

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Condone Delay IA No. 1138/2022

in

Comp App (AT) (CH) (Ins) No.448/2022

(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)

(Arising out of the Impugned Order dated 08.06.2022 in CP (IB)

No.37/BB/2021

passed by the ‘Adjudicating Authority’ (National Company Law
Tribunal, Bengaluru Bench, Bengaluru)

In the matter of:

M/s. Platinum Rent A Car (India) Pvt. Ltd.

Represented by its Director

Mr. Prasad Shinde,

5th Floor, Technopolis Knowledge Park,

Mahakali Caves Road, Chakala,

Andheri (East),

Mumbai 400 093.

... Petitioner / Appellant

V

M/s. Quest Offices Limited,

No.229, Binnamangala 01st Stage,

Indiranagar,

Bangalore – 560 038.

... Respondent

Present :

For Appellant : Mr. V. Nallasenapathy, Advocate

For Respondent : Ms. Aishwarya, Advocate For R&P Partners

ORDER

(Virtual Mode)

12.01.2023: Heard the Learned Counsel for the ‘Petitioner’ / ‘Appellant’

in IA No. 1138/2022 in Comp App (AT) (CH) (Ins) No.448/2022.

2. The Learned Counsel for the ‘Petitioner’ / ‘Appellant’ submits that the instant Comp App (AT) (CH) (Ins) No.448/2022, is preferred by the ‘Appellant’ with a ‘Delay’ of ‘25 Days’ and hence, the ‘Appellant’, as ‘Petitioner’, has preferred an IA No. 1138/2022 in Comp App (AT) (CH) (Ins) No.448/2022, seeking to ‘Condone the Delay’ of ‘25 Days’, in preferring the instant Comp App (AT) (CH) (Ins) No.448/2022, in the interest of ‘Justice’.

3. Advancing his ‘Argument’, the Learned Counsel for the ‘Petitioner’ / ‘Appellant’, points out that the ‘impugned order’, was passed by the ‘Adjudicating Authority’, (National Company Law Tribunal, Bengaluru Bench, Bengaluru), on 08.06.2022, in CP (IB) No.37/BB/2021 under Section ‘7’ of the ‘Insolvency & Bankruptcy Code, 2016’, against the ‘Corporate Debtor’, because of the ‘Default’, amounting to a sum of Rs.10,95,01,185/-. It is not ‘in dispute’ that the instant Comp App (AT) (CH) (Ins) No.448/2022 was filed before the ‘Office of the Registry’, of this ‘Tribunal’ on 03.08.2022, (bearing ‘Bharath Kosh’ ID No.0308220022486) wherein Rs.5,000/-, (Rupees Five Thousand Only), was paid by the ‘Appellant’.

4. Admittedly, the ‘impugned order’ in CP (IB) No.37/BB/2021 came to be passed on 08.06.2022, by the ‘Adjudicating Authority’, (National Company Law Tribunal, Bengaluru Bench, Bengaluru), and according to the ‘Petitioner’ / ‘Appellant’, the ‘Certified Copy’ of the above ‘impugned

order’ was applied on 21.07.2022 and the ‘Appellant’, was provided with a ‘Certified Copy of the same’, on 26.07.2022.

5. Considering the fact that the ‘Petitioner’ / ‘Appellant’ has preferred the instant Comp App (AT) (CH) (Ins) No.448/2022 with a ‘Delay’ of ‘25 Days’ and, in this regard, this ‘Tribunal’, keeping in mind, the ‘prime fact’ that as per Section 61 (1) of the ‘Insolvency & Bankruptcy Code, 2016’, an ‘Appeal’, can be preferred by an ‘Aggrieved person’, in respect of an ‘Order’ passed by the ‘Adjudicating Authority’, (National Company Law Tribunal), within ‘30 Days’, before the ‘National Company Law Appellate Tribunal’ . However, as per Section 61 (2) of the ‘Insolvency & Bankruptcy Code, 2016’, if a ‘party’ / a ‘person’ is able to ‘exhibit’, before this ‘Appellate Tribunal’, that there was ‘sufficient cause’ for not filing the ‘Appeal’, within such period, shall not exceed ‘15 Days’. In fact, the ‘outer limit’ will be 30 + 15 + ‘45 Days’, in preferring an ‘Appeal’, by an ‘Aggrieved’ / ‘Affected party’, in respect of an ‘Order’ passed by the ‘Adjudicating Authority’ (‘Tribunal’).

6. It is to be borne in mind, that the ‘procedural formalities’ (including the ‘time limit’), enshrined under the ‘Insolvency & Bankruptcy Code, 2016’, ought to be followed in true ‘letter and spirit’, because of the fact that ‘Speed’ is essence of the ‘Insolvency & Bankruptcy Code, 2016’.

7. **Rules of Limitation :** There is no ‘second opinion’ of an ‘established fact’, that the ‘Rules of Procedure’, do not create any right to and in favour of a ‘person’, and further, it do not create ‘Cause of Action’, as opined by this ‘Tribunal’. If a ‘certain remedy’, is to be exercised in respect of a ‘Statute’ in a particular manner and time, then, it has to be followed, and the same cannot be done, in any other manner.

8. Be that as it may, the ‘Appellate Tribunal’ has no ‘power’ to condone the ‘Delay’ after $30 + 15 = 45$ Days’ and in the instant Comp App (AT) (CH) (Ins) No.448/2022 came to be filed on 55th day, which is beyond the ‘permissible limit’, provided under the ‘Insolvency & Bankruptcy Code, 2016’. This ‘Tribunal’, is not to extend its ‘Judicial arm of generosity, considering the fact that the ‘Insolvency & Bankruptcy Code, 2016’, is a self-contained and inbuilt one. Also an invocation of Section 12 of the ‘Limitation Act’, 1963, will be of no assistance to the ‘Petitioner’ / ‘Appellant’ because of the ‘overriding effect’ of the ‘ingredients of Section 238 of the ‘Insolvency & Bankruptcy Code, 2016’.

9. Looking at from any angle, the ‘Delay of 25 Days’, which is beyond the ‘permissible limit’ of ‘45 Days’, ‘Outer Limit (30 + 15), as per Section 61 of the ‘Insolvency & Bankruptcy Code, 2016’, is not to be ‘condoned’ by this ‘Tribunal’, because of the ‘simple fact’ that there is no ‘Power’,

enjoined upon this ‘Tribunal’, to ‘condone the delay of 25 Days’ in IA No.1138/2022 in Comp App (AT) (CH) (Ins) No.448/2022 (Admittedly beyond the ‘permissible limit’ of 45 Days), as mentioned ‘supra’. Viewed in that perspective, IA No.1138/2022 in Comp App (AT) (CH) (Ins) No.448/2022, sans merits and the same fails.

In fine, the IA No.1138/2022 in Comp App (AT) (CH) (Ins) No.448/2022 is ‘**dismissed**’. No Costs.

Comp App (AT) (CH) (Ins) No.448/2022
(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)
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... Appellant

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... Respondent

ORDER

(Virtual Mode)

12.01.2023: Consequent to the ‘dismissal’ of IA No. 1138/2022 in Comp App (AT) (CH) (Ins) No.448/2022, the instant Comp App (AT) (CH) (Ins) No.448/2022 is not entertained by this ‘Tribunal’, and the same is **‘Rejected’**. No Costs.

[Justice M. Venugopal]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

ghk/tm