

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 1277 of 2019

IN THE MATTER OF:

M/s. S. Kumar Construction Co.

...Appellant

Versus

M/s. Bharti Airtel Ltd.

...Respondent

Present:

For Appellant : Mr. Alok Tripathi, Advocate

For Respondent : Ms. Mehak Suri, Advocate

ORDER

20.11.2019 Learned counsel for the Appellant submits that the free copy of the impugned order was not supplied to the Appellant and there is no delay in filing the appeal if it is counted from the date of knowledge.

It is further submitted that the Adjudicating Authority, though wrongly held that the application was barred by limitation, should not have imposed the cost of Rupees One Lakh on the Appellant.

We have heard Mr. Alok Tripathi, learned counsel for the Appellant and Ms. Mehak Suri, Advocate for 'M/s. Bharti Airtel Ltd.'.

Taking into consideration the fact that the appeal has been preferred by the Appellant within 30 days from the date of knowledge, we hold that the appeal is not barred by limitation. However, as we find that the default took place in the year 2012, we hold that the Adjudicating Authority (National Company Law Tribunal), Bench-III, New Delhi rightly held that the application under Section 9 of the 'I&B Code' was barred by limitation and mere issuance of raising the bill

after long delay, the 'Operational Creditor' cannot take advantage of the claim. The learned counsel appearing on behalf of the Appellant submits that the Appellant is ready to move before the competent Forum for appropriate relief but the cost as imposed is uncalled for.

We are of the opinion that if the application under Section 9 was time barred, while dismissing the application, the Adjudicating Authority should not have held that the appeal preferred was frivolous or vexatious which otherwise affect the right of the Appellant to move before the Appropriate Forum. Therefore, observation as made at paragraph 8 of the impugned order by the Adjudicating Authority that the petition was frivolous and vexatious claim and imposed a cost of Rupees One Lakh is set aside. However, the application filed by the Appellant under Section 9 is treated to be dismissed.

The appeal stands disposed of with aforesaid observations.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

[Justice Venugopal M.]
Member (Judicial)

/ns/gc