

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Un-numbered Company Appeal (AT) (Insolvency) No. /2018
(F.No.02/06/2018/ NCLAT/UR/559)

In the matter of:

The Board of Trustees for the Port
of Kolkata, Rep. by its
Constituted Attorney & Anr. Appellants

Versus

Stewarts and Lloyds of India Ltd. Respondent

Appearance: Mr. T. Harish Kumar, Advocate for the Appellant.

11.07.2018

The aforesaid Appeal under Section 61 of the I&B Code, 2016 (hereinafter referred to as the Code) is against the order dated 04.05.2018 in CA (IB) No.225/KB/2018 of the Hon'ble NCLT, Kolkata Bench.

2. In pursuant to the order dated 10.07.2018, the Office has re-submitted the report and from the perusal of the report of the Office, it appears that the impugned order was passed on 04.05.2018, whereas the Memo of Appeal was presented on 02.07.2018. According to the report of the Office, the Appeal is barred by limitation because the Appellants were required to file the Appeal within 30 days as provided under the I&B Code and the 30 days had expired on 05.06.2018, whereas the Appeal was presented on 02.07.2018. The Office has referred page 153 of the Memo of Appeal, which relates to the application filed by the Advocate on record, in which, it has been stated that the impugned order was passed on 04.05.2018 and the limitation expired during the summer vacation of the Appellate Tribunal, i.e., 04.06.2018, therefore, as provided under Section 238A of the I&B Code (Amendment) Ordinance, 2018 read

with Section 4 of the Limitation Act, the Appeal was filed on the re-opening day of the Tribunal, i.e., on 02.07.2018 and so the same is within time.

3. Heard learned counsel appearing for the Appellants. Learned counsel submitted that the impugned order was passed on 4th May, 2018 and as per the I&B Code, he was required to file an Appeal within 30 days from the date of the impugned order, which was going to be expired on 05.06.2018, but on that day, the Tribunal was closed due to summer vacation and that is the reason, he could not file the Appeal on that day, rather, he filed the Appeal on the re-opening day of the Tribunal, i.e., 02.07.2018 and, if the limitation is calculated in the light of Section 238A of the I&B Code, 2016 read with Section 4 of the Limitation Act, then that period will be excluded while counting the period of limitation.

4. In the light of the submissions made by learned counsel on behalf of the Appellant, I have also gone through the report submitted by the Office. As per the Office report, the Appeal is barred by limitation because the period of limitation was expired on 5th June, 2018, whereas the Memo of Appeal was presented on 2nd July, 2018.

5. If, I shall consider the report of the Office along with submissions made by the learned counsel and the provisions on which the learned counsel placed reliance, then I am of the view that there is no dispute that if the Court/Tribunal is closed and on that day the period of limitation is expired and if the Appeal is filed on the opening day, that period will be excluded, as per amendment made in the I&B Code on 6th June, 2018. But in this case, limitation expired prior to the date of amendment, so the amended law, in my opinion is not applicable. Moreover, apart from that, the question is whether the Tribunal was closed or the Office was opened or not? It's a fact that the Office and the Court of the Tribunal was functioning during that period when the Memo of Appeal was required to be presented. So under such circumstances, in my opinion, the contention of the learned counsel that since the Office was closed on that day due to summer vacation and he could not

file the Appeal in time, in my opinion is not acceptable. Moreover, since the Office has pointed out that the Appeal is barred by limitation and the Registrar is not empowered to condone the delay. Under such circumstances, list the matter before the Hon'ble Bench for hearing on the point of limitation and admission on 13.07.2018.

(Abni Ranjan Kumar Sinha)
Registrar

Dictated and corrected by me.

(Abni Ranjan Kumar Sinha)
Registrar