

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 458 of 2018

IN THE MATTER OF:

IFCI Ltd.

...Appellant

Vs

Anuj Jain, R. P. of Jaypee Infratech Ltd.

....Respondent

Present:

**For Appellant: Ms. Shweta Bharti and Ms. Nanki Arora,
Advocates.**

**For Respondent: Mr. Sumant Batra and Ms. Shrishti Kapoor,
Advocates for Resolution Professional.**

O R D E R

20.08.2018: This appeal has been preferred by Appellant – 'IFCI Ltd.' (Financial Creditor) against order dated 16th May, 2018 passed in CA No. 26/2018 in CP No. (IB)77/ALD/2017. The appeal has been filed on 7th August, 2018 after some delay, therefore, a petition for condonation of delay has been filed. As per Sub-section (2) of Section 61 of Insolvency and Bankruptcy Code, 2016 (for short 'I&B Code') an appeal can be filed within a period of 30 days before this Appellate Tribunal and after the expiry of the aforesaid period of 30 days, the Appellate Tribunal if satisfied of the grounds shown for not filing the appeal can condone the delay but such period cannot exceed 15 days.

It is not in dispute that the impugned order was communicated to the Appellant on 1st June, 2018 and the appeal was filed on 7th August, 2018. According to counsel for the Appellant the Appellate Tribunal was closed for summer vacation between 1st June 2018 to 1st July, 2018, therefore, prayer has been made to exclude the aforesaid period for counting period of delay. If the period is counted from 2nd July, 2018, when the Appellate Tribunal opened after the vacation, then the delay is about 6 days in preferring the appeal.

We have heard learned counsel for the Appellant and Mr. Sumant Batra, learned counsel appearing on behalf of the Resolution Professional. By Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 (which has now been enacted as an Act) Section 238A has been inserted in the principal Act (I&B Code, 2016), which reads as follows:

“238A. The provisions of Limitation Act, 1963 shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Appellate Tribunal, as the case may be.”

In view of the fact that the provisions of Limitation Act, 1963 is applicable as far as may be to the proceeding of appeal, we accept submission made on behalf of the Appellant and we exclude the period of vacation for counting period of limitation. After such exclusion, as the appeal has been preferred after delay of 6 days and taking into consideration the fact that appeal against the same impugned order has been filed by other Financial Creditors has been entertained and being satisfied of the grounds, we condone the delay of 6 days in preferring the appeal.

Let the appeal be listed on **29th August, 2018**, when similar appeals are likely to be listed.

[Justice S. J. Mukhopadhaya]
Chairperson

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

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