

Wadhwa Rubber v. Bandex Packaging Pvt. Ltd.

Wadhwa Rubber

...Appellant

Bandex Packaging Pvt. Ltd.

...Respondent

Case No: Company Appeal (AT) (Ins.) No. 576 OF 2021

Date of Judgement: 24.08.2022

Judges:

Justice Rakesh Kumar Jain – Member (Judicial)

Dr. Alok Srivastava – Member (Technical)

For Appellant: Mohit Agarwal, Advocates.

For Respondent:None.

Facts:

Wadhwa Rubber (Appellant) had filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 against Bandex Packaging Pvt. Ltd. (Respondent) before the National Company Law Tribunal (NCLT).The NCLT dismissed the application on 08.01.2020. The Appellant applied for a certified copy of the dismissal order on 10.02.2021, after almost a year.The certified copy was prepared on 17.02.2021 and collected by the Appellant on 06.04.2021. The Appellant filed the appeal before the National Company Law Appellate Tribunal (NCLAT) on 04.08.2021.

NCLAT's Opinion:

The NCLAT noted that the appeal was filed beyond the limitation period of 30 days under Section 61 of the Code.It

observed that the Appellant was aware of the dismissal order but did not apply for a certified copy for over a year on the pretext that it had to be supplied free of cost. The NCLAT held that the delay in filing the appeal could not be condoned as no sufficient cause was shown. It stated that limitation runs from the date of preparation of the certified copy, i.e. 17.02.2021, and not from the date of its delivery. The NCLAT dismissed the appeal as barred by limitation.

Sections Referred:

Section 9 of the Insolvency and Bankruptcy Code, 2016 – Initiation of corporate insolvency resolution process by operational creditor

Section 61 of the Insolvency and Bankruptcy Code, 2016 – Appeals and Appellate Authority

Case Laws Referred:

No case laws were referred in the order.

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Full Text of Judgment:

1. This appeal is directed against the order dated 08.01.2020 by which an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') has been dismissed.
2. We have found from the record that the Appellant had applied for the certified copy of the order dated 08.01.2020 on 10.02.2021 i.e. almost after a year. The

copy of the order was prepared on 17.02.2021. It was taken by the Appellant on 06.04.2021 and then the appeal is filed on 04.08.2021. During the Course of the hearing, the Appellant was asked as to why the appeal was not filed within 30 days from the date of the order dated 08.01.2020. In this regard, he submitted that the copy which is to be given free of cost was not supplied and therefore, the certified copy was applied on 10.02.2021 and when it was delivered, the appeal was filed which is within limitation.

3. We have heard Counsel for the Appellant and perused the record.

4. The application filed under Section 9 of the Code by the Appellant was dismissed on 08.01.2020. It cannot be imagined that the factum of dismissal of the application was not within the knowledge of the Appellant who was represented by the Counsel. Despite that, the Appellant did not care to apply for the certified copy for over a year and has made a lame excuse that it was to be supplied free of cost. However, the certified copy appears to have been applied on 10.02.2021 and was prepared on 17.02.2021 but the Appellant spent almost two months even in taking the certified copy from the Tribunal. It is well settled that the limitation is to be counted not from the date of delivery of the certified copy but from the date of preparation of the certified copy. In this case it was prepared on 17.02.2021 and if the limitation is to be counted from 17.02.2021 the same had expired much earlier than the date of filing of the appeal on 04.08.2021.

5. Thus, looking from any angle, the appeal filed by the Appellant is without limitation provided under Section 61 of the Code of a period of 30 days and Section 61(2) proviso an additional period of 15 days for which discretion is granted to the Appellate Authority to condone only on being satisfied that there is a sufficient cause for condonation of delay.

6. In view of the aforesaid facts and circumstances, the present appeal is hereby dismissed as being barred by limitation.