

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

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

In the matter of:

Poorani Nagarajan Shareholder in Infinitas
Energy Solutions Pvt. Ltd.

.... Appellant

Versus

Indian Bank

.... Respondent

Appearance: Shri T.S. Sundram and Shri Vishnu Kumar, Advocates for the
Appellant.

14.12.2017

The aforesaid Appeal under Section 61 of the I&B Code, 2016 (hereinafter referred to as the Code) is against the order dated 18.09.2017 in C.P./558/(I.B.)/CB/2017 of the Hon'ble NCLT, Chennai Bench.

2. The Appeal is seen presented before the Registry on 06.12.2017. The Appeal when scrutinized on 07.12.2017 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. The appeal was re-submitted after curing all the defects except defect no.13. The Appellant disagreed with the stand taken 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. As per sub-section (2) to section 61 of the Code an appeal under sub-section (1) shall be filed within a period of 30 days before the Appellate Tribunal. The impugned order is dated 18.09.2017. The certified copy of the impugned order produced does not indicate the date on which it was issued. In such circumstances, generally the limitation is computed from the next day of the date of order, which in this case is 19.09.2017, so long as the Appellant has no case that he was unaware of the impugned order being pronounced. Then the period of limitation would have expired on 18.10.2017. The Appellant has a further case that the order dated 18.09.2017 was rectified on 25.10.2017. Therefore, the Scrutiny Section computed

the period of limitation from 26.10.2017. When so calculated, the period of limitation would expire on 24.11.2017 and as the appeal was presented on 06.12.2017, the Scrutiny Section considered the appeal to have been filed beyond the period of limitation.

4. The Appellant herein alleges that she is entitled to a period of 45 days from 25.10.2017 to file the present appeal taking into account the period provided under sub-section (2) and the proviso to section 61 of the Code. That being the position, her case is that the period of limitation would expire only on 09.12.2017 and as the appeal has been presented before the Registry on 06.12.2017, the appeal is well within the period of limitation.

5. As stated earlier, the impugned order is dated 18.09.2017. The Appellant instead of filing an appeal before this Appellate Tribunal, after about 21 days, nearly exhausting the period provided under sub-section (2) to section 61 of the Code, filed Writ Petition 26904/2017 before the Hon'ble Madras High Court, which is stated to have been filed on 09.10.2017. This writ petition is seen to have been disposed of by order dated 31.10.2017 (Annexure A-3 at page 66 of the appeal memorandum) giving liberty to the Appellant to file an appeal before this Appellate Tribunal within a period of three weeks from the date of receipt of copy of the order in the writ petition. According to the Appellant, she received the copy on 20.11.2017. If that be so, the period of three weeks would expire on 12.12.2017. Then the appeal presented on 06.12.2017 will have to be considered to have been filed within the period granted by the Hon'ble Madras High Court.

6. As the appeal has been filed within the period granted by the Hon'ble Madras High Court, the appeal is taken on file and placed before the Hon'ble Appellate Tribunal for appropriate orders.

List the matter before the Hon'ble Appellate Tribunal on 18.12.2017.

(C.S. Sudha)
Registrar