be a mandatory period. The five-judge bench remarked that the law laid down by NCLAT in *Jitendra Virmani's case* and in *Arul Muthu's case* that when the defects in appeal are cured after seven days and the same is refiled, it shall be treated as a fresh Appeal, does not lay down a correct law. The re-presentation of appeal after expiry of a period of seven days or after extended period shall not be a fresh filing and shall only be refiling/representation. Also, as per Rule 26 of NCLAT Rules, 2016, as noticed above, there is no indication of concept of fresh filing, if defects are not cured in seven days as has been expressly provided in Delhi High Court Rules.

Regarding the second question, the court observed that Section 61 (2) of IBC, 2016 and Section 421 of the Companies Act, 2013 talk about time period for filing the appeal and not for refiling/re-presentation of the appeal after curing defects. The NCLAT held that the limitation prescribed in filing an appeal under Section 61 of the IBC, 2016 or Section 421 of the Companies Act, 2013 shall not govern the period taken in an appeal for removal of the defects in refiling/re-presentation. Even if, there is a delay in refiling/re-presentation which is more than the period of limitation prescribed for filing an appeal under Section 61 of the Code and Section 421 of Companies Act, 2013, the same can be condoned on sufficient justification. Accordingly, the NCLAT held that the time period of seven days for removal of defects is directory and the refiling after removal of defects will not amount to a fresh filing.

Order: -The Appeals for consideration of condonation of delay in refiling/re-presentation were ordered to be listed in accordance with law.

Case Review: Appeals disposed of.