

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT)(Insolvency) No. 285 and 286 of 2017

IN THE MATTER OF:

M/s. M. Nandagopal

...Appellant

Vs.

Virtuous Urja Ltd

...Respondent

Present: For Appellant: - Mr. Mohan Parasaran, Sr. Advocate, Mr. Serthil Jagadeesan, Ms Shruti Iyer and Ms Suriti Chowdhary, Advocates.

For Respondents. Mr. P.V. Kapur, Senior Advocate, Mr. P.K. Bansal, Mr. Kamal Bhudhiraja, Mr, Sidhant Kapur, Advocates.

O R D E R

21.12.2017- The appellant have preferred an application for condonation of delay in preferring the appeal. According to appellant he was not a party to the insolvency proceedings and having come to know of the impugned order dated 31st July, 2017, applied for certified copy of the impugned order which was obtained on 16th October, 2017. Thereafter the appeal has been preferred on 13.11.2017 i.e within thirty days from the receipt of certified copy of the impugned order. Therefore, in fact no delay.

Learned counsel appearing on behalf of the respondent referred to para 2 of the appeal to suggest that the counsel of the appellant approached the office of the NCLT, Chennai and he was given a copy of the impugned order on 8.9.2017 which was sent to the counsel at the New Delhi for preparation of the appeal. Learned counsel for the respondent further submitted that the appellant also accepted that the subsequent order dated 29th August, 2017 was provided on 1st October, 2017. However, from the plain reading of the appeal it is not clear as to which counsel approached the office of the NCLT.

Learned counsel appearing on behalf of the appellant submitted that the counsel for the corporate debtor had approached the

NCLT and was handed over a free copy and not the shareholder(s) like the appellant, who was not a party.

Having heard the learned counsel for the parties and taking into consideration the facts that the appellant is a shareholder and is Managing Director of the corporate debtor and is an aggrieved person who was not a party before the Tribunal and in view of the decision of the Hon'ble Supreme Court in the case of ***Innoventive Industries Ltd Vs ICICI Bank 2017 SCC Online SC 1025*** the corporate debtor cannot prefer an appeal, we hold that the appeal preferred by the appellant is within the time i.e. within 30 days of receipt of certified copy of the impugned order. IA No.887/2017 stands disposed off.

Respondent is allowed time till 5th January, 2018 to file additional affidavit/reply and state whether any notice under sub-section (1) of Section 8 of Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') was issued on the corporate debtor before treating the petition as an application under Section 9 of the I&B Code and other information as required to be provided in terms of Part IV and V of Form 5 of Insolvency & Bankruptcy (Adjudicating Authority) Rules, 2016 were brought to the notice of the Adjudicating Authority or not.

Post the matter on 16.1.2018.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

BM/unni