

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) Nos. 578 & 584 of 2018

IN THE MATTER OF:

Dinesh Kumar & Ors.

...Appellants

Versus

Kalyanpur Cements Ltd.

...Respondent

Present:

For Appellants : **Mr. Kapil Sankhla, Mr. Mayank Wadhwa, Mr. Sumit
and Ms. Kritika Nagpal, Advocates**

ORDER

25.09.2018 The appellant has preferred the appeal against two different sets of orders in common appeal and they are liable to pay two sets of fee. It is informed that the parties have already paid two sets of Court fee. If that be so, office is directed to provide two different number of appeals.

2. Learned counsel appearing on behalf of the appellant submits that the appellants had no knowledge about the impugned order dated 31st January, 2018 which they came to know on 4th February, 2018 whereinafter the review application was filed which has been rejected by the Adjudicating Authority by order dated 11th June, 2018. Thereafter, the certified copy of the order has been obtained on 5th July, 2018, followed by appeal preferred on 26th July, 2018. Prayer has been made to exclude the period of pendency of the review petition in terms of Section 14 of the Limitation Act, 1963.

3. In the present case, one of the impugned order was passed on 31st January, 2018 and the appellant had knowledge of the same on 6th February, 2018. In terms of sub-section (2) of Section 61, the limitation could have been condoned if the appeal had been filed within 15 days after expiry of 30 days. The 30 days of appeal expires on 2nd March, 2018 and if 15 days is added then it expired on 17th March, 2018. As the said date i.e. 17th March, 2018, the provision of Limitation Act having not made applicable to the I&B Code, the Appellate Tribunal is not entitled to exclude the period and in absence of any power delegated in terms of sub-section (2) of Section 61. Therefore, the prayer for condonation of delay in preferring the appeal against the order (31.01.2018) is rejected. The appeal against the order dated 31st January, 2018 being barred by limitation is dismissed.

4. Insofar as the order dated 11th June, 2018 is concerned, the appeal has been filed within the time.

5. Learned counsel appearing on behalf of the appellant referring to an order dated 31st January, 2018 submitted that by the said order the Adjudicating Authority approved the 'Resolution Plan' submitted by Dalmia Cement (Bharat) Ltd. It is submitted that one of the member of the 'Committee of Creditors' namely 'Kampilya Builders Pvt. Ltd.' was a related party to the 'Corporate Debtor' having 4.2% voting share. Therefore, the constitution of 'Committee of Creditors' was wrong which resulted in wrong approval of the 'Resolution Plan'.

6. In the present case, it is not in dispute that the 'Resolution Plan' was approved with 100% of the voting share of the 'Committee of Creditors'. Even for the sake of argument, we accept that 'Kampilya Builders' was a related party (though we are not holding so without hearing the parties) in such case if 4.2%

shareholding is excluded for counting the voting share, it will be 95.8% voting share by which 'Committee of Creditors' approved the plan. Further order of approval of plan by Adjudicating Authority being not under challenge, no relief can be granted. We find no merit in other appeal also. The said appeal is also dismissed. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/gc/