

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

**Company Appeal (AT) (Insolvency) No. 32 & 50 of 2018
I.A. No. 136 of 2018**

IN THE MATTER OF:

Randhiraj Thakur

...Appellant

Vs

Jindal Saxena Financial Services Pvt. Ltd. & Anr.

....Respondents

Present:

**For Appellant: Mr. Abhinav Vasisth, Senior Advocate assisted by
Ms. Gauri Rishi and Ms. Srishti Juneja,
Advocates.**

For Respondents: Mr. Tushar Parashar, Advocate.

ORDER

23.04.2018: A petition for condonation of delay has been filed by Appellant in respect of order dated 27th June, 2017. Learned counsel appearing on behalf of the 1st Respondent contended that there is delay of more than 35 days beyond 30 days period of filing the appeal, therefore as per Section 61(2) of I&B Code, the appeal is not barred by limitation.

Learned counsel for the Appellant submits that there is no delay on the part of the Appellant as against order dated 27th June, 2017, an application for review was filed by the Appellant in which final order was passed on 8th January, 2018, which is also under challenge.

It is further submitted that the order dated 27th June, 2017 was passed by the Adjudicating Authority without notice to the Corporate Debtor. The Appellant having come to know of the same filed an application for recall on 2nd August, 2017, which was heard and order was reserved on 31st August, 2017.

The impugned order was passed after four and a half months on 8th January, 2018.

Having heard learned counsel for the Appellant while we appreciate the submissions made by the Appellant but in absence of power conferred under Section 61 (2) of the I&B Code, we cannot condone the delay. However, it will be open to the Appellant to raise all the questions while challenging the impugned order dated 8th January, 2018.

Learned counsel appearing on behalf of the Appellant submits that 'Mayfair Capital Pvt. Ltd.' is a non-banking finance company (NBFC) (relied on page 64, the certificate of registration given by RBI) and therefore, it does not come within the meaning of 'Corporate Person' as defined under Section 3(7). For the said reason it cannot be treated to be 'Corporate Debtor' within the meaning of Section 3(8), read with Section 3(16) and (17) of the I&B Code.

Learned counsel appearing on behalf of the Respondent while accepts that 'Mayfair Capital Pvt. Ltd.' is a non-banking finance company, according to him the non-banking financial companies have not been excluded from I&B Code for all purpose. It is excluded only in respect to those to which it renders financial service. In the present case, the 'Mayfair Capital Pvt. Ltd.' has not provided any financial services to the 1st Respondent but has taken loan. Therefore, the 'Mayfair Capital Pvt. Ltd.' comes within the meaning of 'Corporate Debtor' qua the 1st Respondent who is its 'Financial Creditor'.

Such argument made on behalf of 1st Respondent is being disputed by the learned counsel for the Appellant.

Heard. **Judgment Reserved.** It will be open to the learned counsel for the parties to file short written submission not more than 3 pages by tomorrow.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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