

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

I.A. No. 29 of 2018
AND
Company Appeal (AT) (Insolvency) No. 14 of 2018

IN THE MATTER OF:

Elecon Engineering Co. Ltd.

...Appellant

Versus

Ducon Technologies (I) Pvt. Ltd.

...Respondent

Present:

For Appellant : **Shri Priyam Shah, Advocate**

For Respondent : **Shri Rakesh Sinha and Shri Arjun Harkauli,**
Aadvocates

O R D E R

12.01.2018 The appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'I & B Code') has been preferred by the appellant (Operational Creditor) against the order dated 2nd November, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench in C.P. No. 1317/I&BP/NCLT/MAH/2017 whereby and whereunder the application preferred by the appellant under Section 9 of the I & B Code has been rejected.

2. An application for condonation of delay has also been filed and stated that there is a delay of 15 days delay in preferring this appeal. Learned counsel appearing on behalf of the respondent submitted that the delay is more than 15

days, which cannot be condoned and appropriate ground has not been shown to condone the delay.

3. We have heard the learned counsel for the appellant and the respondent both on the question of condonation of delay and on merit.

4. From the record we find that free certified copy of the impugned order dated 2nd November, 2017 was supplied to the appellant on 15th November, 2017 who was required to file the appeal within 30 days i.e. by 15th December, 2017. However, the appeal has been filed on 2nd January, 2018.

Learned counsel for the appellant submits that this Appellate Tribunal was closed during Winter Vacation but we notice that the Court was closed from 23rd December, 2017 but the Registry was open which closed from 28th December, 2017. However, even if we accept the submission made on behalf of the appellant that re-opening of 2nd January, 2018 as the last date of filing the appeal, we find no good and convincing ground has been shown to condone the delay.

5. Apart from the aforesaid fact, we find that there is an 'existence of dispute' pending even before the issuance of demand notice under sub-section (1) of Section 8 of the I & B Code, as noticed by the Adjudicating Authority and quoted below:

"In another email dated 8.7.2015 come from the corporate debtor to the petitioner discloses that a statement of accounts has been furnished to the petitioner incorporating the actual cost incurred by the debtor due to the delay in replacing the pipe conveyor belts at Mahan site and inviting commercial person from the petitioner

side to understand the details of debit notes and the cost incurred by the corporate debtor. To which the answer from the petitioner in email dated 7.7.2015 is that the petitioner also incurred losses, meaning thereby the corporate debtor already incurred losses. In a letter dated July 3, 2015, written by the debtor to Aditya reflects that the debtor forwarded statement of Account along with a final payment to be made to the petitioner was Rs. 18,18,369 subject to confirmation of receipt of PBG (Performance Bank Guarantee).”

6. In view of ‘existence of dispute’, we are not inclined to interfere with the impugned order. In absence of any merit also, the appeal is dismissed. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/uk