

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

**Company Appeal (AT) (Insolvency) No. 121 of 2020**

**IN THE MATTER OF:**

Radhika Mehra ...Appellant  
Versus  
Vaayu Infrastructure LLP & Ors. ...Respondents

**Present**

**For Appellant: Mr. Abhinav Vashisth, Senior Advocate with Ms. Varsha Banerjee and Ms. Rekha Dwivedi, Advocates.**

**For Respondents: Mr. Satendra K. Rai, Advocate for Respondent No.1.  
Mr. Shailen Shah, Resolution Professional.  
Mr. R. Sudhinder and Ms. Ekta Bhasin, Advocates for Respondent No.2.**

**O R D E R**

**30.01.2020** Vejas Power Projects Ltd. ('Financial Creditor') moved Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short the 'I&B Code') against Vaayu Infrastructure LLP. ('Corporate Debtor') before the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, which, by impugned order dated 30<sup>th</sup> August, 2019 admitted the Application. The Appellant, Partner of Vaayu Infrastructure LLP ('Corporate Debtor') moved before the Hon'ble High Court of Judicature at Mumbai in Writ Petition (Lodging) No.3498 of 2019, wherein the following order was passed

*"1. Heard both sides. On instructions, Mr. Nankani, learned Senior Advocate appearing for the petitioner, seeks leave to withdraw the Writ Petition with liberty to file an appeal before the NCLAT (National Company Law Appellate Tribunal) and to raise all contentions therein including that the impugned order is a nullity for it does*

*not comply with the National Company Law Tribunal Rules.*

*2. Leave granted. Writ Petition is, therefore, dismissed as withdrawn with liberty to file an appeal and to raise all contentions including the one noted above. We clarify that we have not expressed any opinion either way on the contentions of the parties.”*

2. In view of such liberty given by the Hon'ble High Court of Bombay, the present Appeal has been preferred with the Petition for exclusion the period under Section 14 of the Limitation Act, 1963, which reads as:-

**“14 Exclusion of time of proceeding bona fide in court without jurisdiction.** — (1) *In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.*

*(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.*

*(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in*

*relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.*

*Explanation.— For the purposes of this section,—*

- (a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;*
- (b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;*
- (c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.”*

3. Section 14 of the Limitation Act relates to exclusion of time of proceeding *bona fide* in court without jurisdiction, but it relates to period of limitation for any suit the time during which the plaintiff had been prosecuting with due diligence another civil proceeding. The other provision of Section 14 of the Limitation Act cannot be made applicable in this Appeal preferred under Section 61 of the I&B Code.

4. Section 238A of the I&B code, which deals with limitation is as under:-

**“238A. Limitation.**—*The provisions of the Limitation Act, 1963 (36 of 1963) shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be.”*

5. If we apply the provision of Section 5 of the Limitation Act, this Appellate Tribunal has the power to admit an Appeal after the prescribed period, if the Appellant satisfies this Appellate Tribunal that he had sufficient cause for not preferring the Appeal within such period. Section 5 of the Limitation Act is as under:-

**“5. Extension of prescribed period in certain cases.**

— Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

*Explanation.— The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.”*

6. In this background, learned Counsel for the Appellant requested to extend the prescribed period under Section 5 of the Limitation Act for the reasons recorded above.

7. Section 61(2), which provides limitation to prefer an Appeal under the I&B Code reads as under: -

**“61. Appeals and Appellate Authority.—(1)**

*Notwithstanding anything to the contrary contained under the Companies Act 2013 (18 of 2013), any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.*

*(2) Every appeal under sub-section (1) shall be filed within thirty days before the National Company Law Appellate Tribunal:*

*Provided that the National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed fifteen days.”*

8. Section 238 of the Code makes it clear that the provision of the Code will override other laws. Therefore, we hold that Section 61(2) will override Section 5 of the Limitation Act.

9. In the aforesaid circumstances, as the Appeal is filed after 30 days and beyond 15 days thereafter, i.e., after 45 days of the date of the receipt/knowledge of the order, we hold that we have no jurisdiction to entertain the Appeal.

10. Learned Counsel for the Appellant informed that another Appeal being Company Appeal (AT) (Insolvency) No.1069-1070 of 2019 has already been preferred against the same impugned order dated 30<sup>th</sup> August, 2019 and notice has been issued in that case. If that be so, it will be open to the Appellant to intervene in the said Appeal in support of the Appellant of the said Appeal and may raise all the issues.

11. The Appeal stands disposed of with the aforesaid liberty. No costs.

[Justice S. J. Mukhopadhaya]  
Chairperson

[Shreesha Merla]  
Member (Technical)

Ash/GC