

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 510 of 2018**

**IN THE MATTER OF:**

**Mr. Vimal Saraf & Ors.**

**...Appellants**

**Versus**

**M/s. Maheshwar Textile & Anr.**

**...Respondents**

**Present:**

**For Appellant :           Mr. Naresh Kumar Sejvani, Advocate**

**For Respondents :       Mr. Abhishek Anand, Advocate**

**ORDER**

**04.09.2018**       This appeal has been preferred by the shareholder against the order dated 13<sup>th</sup> June, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench with a petition for condonation of delay. Learned counsel appearing on behalf of the appellant submits that one of the appellant came to know of the order on 19<sup>th</sup> June, 2018 and the other appellant came to know about the order on 31<sup>st</sup> July, 2018. Certified copy of the order applied on 31<sup>st</sup> July, 2018 and received on 29<sup>th</sup> August, 2018. The appeal has been preferred thereafter on 29<sup>th</sup> August, 2018.

From the submission made by the learned counsel for the appellant, we find that the 1<sup>st</sup> appellant had knowledge since 19<sup>th</sup> June, 2018 and was required to file appeal within thirty days and thereafter fifteen days could have allowed to file an appeal, but he has not filed the appeal till 29<sup>th</sup> August, 2018, therefore appeal at his instance is barred by limitation.

Insofar as the 2<sup>nd</sup> appellant is concerned, he has come along with 1<sup>st</sup> appellant, but nothing has brought on record to show that he came to know the order of 13<sup>th</sup> June, 2018 on 31<sup>st</sup> July, 2018 particularly when other appellant had knowledge on 19<sup>th</sup> June, 2018. However, going into the aforesaid plead, we decided to hear the appeal on merit.

Learned counsel appearing on behalf of the respondent submits that 'Corporate Debtor' initially moved appeal against the same very impugned order in '*Company appeal (AT)(Insolvency) No. 314 of 2018*' which was dismissed by this Appellate Tribunal on 31<sup>st</sup> July, 2018 as not maintainable. On merit also, this Appellate Tribunal was not inclined to interfere with the order.

Learned counsel appearing on behalf of the appellants submits that the application under Section 9 of the I&B Code was filed by M/s. Maheshwar Textiles (HUF) in view of arbitral award dated 19<sup>th</sup> August, 2009. From the record we also find that the Arbitration case in Case No. A-1/2009-2010 was filed by 'M/s. Maheshwar Textiles'. The earlier application under Section 9 was also filed by 'M/s. Maheshwar Textiles'. We are not inclined to accept the submission made on behalf of the appellant that 'M/s. Maheshwar Textiles' is different from 'M/s. Maheshwar Textiles (HUF)'. In fact it is a proprietary HUF firm. The application under Section 9 was filed by 'M/s. Maheshwar Textiles' and HUF being the proprietor has been mentioned in the bracket. A firm which starts with 'Messrs' cannot be a Hindu Undivided Family. It being a firm has preferred the application. Otherwise it is to be treated as typographical error because of the dues has been shown in the enclosure in para 4 and 5 i.e. 'debt' and 'default' which relates to 'M/s. Maheshwar Textiles'. At this stage, we may

mention that earlier also 'M/s. Maheshwar Textiles' filed an application under Section 9 of the I&B Code, which was admitted. It was challenged by the 'Corporate Debtor' – 'Zapp India Ltd.' before this Appellate Tribunal. It is only on technical ground that Notice under Section 8(1) was issued by an advocate, this Appellate Tribunal by order dated 22<sup>nd</sup> September, 2017 in '*Company Appeal (AT)(Insolvency) No. 157 of 2017*' set aside the order of admission. Therefore, 'M/s. Maheshwar Textile' filed the fresh application under Section 9 in which again a technical ground has been taken by shareholder, that it is a different firm i.e. 'M/s. Maheshwar Textile (HUF)', such submission is rejected. In absence of any merit, the appeal is dismissed. No cost.

I.A. No. 1318 of 2018 also stands disposed of.

[Justice S.J. Mukhopadhaya]  
Chairperson

[ Justice Bansi Lal Bhat ]  
Member (Judicial)

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