

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Ins) No.1072 of 2019

[Arising out of Order dated 08.08.2019 passed by National Company Law Tribunal, Mumbai Bench in MA 1306/2018 in CP No.02/2018, CP No.01/2018, CP No.543/2018, CP No.507/2018, CP No.509/2018, CP No.511/2018, CP No.508/2018, CP No.512/2018, CP No.510/2018, CP No.528/2018, No.563/2018, CP No.560/2018, CP No.562/2018, CP No.559/2018, CP No.564/2018 & MA 1416/2018 in CP No.02/2018 & MA 393/2019 in MA 115/2019 in CP No.543/2018 & MA 1574/2019 in CP No.01/2018 & MA 774/2019 in CP No.543/2018 & MA 778/2019 in CP No.559/2018 & MA 1583/2018 in CP No.559/2018]

IN THE MATTER OF:

Before NCLT

Before NCLAT

Rahul Shukla
553,
Kanishka Residency,
Ashoka Enclave – 3
Mathura Road,
Faridabad,
Haryana

...

Appellant

Versus

- | | | |
|--|------------------------------|-----------------|
| 1. State Bank of India
State Bank Bhavan,
Madam Cama Road,
Mumbai – 400 021
acting thorough its
Corporate Accounts
Group Branch (Mumbai)
at Neville House,
J.N. Heredia Marg,
Ballard Estate,
Mumbai – 400 001 | Applicant in
MA 1306/2018 | Respondent No.1 |
| 2. Videocon Industries
Ltd.,
14 KM Stone
Aurangabad-Paithan
Road,
Village Chittegaon
Taluka Paithan,
Aurangabad - 431105
Through its Resolution
Professional | Respondent No.1 | Respondent No.2 |

- | | | | |
|----|--|-----------------|-----------------|
| 3. | Videocon
Telecommunications
Limited,
RH No.2
Pratapnagar
Shahnoorwadi Road,
Aurangabad -431001
Through its Resolution
Professional | Respondent No.2 | Respondent No.3 |
| 4. | Evans Fraser & Co.
(India) Ltd.,
171-C, 17 th Floor,
Mittal Court - C Wing,
Nariman Point
Mumbai – 400021
Through its Resolution
Professional | Respondent No.4 | Respondent No.4 |
| 5. | Millennium Appliances
(India) Ltd.,
2275, Adate Bazar,
Ahmednagar,
Maharashtra – 414001
Through its Resolution
Professional | Respondent No.5 | Respondent No.5 |
| 6. | Applicomp India Ltd.,
Gangapur GIN,
Compound Station
Road,
Ahmednagar – 414001
Through its Resolution
Professional | Respondent No.6 | Respondent No.6 |
| 7. | Electroworld Digital
Solutions Ltd.
171-C, 17 th Floor,
Mittal Court - C Wing,
Nariman Point
Mumbai – 400021
Through its Resolution
Professional | Respondent No.7 | Respondent No.7 |
| 8. | Techno Kart India
Ltd.,
Auto Cars Compound,
Adalat Road, | Respondent No.8 | Respondent No.8 |

- Aurangabad – 431 005
Through its Resolution
Professional
9. Century Appliances Ltd. Respondent No.10 Respondent No.9
Auto Cars Compound
Adalat Road,
Aurangabad -431005
Through its Resolution
Professional
10. Techno Electronics Respondent No.11 Respondent No.10
Ltd.,
Auto Cars Compound,
Adalat Road,
Aurangabad -431005
Through its Resolution
Professional
11. Value Industries Respondent No.12 Respondent No.11
Ltd.,
14 KM Stone
Aurangabad-Paithan
Road,
Village Chittegaon
Taluka Paithan,
Aurangabad -431105
Through its Resolution
Professional
12. PE Electronics Ltd. Respondent No.13 Respondent No.12
Auto Cars Compound
Adalat Road,
Aurangabad -431005
Through its Resolution
Professional
13. CE India Ltd. Respondent No.14 Respondent No.13
(CE India),
Auto Cars Compound
Adalat Road,
Aurangabad -431005
Through its Resolution
Professional
14. Sky Appliances Ltd. Respondent No.15 Respondent No.14
1601, Maker
Chamber V,
Nariman Point

Mumbai -400021
Through its Resolution
Professional

- | | | |
|--|------------------------------|------------------|
| 15. Mr. Venugopal N.
Dhoot,
Ex-Managing
Director of
Videocon Industries
Limited,
14 KM Stone
Aurangabad-Paithan
Road,
Village Chittegaon
Taluka Paithan,
District Aurangabad,
Maharashtra-431105 | Applicant in
MA 1416/2018 | Respondent No.15 |
|--|------------------------------|------------------|

For Appellant: Shri Abhijeet Sinha, Advocate

**For Respondents: Shri Ramji Srinivasan, Sr. Advocate with Shri
Bishwajit Dubey, Ms. Srideepa Bhattacharya and
Ms. Sylona Mohapatra, Advocates (R-1)
Shri Abhinav Vashisht, Sr. Advocate with Shri
Zeeshan Khan, Advocate (for RP)
Shri Yashvardhan and Shri Devender Singh,
Advocates (R-15)**

ORDER

30.01.2020 Heard Counsel for the Appellant and learned Counsel for the Respondent No.1. This Appeal has been filed by the Appellant claiming to be a shareholder of Videocon Industries Ltd. (VIL - in short). It is stated, the VIL is part of different CIRP processes which have been consolidated by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Mumbai) in MA 1306/2018 in CP No.02/2018 (with other CPs) vide Orders dated 8th August, 2019. Copy of the Impugned Order is at Annexure A-1 indicating the various proceedings. The Appellant has challenged the said

Order of consolidation of insolvency process of Videocon group companies filing this Appeal on the basis that he is one of the shareholders in one of the Companies, which is part of the CIRP going on in view of consolidation orders.

2. The Appeal has been filed on 3rd October, 2019. The Impugned Order was dated 8th August, 2019. Thus Appeal is filed after about 54 days. The Appeal has been filed on the basis of self-attested Impugned Order. In Para – 2 of the Appeal (Page – 11), for the purpose of limitation, the Appellant has stated as under:-

“2. Date on which the order appealed against is communicated and proof thereof, if any:

That the Impugned Order was pronounced by the Adjudicating Authority on 08.08.2019. Thereafter, the Impugned Order was uploaded on the site of the Adjudicating Authority subsequently. Since the Appellant herein was not a party to the proceedings before the Adjudication Authority, he had no immediate knowledge of the Impugned Order. The Appellant became aware of the Impugned Order only subsequently on 05.09.2019 through newspaper articles. The copy of the Impugned Order dated 08.08.2019 as downloaded by the Appellant from the site of the Adjudicating Authority is annexed herewith and marked as **ANNEXURE A-1.**”

3. Thus he claims Appeal to be in limitation on the basis of knowledge. This Tribunal had on 19.11.2019, directed the Appellant to file an Application for condonation of delay and on 19.11.2019, the Appellant sought further time to file the Application but the same has not been filed till today. The Appeal needs to be dismissed also on this count of default.

4. The learned Counsel for the Appellant, however, submits that above para – 2 is the only stand Appellant can take and thus did not file application

as directed on 19.11.2019. Learned Counsel further states that Section 61 of Insolvency and Bankruptcy Code, 2016 (IBC – in short) is relevant for the purpose of limitation to file Appeal and the condonation of delay. Section 61(1 and 2) read as under:-

“(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.”

5. In Appeal para – 2 reproduced above, Appellant accepts that he was not party to the proceedings. The learned Counsel is submitting that there are rules governing the NCLT which are National Company Law Tribunal Rules, 2016 and Rule 157(3) requires sending of copies to the parties. The Counsel submits that the Appellant was one of the shareholders of VIL and so copies of Impugned Order should have been sent to shareholders. It is accepted that VIL is a public limited company which is listed company. Counsel for Appellant claims that no free copy of Impugned Order was sent to him and thus, the Appeal cannot be said to be time barred as the Appellant now claims to have come to know only through newspaper of 5th September, 2019. Counsel referred to **“Mahendra Trading Company & Ors. Vs. Hindustan Controls and Equipment Pvt. Ltd.”** in Company Appeal (AT) (Insolvency) No.

97 of 2018 dated 25.11.2019 to state that when there is provision to supply free copy to parties, if not supplied, limitation will not run.

6. The learned Counsel for the Respondent No.1 is pointing out to the Reply filed by the Respondent No.1 and copies of news articles attached with the Reply marked as 'Annexure A-2 and A-3 (colly)'. It is submitted that copy of Impugned Order was uploaded on site of Adjudicating Authority on 9th August, 2019 itself and was in Public Domain. The Counsel submits that the Appellant cannot claim that the Appellant came to know through newspaper only on 5th September, 2019. It is stated that Annexures A-2 and A-3 show wide publicity to the Order in various newspapers. It is stated that even if Appellant wants to rely on date of knowledge, record shows that immediately on the next day of the passing of the Impugned Order, various newspapers carried various news articles regarding the consolidation Order with regard to these Companies. The learned Counsel for Respondent is pointing out Para – 12 of its Reply to show that even on the sites of the Stock Exchanges, information was given to all the shareholders on 23.08.2019 by putting up the news and even the copy of Impugned Order is stated to have been put on the websites and thus, the Appellant cannot claim not to be having knowledge. Counsel states that no proof of Appellant being shareholder is given but even assuming he is shareholder, his plea of knowledge only on 05.09.2019 is unsupported and unacceptable. It is stated when shares of company are being traded, it cannot be expected that free copies of Impugned Order should be sent after searching such shareholders.

7. We have heard Counsel for both sides and pursued the record. Considering the Reply submitted by the Respondent No.1 and the vague averment in Para – 2 of the Appeal, which has been reproduced, we find that the claim of the Appellant that he became aware of the Impugned Order only on 05.09.2019 through newspaper, is not believable and cannot be accepted. There is no material submitted that on 05.09.2019 through newspaper, he came to know about the Impugned Order.

8. Judgement in the matter of “Mahendra Trading Company” (supra) relied on by the learned Counsel for the Appellant with regard to supply of free certified copies to concerned persons, the relevant Para – 13 of that Judgement reads as under:-

“13. We may observe that we have not taken into consideration the decision of the Hon’ble Supreme Court in **“Singh Enterprises v. Commissioner of Central Excise”** (Supra) as in the “Central Excise Act, 1944” there is no provision of communicating certified copy and there is no mandate to provide free certified copy to the concerned person and, therefore, we have noticed that the aforesaid decision is not applicable in the present case.”

The observations do not help Appellant in present set of facts.

9. Sub-Rule (3) to Rule 157 of National Company Law Tribunal Rules, 2016 on which Counsel for Appellant is relying, reads as under:-

“(3) The Deputy Registrar shall thereafter cause to transmit the case file and the order to the Registry for taking steps to prepare copies and their communication to the parties.”

10. In the present set of facts, where it is stated that VIL is a public limited company and shares of which are listed, it appears unimaginable how the Appellant can expect the Deputy Registrar to have sent copies of the Impugned Order to all the shareholders. When it is a listed company and the shares are being traded, such expectation would be unpractical. Benevolent Rule 157 of NCLT Rules, 2016 framed under Section 469 of Companies Act, 2013 which have been framed to carry out provisions of that Act, are being imported into Appeal under Section 61 of IBC. We do not accept that Deputy Registrar was required to go in search of persons trading shares to give them copies, which would be unpractical and thus unenforceable. Such party can rely only on knowledge.

11. The Respondent No.1 has shown that immediately on the next date of the Impugned Order, the information regarding Impugned Order was in public domain and even Stock Exchanges carried information on their website. Knowledge can thus be attributed. If Appellant was aggrieved, Appeal should have been filed in limitation. We reject the claim of the Appellant that he got knowledge only on 5th September, 2019.

We hold that the Appeal is time barred.

Appeal is dismissed.

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

(Justice A.B. Singh)
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

/rs/md