

(2025) 03 NCLAT CK 0004

National Company Law Appellate Tribunal New Delhi

Case No: I.A. No. 8815,8811 of 2024 In Company Appeal (AT) (Insolvency) No. 2350,2351 of 2024 I.A. No. 7495 of 2024

M/s. Daimler Financial Services
India Private Limited Vs Mr. Ashish
Alex

APPELLANT

Vs

RESPONDENT

Date of Decision: March 26, 2025

Acts Referred:

- Insolvency and Bankruptcy Code 2016 — Section 61, 65

Hon'ble Judges: Ashok Bhushan, Chairperson; Barun Mitra, Member (T); Arun Baroka, Member (T)

Bench: Full Bench

Advocate: Arjun Sheth, Rajiv Chawla, Kriti Kothari , Henna George, Palash S. Singhai , Harshal Sareen

Final Decision: Dismissed

Judgement

[Per: Arun Baroka, Member (Technical)]

The present Appeal has been preferred seeking to set aside the order dated 26.04.2024 passed by the Hon'ble National Company Law Tribunal, Ahmedabad Bench in CP(IB) No. 300 of 2022 with IA No. 85 of 2024 in CP(IB) No. 300 of 2022 wherein the Hon'ble AA vide the impugned order had allowed the insolvency petition being CP(IB) No. 300 of 2022 which was filed by the Respondent no. 1 herein and rejected the Application being IA No. 85 of 2024 in CP(IB) No. 300 of 2022 which was filed by the Appellant herein under Section 65 of the Insolvency and Bankruptcy Code, 2016, inter alia, on the

ground that the Ld. AA has no jurisdiction to deal with the said matter.

2. Company Appeal (AT) (Insolvency) No. 2350 of 2024 and Company Appeal (AT) (Insolvency) No. 2351 of 2024 are related and they have been taken up together.

3. With respect to the condonation of delay of 15 days in I.A. No. 8834 & 8835/2024, the matter was taken up on 21.03.2025 and 15 days delay in filing the Appeal was condoned.

4. I.A. No. 8815 & 8811/2024 are applications praying for condonation of 160 days delay in refiling of the appeal, which have been taken up in this order.

5. The I.As. No. 8815 & 8811 of 2024 relating to refiling delay are being taken up herein, which relate to the refiling delay in I.A. No.8815 of 2025. The Appellant has provided explanation at paragraphs 2 to 4 which is extract below:

" ...

2. That the Applicant most humbly states and submits that Insolvency Petition originally preferred by the Respondents before the Ld. Adjudicating Authority contained documents/annexures which were not properly legible. That for preferring the appeal, the better copies were required to be filed.

3. It is most humbly submitted that most of the annexures to the insolvency petition filed by the respondent herein before Ld. Adjudicating Authority were to be perused and a better copy of the same were required to be filed. That better copies of documents of more than 200 pages were required to be filed therefore, the original sets of the documents were to be procured and thereafter the copies of the same were required to be filled.

4. That since time was concurred in procurement of the original documents and thereafter coordination between the appellant and counsel for the appellant for filing of the said documents there was a delay in refiling of the appeal."

6. The Respondent No.1 has vehemently opposed the grounds cited by the Appellant seeking condonation of delay in refiling of the appeal. It claims that delay was for an inordinate long period of 160 days and does not deserve condonation as no substantial reasoning has been provided in the application. It also claims that the Appeal has still been listed with defects, which shows that despite taking various opportunities, the appellant has failed to refile the defect free appeal and is still seeking condonation of delay in refiling, which is not permissible.

7. Respondent claims that the Appellant herein has made a cooked-up story, with no substantial proof annexed with the Application, in order to hide its negligence in filing the Appeal in a timely manner and further lax in curing the defects of the Appeal. It is

claimed that the Applicant made an attempt to mislead this Hon'ble Appellate Tribunal in order to escape the rigid timelines prescribed under the Code. The only reason for the delay as provided by the Appellant is the time consumed in taking legal opinion and coordinating with the counsels in Ahmedabad and Delhi. It is also contended that the said reasons cannot be termed sufficient cause for the purpose of condonation of delay as these are the generic excuses which parties adopt without any sufficient backing and evidence.

8. It is claimed that time is of essence in CIRP proceedings has also been reiterated in several judgments of the Hon'ble Supreme Court. The Respondent herein places its reliance upon the case of V. Nagarajan v. SKS Ispat and Power Ltd. And Others (2022) 2 SCC 244, wherein the Hon'ble Supreme Court has observed as follows:

"....

25. The law on limitation with respect to IBC is settled and emphatic in its denunciation of delays. The power to condone delay is tightly circumscribed and conditional upon showing sufficient cause, even within the period of delay which is capable of being condoned. IBC is a watershed legislation which seeks to overhaul the previous bankruptcy regime which was afflicted by delays and indefinite legal proceedings. IBC sought to structure and streamline the entire process of insolvency, right from the initiation of insolvency to liquidation, as a one-stop mechanism."

9. It is also contended that the Hon'ble Supreme Court has denounced delay in filing litigation and held the power to condone delay is to be tightly circumscribed and conditional only, upon showing sufficient cause, which is glaringly amiss in the present case. It is submitted that the overall purpose of specifying a stringent time frame under the Code has to be kept uppermost in mind. It is further submitted that the Applicant/Appellant has filed the instant frivolous Appeal, coupled with the delay of 15 days in filing the Appeal on account of casual approach of the Applicant/Appellant. It is incumbent to mention herein that the Appellant herein, malevolently attempted to delay the proceedings till the last date (45th day) meriting baseless and frivolous grounds which are unfounded. The Appellant strategically attempted to manoeuvre the timelines prescribed under Section 61(2) of the Code in a manner to benefit their own cause under the guise of technical restraints and non-availability of documents. Additionally, the lackadaisical and cavalier approach of the Appellant is highlighted by the fact that not only he waited till the 45th day for filing of the Appeal, more so, the refiling was advertently delayed by 161 days which is against the spirit and objective of the Code and further showcases the negligent and causal approach of the Appellant/Applicant in pursuing the instant litigation. Further, it is submitted that the Appellant herein also failed to provide any specific details with any proof to substantiate the nature of technical constraints faced by the Applicant pursuant to

which the Appellant failed to file the instant Appeal in a timely manner. It is further contended by the Respondent that the Applicant has also failed to provide as to what steps were taken, as an abundant caution to overcome the technical bottlenecks by the Applicant, to which no proof has been annexed by the Applicant/Appellant to the instant Application. It is claimed that the averment made by the Applicant has no leg to stand upon.

10. We have heard both sides and perused materials placed on record. We find that the impugned order was passed on 26.04.2024 and the appeal was filed on the 45th day and the appellant has sought condonation of 15 days delay, which was condoned. On condoning the refiling delay of 160 days explanation provided by the Appellant does not inspire much confidence. The Appellant was intimated about the defects on 02.07.2024. As per Rule 26 of National Company Law Appellate Tribunal Rules, 2016 defects were to be removed within 7 days from the date of receipt of the notification of defects. But the defects were finally cured on 16.12.2014 which is a delay of almost 160 days. We find that the appellant has been sitting tight and was not pursuing his case for curing the defects. The explanation provided is not sufficient to condone the delay in refiling. Even now the case has been taken up with defects. If the appellant was not able to cure the defects, he could have mentioned the matter before this Tribunal for listing it with defects on an earlier date also. We find that the appellant has been negligent in prosecuting the removing the defects, which indicates that he was not diligent. Thus, we find that the delay in refiling for 160 days is not explained satisfactorily. Keeping the provisions of the IBC, 2016 in mind which aims to complete all proceedings in a time bound manner, the cause shown for refiling of the case is not sufficient.

Orders:

11. Under these circumstances, we conclude that sufficient cause has not been shown for the condonation of delay of 160 days. Accordingly, the condonation of delay Application I.As. No. 8815 & 8811 of 2024 are dismissed. Consequently, the present Company Appeal (AT) (Insolvency) No. 2350 & 2351 of 2024 are also dismissed.