

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Un-numbered Company Appeal (AT) (Insolvency) No. /2017

In the matter of:

Shaw Traders

.... Appellant

Versus

Balaji Paper & Newsprint Pvt. Ltd.

.... Respondent

Appearance: None for the Appellant.

12.12.2017

The aforesaid Appeal under Section 61 of the I&B Code, 2016 (hereinafter referred to as the Code) is against the order dated 11.10.2017 in C.P. (I.B.) No.301/KB/2017 of the Hon'ble NCLT, Kolkata Bench.

2. The Appeal is seen presented before the Registry on 28.11.2017. The Appeal when scrutinized on 30.11.2017 was found to be defective and hence the Appellant was informed of the same with a direction to cure the defects within a period of seven days. All the defects except defect no.9 has been cured. The Appellant does not agree to the aforesaid defect raised by the Scrutiny Section that the appeal is barred by limitation and hence the matter has been put up before me for appropriate orders.

3. Para-6 of the Appeal memorandum reads thus: - "Limitation: - The appellant declares that the impugned judgment and order though passed on 11th October, 2017 but certified copy was made available only on 8th November, 2017. As such, the period of making application for obtaining certified copy and the date on which the certified copy has been delivered i.e. the period including 2 days when the application was made for obtaining certified copy and the certified copy was made

available has to be excluded for calculating the period of limitation. According to Sub-Section (3) of the Section 421 of the Companies Act, 2013 every appeal shall be filed within a period of 45 days from the date on which a copy of the impugned 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 45 days from the date aforesaid, but within a further period not exceeding 45 days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period. As such, the applicant is preferring this appeal before this Tribunal well within 90 days from the date of delivery of order and for such reasons your applicant is seeking leave of this Hon'ble Tribunal for exemption in filing condonation of delay application".

4. First and foremost, the aforesaid appeal is one under section 61 of the Code and therefore, computing the period of limitation for filing appeal on the basis of sub-section (3) to section 421 of the Companies Act, 2013 (hereinafter referred to as the Act) as pleaded in para-6 of the appeal memorandum is not correct. On the other hand, we have to go by sub-section (2) and the proviso therein to section 61 of the Code for computing the limitation. Sub-section (2) to section 61 of the Code says that every Appeal under sub-section (1) shall be filed within 30 days before the Appellate Tribunal. Unlike sub-section (3) to section 421 of the Act which says that an Appeal has to be filed within a period of 45 days from the date on which a copy of the impugned order is made available to the person aggrieved, the Code is silent and does not indicate the date from which the limitation has to be computed. In such cases, the date from which limitation has to be computed can only be taken as the date of knowledge of the order.

5. There is no pleadings regarding the date on which the Appellant came to know of the impugned order. The Appellant also has no case that they were not aware of the order being pronounced on 11.10.2017. In such circumstances, the Section has rightly computed the date from which limitation is to begin as 12.10.2017.

6. The copy of the impugned order produced is a paid copy. The dates on which the Appellant applied for the certified copy is stated to be 26.10.2017 and 08.11.2017. The certified copy is seen issued on 08.11.2017. Therefore, the period of 30 days starting from 12.10.2017 would expire on 24.11.2017, i.e., after excluding 14 days from 26.10.2017 to 08.11.2017, the period taken for obtaining the certified copy. The appeal is seen presented on 28.11.2017, i.e. with a delay of four days. Hence, the stand taken by the Section that the appeal is barred by limitation and that an application for condonation of delay is necessary is correct and justified.

7. Today, none appeared for the Appellant. As the Appellant does not agree to the defect pointed out, the matter be placed before the Hon'ble Appellate Tribunal on 13.12.2017 for appropriate orders.

List the matter before the Hon'ble Appellate Tribunal on 13.12.2017.

(C.S. Sudha)
Registrar