

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Un-numbered Company Appeal (AT) (Insolvency) No. /2018
(F.No.05/04/2018/ NCLAT/UR/232)

In the matter of:

Kadevi Industries Ltd.

.... Appellant

Versus

Indian Bank & Ors.

.... Respondents

Appearance: None for the Appellant.

12.04.2018

The aforesaid Appeal under Section 61 of the I&B Code, 2016 (hereinafter referred to as the Code) is against the order dated 23.02.2018 in CP (IB) 10/7/HDB/2017 of the Hon'ble NCLT, Hyderabad Bench.

2. The Appeal is seen presented before the Registry under Rule 22 on 05.04.2018. The Appeal when scrutinised on 06.04.2018 was found to be defective and hence, on the same day the Appellant was informed of the defects with a direction to cure them within a period of seven days. The Appeal was thereafter presented on 10.04.2018 stating that all the defects have been cured. However, it is reported that defect no.4 referred to in the defects sheet has not been cured and hence the matter has been placed before me for appropriate orders.

3. Defect no.4 raised is that the appeal is barred by limitation and therefore, an application for condonation of delay is required. Sub-rule 2 to Rule 22 of the NCLAT Rules, 2016 (hereinafter referred to as the Rules) stipulates that every appeal shall be accompanied by a certified copy of the impugned order. However, the copy of the impugned order produced is only a xerox copy. The reason for not producing the original certified copy of the impugned order is also not stated in the application filed by the Appellant for exemption from filing the certified copy. Therefore, the

office computed the period of limitation from the next day of the order, i.e. from 24.02.2018 and when so computed the period of limitation would expire on 25.03.2018. As the initial presentation of the Appeal under Rule 22 on 05.04.2018 was obviously beyond the period of 30 days, the defect regarding limitation was raised and the party was directed to file application for condonation of delay.

4. In para 2 of the Appeal memorandum it is alleged thus – “The impugned order was passed on 23.02.2018 and the certified copy of the same was obtained from the official website NCLT, Hyderabad.” There are no pleadings regarding the date on which the free certified copy of the impugned order was received by the Appellant. As noticed earlier, the copy of the impugned order produced is a xerox copy, which appears to be a xerox copy of the certified copy issued by NCLT, Hyderabad. The copy produced shows that the certified copy was made ready on 05.03.2018. Now even if the date given in this copy is taken into account and the period of limitation computed from 06.03.2018, the initial presentation of the Appeal under Rule 22 on 05.04.2018 is beyond the period of 30 days as the period of limitation expired on 04.04.2018. Therefore, there is still a day’s delay in presenting the Appeal. As per the computation of the scrutiny Section there is a delay of 11 days. Hence, either way as the Appeal has been filed beyond the period of 30 days, the defect noted regarding limitation is right and the stand taken by the Section that an application for condonation of delay is required is justified.

5. The Appellant is given a day’s time for filing an application for condonation of delay and the matter shall stand listed before the Hon’ble Appellate Tribunal on 16.04.2018.

(C.S. Sudha)
Registrar