

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

**Interlocutory Application No.2390 of 2019 With
Company Appeal (AT) (Insolvency) No. 751 of 2019**

IN THE MATTER OF:

Mr. Dharendra Kumar

.... Appellant

Vs

M/s Randstand India Pvt. Ltd. & Anr.

.... Respondents

Present:

For Appellant: Mr. Rajesh Mahale, Advocate.

O R D E R

07.08.2019 This Appeal has been preferred by the Appellant-Managing Director of the 'Corporate Debtor' against order dated 14th June, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Bengaluru Bench, whereby, an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short the 'I&B Code') preferred by M/s. Randstand India Private Limited ('Operational Creditor') was admitted against M/s. Camson Bio Technologies Limited.

2. An application for condonation of delay has been filed to condone the delay of 360 days. One of the ground taken by the Appellant is that the 'Corporate Debtor' (not the Appellant) filed a Writ Petition No.29393 of 2018 and challenged the impugned order of admission dated 14th June, 2018. In the said case, initially, an order of stay was passed and the 'Corporate Debtor' was allowed to deposit entire amount of Rs.36,83,660.30 in favour of the ('Operational Creditor'), which was deposited with the High Court of Karnataka. It is submitted that the Hon'ble High Court, subsequently, disposed of the matter on 1st July, 2019, whereinafter, the present Appeal has been preferred. Therefore, a prayer has been made to exclude the period of pendency of the matter before the Hon'ble High Court of Karnataka for the purpose of counting the period under Section 14 of the Limitation Act, 1963.

3. Section 238A of the I&B Code prescribes limitation, as per which the provisions of the Limitation Act, 1963 shall, “as far as may be”, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Tribunal or the Debt Recovery Appellate Tribunal, as the case may be. In this background, a prayer has been made to exclude the period of pendency of the Writ Petition before the Hon’ble High Court of Karnataka.

4. However, proviso to sub-Section (2) of Section 61 of the I&B Code does not empower the Appellate Tribunal to condone the delay beyond 15 days after the expiry of the period of 30 days, if it is satisfied that there is sufficient cause shown. The Section 61 reads as follows: -

“61. Appeals and Appellate Authority.—(1)

Notwithstanding anything to the contrary contained under the Companies Act 2013, any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.

(2) Every appeal under sub-section (1) shall be filed within thirty days before the National Company Law Appellate Tribunal:

Provided that the National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed fifteen days.”

5. Keeping in view Section 238A of I&B Code, in case of any inconsistency, the provision of Section 61(2) will prevail over the Section 14 of the Limitation Act, 1963 and, therefore, we hold that this Appellate Tribunal has no jurisdiction to condone the delay beyond 15 days after the expiry of the period of 30 days in preferring the Appeal, even if, we are satisfied that there is sufficient cause shown by the Appellant.

6. Learned Counsel for the Appellant submits that the Appellant wanted to settle the claim with the 'Operational Creditor' and the amount has already been deposited with the Hon'ble High Court of Karnataka, if opportunity would be given, the Appellant could move before the 'Committee of Creditors' for settling the matter in terms of Section 12A of the I&B Code.

7. Having heard learned Counsel for the Appellant, we cannot condone the delay of 360 days. However, this order will not come in the way of the Appellant or any other Shareholder/ Director to move before the Adjudicating Authority (National Company Law Tribunal), Bengaluru Bench for exercising its inherent power conferred under Section 11 of the NCLT Rules, 2016, on the ground that the Appellant intends to settle the matter and has deposited the claimed amount with the Hon'ble High Court of Karnataka and passing an appropriate order under Rule 11, taking into consideration that the 'Committee of Creditors' has not yet been constituted. However, if the 'Committee of Creditors' has already been constituted, it will be also open to the Appellant to move an application under Section 12A before the 'Committee of Creditors' for its decision.

8. The Appeal is dismissed being barred by limitation and the Interlocutory Application No.2390 of 2019 stands disposed of with the aforesaid liberty.

[Justice S. J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

Ash/GC