

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 223 of 2017**

**IN THE MATTER OF:**

**Prowess International Private Limited**

**...Appellant**

**Vs.**

**Action Ispat & Power Private Limited**

**...Respondent**

**Present: For Appellant: - Mr. Akhilesh Kr. Srivastava, Advocate with Ms. Suhita Mukhopadhaya, PCS.**

**For Respondent:- Mr. Milan Singh Negi, Ms. Varsha Banerjee and Mr. Kunal Godhwani, Advocates.**

**ORDER**

**26.03.2018** – This appeal has been preferred by the Appellant against judgment dated 15<sup>th</sup> March, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi, whereby and whereunder application preferred by the Appellant under section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “I&B Code”) has been rejected for the grounds mentioned therein.

2. The defective appeal was preferred by the Appellant after delay of more than six months on 22<sup>nd</sup> September, 2017 without any application for condonation of delay. When it was pointed out, the Appellant preferred an application for condonation of delay and taken plea that there is a delay of only two days.

Contd/-.....

3. On notice, learned counsel for the Respondent has appeared and opposed the prayer. It was pointed out that the judgment was delivered by the Adjudicating Authority on 15<sup>th</sup> March, 2017 in open court in presence of learned counsel for the Appellant and in spite of the same, the Appellant did not choose to apply for certified copy, and application for certified copy was filed for the first time on 18<sup>th</sup> August, 2017 i.e. after five months, which was prepared immediately on 21<sup>st</sup> August, 2017 and handed over to the Appellant. Thereafter, the defective appeal was preferred on 22<sup>nd</sup> September, 2017.

4. From the record, we find that the Appellant has not explained as to what action the Appellant had taken between 15<sup>th</sup> March, 2017 and 18<sup>th</sup> August, 2017 i.e. between the day of judgment and the day the application for certified copy was filed.

5. Learned counsel for the Appellant submitted that the copy of the impugned order was not forwarded to the Appellant. However, it is accepted that the impugned order was passed on 15<sup>th</sup> March, 2017 in presence of the counsel for the Appellant.

6. It is desirable to refer the relevant provisions under which appeals can be preferred before this Appellate Tribunal.

7. Against an order passed by the Tribunal under Companies Act, an appeal is maintainable under Section 421 of the Companies Act, 2013, which reads as follows:

**“421. Appeal from orders of Tribunal.** –(1) *Any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.*

*(2) No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.*

*(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed:*

*Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.*

*(4) On the receipt of an appeal under sub-section (1), the Appellate Tribunal shall, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.*

*(5) The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and the parties to appeal.”*

8. As per the said provision, if an appeal is preferred under Section 421 of the Companies Act, 2013, the Appellate Tribunal counts the period of limitation from the date on which a copy of the order is made available by the Tribunal in terms of sub-section (3) of Section 421 of the Companies Act, 2013.

9. However, for preferring appeal under Section 61 of the 'I&B Code' against an order passed by the 'Adjudicating Authority' provision for counting the period of limitation is different. The provision is as follows:

**“61. Appeals and Appellate Authority. – (1)**  
*Notwithstanding anything to the contrary contained under the Companies Act, 2013 (18 of 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.*

*(3) An appeal against an order approving a resolution plan under section 31 may be filed on the following grounds, namely:—*

*(i) the approved resolution plan is in contravention of the provisions of any law for the time being in force;*

*(ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency*

*resolution period;*

*(iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;*

*(iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or*

*(v) the resolution plan does not comply with any other criteria specified by the Board.*

*(4) An appeal against a liquidation order passed under section 33 may be filed on grounds of material irregularity or fraud committed in relation to such a liquidation order.”*

As per the aforesaid provision, the appeal is required to be filed within thirty-days, means within thirty-days from the date of knowledge of the order against which appeal is preferred.

10. In the present case, as Appellant had knowledge of the impugned order as on the date of pronouncement of the said order i.e. 15<sup>th</sup> March, 2017. It is not the case of the Appellant that its Lawyer has not informed

of the order passed by the Adjudicating Authority. The ground as taken in the application for condonation of delay being not satisfactory, it is fit to be rejected. We accordingly, reject the application for condonation of delay and dismiss the appeal being barred by limitation. I.A. No. 292 of 2018 stands disposed of.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansi Lal Bhat)  
Member(Judicial)

Ar/uk