

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 634 of 2019
Company Appeal (AT) (Insolvency) No. 641 of 2019

IN THE MATTER OF:

Sriramgiri Spinning Mills Ltd.

...Appellant

Versus

Oriental Bank of Commerce & Ors.

...Respondent

Present:

For Appellant : **Mr. Deepak Mishra and Mr. Mithilesh Kumar Singh,
Advocates**

O R D E R

25.07.2019 **Company Appeal (AT) (Insolvency) No. 634 of 2019 :**

The application u/s 60(5) was not maintainable at the stage of pre-admission stage of the application u/s 7 of the 'I&B Code' though it was open to the 'Corporate Debtor' to take all the pleas except the prayer not to admit the application. From the record we find that application u/s 7 'I&B Code' was filed on 1st August, 2018 and the matter was adjourned and with a view to delay the proceedings, petition u/s 60(5) of the 'I&B Code' was filed by the 'Corporate Debtor' though it was not maintainable. For the said reason, the Adjudicating Authority rejected the application by order dated 4th December, 2018.

This apart, the impugned order was passed on 4th December, 2018 and there is a delay in filing the appeal without explaining the reason. Learned counsel for the Appellant submits that the order of stay was passed by the Hon'ble High Court of Telangana, which shows that the Appellant was moving at

different Forums to stall the proceedings. Limitation is prescribed under sub-section (2) of Section 61 of the I&B Code, which reads as :

“61. (1) Notwithstanding anything to the contrary contained under the Companies Act 2013, any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.

(2) Every appeal under sub-section (1) shall be filed within thirty days before the National Company Law Appellate Tribunal:

***Provided** that the National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed fifteen days.”*

In view of the fact that the specific limitation period of 15 days is prescribed for condoning the delay beyond the period of 30 days, this Appellate Tribunal has no jurisdiction to condone the delay beyond the specified period even on the ground that the Hon’ble High Court has passed the stay order.

Learned counsel for the Appellant requested to adjourn the matter to enable the Appellant to settle the claim with the Bank. However, we are not inclined to grant any time though it will be open to the Appellant to settle the claim with the Bank in accordance with law.

Company Appeal (AT) (Insolvency) No. 641 of 2019

This appeal has been preferred against the order dated 4th December, 2018 passed by the Adjudicating Authority (National Company law Tribunal), Hyderabad Bench, Hyderabad against the admission of application u/s 7 of the 'I&B Code'. Similar pleas were taken by the Appellant that the Appellant intends to settle the matter with the Bank. However, we have already mentioned that the appeal is barred by limitation. This apart we would like to mention that after admission of application u/s 7, the appeal by the 'Corporate Debtor' is not maintainable in view of the decision of Hon'ble Supreme Court in "*Innoventive Industries Ltd. v. ICICI Bank - (2018) 1 SCC 407*" (Para 11).

Both the appeals are dismissed as barred by limitation and not maintainable

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice A.I.S. Cheema]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

/ns/gc