

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

**I. A. No. 1564 of 2018 in
Company Appeal (AT) (Insolvency) No. 596 of 2018**

IN THE MATTER OF:

R. Mangalam

...Appellant

Vs

SPML Infra Ltd.

....Respondent

Present:

For Appellant: Mr. Arnav Dash, Advocate.

For Respondent:

ORDER

28.09.2018: Learned counsel for the Appellant submits that due to miscalculation condonation of delay has been sought for 13 days in filing the instant appeal though in fact the time is to be reckoned from 17th July, 2018 – the day free copy was provided by the Appellant and upon such reckoning it is manifestly clear that the appeal has been filed within 45 days and the Appellant is required to seek condonation of delay of 15 days. In view of the same Appellant is allowed to rectify the defect by substituting 15 days in place of 13 days in I.A. No. 1564 of 2018. The rectification be carried out just today. Having regard to the ground urged, delay of 15 days in preferring the appeal is condoned. I. A. No. 1564 of 2018 stands disposed of.

2. The Appellant claiming to be a Financial Creditor is aggrieved of disposal of his application in terms of impugned order dated 09.07.2018 passed by the Adjudicating Authority (National Company Law Tribunal) New Delhi Bench Court-III by virtue whereof the Appellant's application for triggering of Corporate Insolvency Resolution Process against the Corporate Debtor has been dismissed on the ground that the application is not in consonance with provisions of Insolvency and Bankruptcy Code, 2016 (I&B Code for short) as well as form prescribed under Addendum Rules.

3. Heard learned counsel for the Appellant. From bare perusal of the impugned order it comes to fore that the Appellant had not preferred application under Section 7 of I&B Code in the prescribed format being Form-1 in terms of Sub-rule (1) of Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. It further appears that the Appellant had, instead of filing application in conformity with the aforesaid rule, filed application in the ordinary form with the relief clause praying for initiation of Corporate Insolvency Resolution Process in terms of provisions of Section 7 of I&B Code. The Appellant has been denied the remedy provided in terms of Section 7 of I&B Code.

4. After hearing learned counsel for a while this Appellate Tribunal is of the view that though no fault can be found with the impugned order on merit, it would have been appropriate on the part of the Adjudicating Authority to allow the Appellant to withdraw the application filed not in conformity with the aforesaid rules with liberty to file fresh one after complying with the mandate of law. It is true that the infirmity in the application was not in the nature of a minor defect which could be rectified in terms of the dictum of Hon'ble Apex Court propounded in "*Innoventive Industries Ltd. Vs. ICICI Bank and Ors.*" – (2018)1 SCC 407, but there would have been no difficulty in permitting withdrawal of the application with liberty to file fresh one in conformity with law.

5. Be that as it may, the Appellant cannot be allowed to face agony of being remediless. The remedy is available under law as the application has not been decided on merit. This Appellate Tribunal accordingly disposes of the appeal by observing that the appellant shall be at liberty to file fresh application under

Section 7 of the I&B Code in respect of the same cause of action and in the event of such application being filed within two weeks from the date of this order, the Adjudicating Authority would entertain the same and admit it if found fit and in conformity with legal requirements, uninfluenced by the impugned order. The appeal is disposed of with aforesaid observations. No cost.

[Justice Bansi Lal Bhat]
Member (Judicial)

am/sk