IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 209
(IB)-418(ND)18
IA-166/2023, IA-3983/2020,
CA-1297/2020, Comp. Appeal No-36/2022

IN THE MATTER OF:
M/s. Alloys & Metals (India) ... **Applicant/Petitioner**

Versus

M/s. Hindustan Paper Corporation Ltd. ... **Respondent**

Under Section: 9 of IBC, 2016

Order delivered on 17.05.2023

CORAM:
SHRI. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)
SHRI. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:
For the Liquidator : Sr. Adv. Vivek Sibal, Adv. Ayush Bhatia, Adv. Rahul Sharma
For the UPSIDA : Adv. Rajesh Raina, Adv. Rehmat Ali
For the EPFO : Adv. Rajesh Kumar a/w Adv. Mishal Vij SC

ORDER

IA-166/2023: Indubitably, the IA has been preferred by the Employees Provident Fund Organisation i.e., an instrumentality of the State. Indubitably, there is a delay of 49 days in filing the Company Appeal No. 36/2022. Ld. Counsel appearing for the Applicant espoused that it was in view of the involvement of administrative mechanism that the appeal could not be filed within 14 days. Mr. Vivek Sibal Ld. Sr. Counsel appearing for the Liquidator submitted that the application is quite vague and there is no explanation for the delay. The only reason we find in the application as espoused by the Ld. Counsel for the Applicant is that the time could be consumed in following the administrative process in filing the application. It is stare decisis that when a judicial proceeding is initiated or instituted on behalf of the State or its instrument the decision in this regard does not rest with any single individual and it is a mechanism which is involved with the decision-making process and the process avoidably take some time. The issue was addressed by the Hon'ble Supreme Court in "State of Bihar vs. Kameshwar Prasad Singh" (Civil Appeal No. 3005 of 2000) wherein it was ruled that the yardsticks which are applicable to an individual while considering an application for condonation of delay may not be applied to state and such applications moved by the State

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need to be looked at differently, as there is public interest involved in filing such application. The relevant excerpts of the judgement read thus:

> *11. "It is notorious and common knowledge that delay in more than 60 per cent of the cases filed in this Court - be it by private party or the State - are barred by limitation and this Court generally adopts liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits. It is equally common knowledge that litigants including the State are accorded the same treatment and the law is administered in an even-handed manner. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay - intentional or otherwise - is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression 'sufficient cause' should, therefore, be considered with pragmatism in justice-oriented process approach rather than the technical detention of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of pragmatic approach injustice-oriented process. The Court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the Courts or whether cases require adjustment and should authorise the officers to take a decision or give appropriate permission for settlement. In the event of decision to file the appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants.*

To the same effect is the judgment of this Court in Special Tehsildar, Land Acquisition, Kerala v. K.V. Ayisumma

13. In Nand Kishore v. State of Punjab this Court under the peculiar circumstances of the case condoned the delay in approaching this Court of about 31 years. In N. Balakrishnan v. M. Krishnamurthy this Court held that the purpose of Limitation Act was not to destroy the rights. It is founded on public policy fixing a life span for the legal remedy for the general welfare. The primary function of a Court is to adjudicate disputes between the parties and to advance substantial justice. The time limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. The object of providing legal remedy is to repair the damage caused by reason of legal injury. If the explanation given does not smack mala fides or is not shown to have been put forth as a part of a dilatory strategy, the Court must show utmost consideration to the suitor. In this context it was observed: SCC p.127, para 9)

"9. It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncontainable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior Court would be free to consider the cause shown for the delay afresh and it is open to such superior Court to come to its own finding even untrammelled by the conclusion of the lower Court."

14. Looking into the facts and circumstances of the case, as noticed earlier and with the object of doing substantial justice to all the parties concerned, we are of the opinion that sufficient cause has been made out by the petitioners which has persuaded us to condone the delay in filing the petitions. Dismissing the appeals on technical grounds of limitation would not, in any way, advance the interests of justice but admittedly, result in failure of justice as the impugned judgments are likely to affect not only the parties before us, but hundreds of other persons who are stated to be senior than the respondents. The technicalities of law cannot prevent us from doing substantial

justice and undoing the illegalities perpetuated on the basis of the impugned judgments. However, while deciding the petitions, the reliefs, in the case can appropriately be moulded which may not amount to unsettle the settled rights of the parties on the basis of judicial pronouncements made by the Courts regarding which the State is shown to have been careless and negligent. It is paramount consideration of this Court to safeguard the interests of all the litigants and persons serving the Police Department of the State of Bihar by ensuring the security of the tenure and non-disturbance of accrual of rights upon them under the prevalent law and the rules made in that behalf. Accordingly delay in filing the petitions is condoned."

In view of the aforementioned judgment of the Hon'ble Supreme Court, the IA-166/2023 is allowed and the delay in filing the Company Appeal No. 36/2022 is condoned.

With this, the present IA stands allowed.

CA-36/2022: The prayer made in the application reads thus:

> *"a. Allow the instant appeal; and;*
>
> *b. Set aside the letters dated 12.05.2022 and 24.05.2022 issued by the Respondent Liquidator rejecting the claim of the Appellant for PF dues beyond Rs 120.77 Crores; and*
>
> *c. Direct the Respondent liquidator to accept the entire claim of Rs. 386.48 Crores made by the Appellant for the PF dues of the Corporate Debtor as detailed in its letter dated 31.01.2022."*

When it is the plea espoused on behalf of the Applicant that the total dues payable by the CD to EPFO are Rs. 386.48 crores, the Ld. Counsel appearing for the Respondent/Liquidator submitted that on verification of the record and examination of the applicable legal position, the Liquidator could find that the amount contributable to EPFO for the relevant period was only Rs. 120.77 crores, as communicated to the Applicant vide letters dated 12.05.2022 and 24.05.2022.

We have heard the Ld. Counsels for the parties and perused the record. As can be seen from the impugned order dated 24.05.2022, the Liquidator had examined the claim of the Applicant herein, and having examined the same, he could take a view that the claim admissible is only to the extent of Rs. 120.77 crores and not the amount as claimed by the Applicant. The Liquidator also gave an opportunity to the Applicant herein to file proper calculations in support of the claim espoused by it. Subsequently, when the Applicant had

furnished the calculation to the Liquidator in terms of the letters dated 31.01.2022 & 30.05.2022, the Liquidator could address to the plea espoused therein and could pass the impugned order.

Arguments heard. **Order reserved.**

IA-3983/2020: Ld. Counsel appearing for the Liquidator submitted that the Liquidator is in talks with UPSIDC and is expecting a favourable view at their end. Having submitted so, he prayed for a short adjournment. Allowed.

List on 11.07.2023.

CA-1297/2020: Ld. Sr. Counsel appearing for the Applicant submitted that he could receive a copy of the reply only yesterday and prayed for an opportunity to file a rejoinder thereto within one week. Allowed.

List on 11.07.2023.

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(L. N. GUPTA)
MEMBER (T)

-Sd-

(ASHOK KUMAR BHARDWAJ)
MEMBER (J)

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