

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Insolvency) No. 1045 of 2020

In the matter of:

K. Venugopalan Nair
Ex-Managing Director,
Dewa Projects Pvt. Ltd.
Vs.
Rita Venugopal & Anr.

....Appellant

...Respondents

Present:

Appellant: Mr. S. Nanda Kumar and Ms. Deepika Nanda Kumar,
Advocates.
Respondents: Mr. Raghenth Basant and Mr. Navneet Nair, Advocates
for R2.
Mr. Santosh Mathew and Mr. Vijay V Paul, Advocates
for R1.

ORDER

(Through Virtual Mode)

07.12.2020: Heard Mr. S. Nanda Kumar, Advocate representing the Appellant who happens to be the Ex-Managing Director of the Corporate Debtor- 'Dewa Projects Pvt. Ltd.' assailing the impugned order dated 13th September, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Kochi Bench, Kochi admitting the application of Financial Creditors- Ms. Rita Venugopal and Dr. K.S. Venugopal with consequential orders of appointment of 'Interim Resolution Professional' and slapping of 'Moratorium' on the assets of the 'Corporate Debtor'.

Contd/-.....

2. The instant appeal has been filed on 26th November, 2020. We take note of the fact that the lockdown in the wake of outbreak of COVID-19 Pandemic was imposed on 23rd March, 2020 whereafter in *suo moto* jurisdiction this Appellate Tribunal suspended limitation which continues till date. However, reckoned from the date of impugned order i.e. 13th September, 2019, the prescribed period of limitation under Section 61(2) of the Insolvency and Bankruptcy Code, 2016 (“I&B Code” for short) would expire on 14th October, 2019 and for sufficient ground, the delay which can be condoned for 15 days, extended period of limitation, would thus come to an end on 30th October, 2019. Computed thus, having regard to exclusion of period post 23rd March, 2020, the appeal has been filed with delay of more than four months even after expiry of extended period of limitation. The provisions regarding limitation in regard to filing of appeals being specifically laid down under Section 61(2) of the ‘I&B Code’, it is well settled that resort cannot be had to provisions of Limitation Act made applicable in terms of Section 238A of the ‘I&B Code’, to situations specifically dealt with under ‘I&B Code’. We accordingly find the appeal hopelessly time barred.

3. Learned counsel for the Appellant made strenuous efforts to convince us that no notice has been served upon the Corporate Debtor and the order was passed without notice thereby denying opportunity of being heard and violating the principles of natural justice.

4. On going through the impugned order, we are of the view that this argument is without substance. Para 19 of the impugned order eloquently speaks of the Corporate Debtor having been put to notice by the Adjudicating Authority which was duly delivered on 25th June, 2019. Courier receipt and acknowledgment duly filed by the Financial Creditors was taken on record. It is, therefore, amply clear that notice was served on the Corporate Debtor. Appellant has preferred the instant appeal as Ex-Managing Director of the Corporate Debtor as the Corporate Debtor would not be competent to maintain an appeal in terms of the dictum of the Hon'ble Supreme Court in ***"Innoventive Industries Ltd. Vs. ICICI Bank and Ors, (Civil Appeal Nos. 8337-8338 of 2017)"***.

We accordingly find no ground made out for condonation of delay. I.A. No. 2825 of 2020 is disposed of.

Since the appeal is barred by limitation, the same is dismissed alongwith all IA's.

**[Justice Bansilal Bhat]
Acting Chairperson**

**[Justice Anant Bijay Singh]
Member (Judicial)**

AR/g