

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) No. 54 of 2025 & I.A. No. 1337, 1378 of 2025

(Arising out of the Order dated 19.08.2024 passed by the National Financial Reporting Authority in Order No. 020/2024 under Section 132(4) in respect of the show cause notice dated 17.01.2024 issued inter alia to the Appellant)

IN THE MATTER OF:

Amit Somani

ICAI Membership No. 060154

Having his residence at:

Embassy Pristine, Flat No. 614

Tower Fern, Iblur Village Bellandur,

Bangalore South, Bengaluru – 560102

Karnataka , India

Email: asomani@bsraffiliates.com

...Appellant

Versus

National Financial Reporting Authority

Having its office at:

7th-8th Floor, HT House, K.G. Marg

New Delhi – 110001, India

Email: review@nfra.gov.in

...Respondent

Present

For Appellants:

Mr. Krishnendu Datta, Sr. Advocate, Ms. Anindita R. Chowdhury, Ms. Vatsala Rai & Mr. Saurabh Batra, Advocates.

For Respondents:

Mr. Zoheb Hossain & Mr. Suradhish Vats, Advocates.

J U D G E M E N T

(28.05.2025)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present Company Appeal (AT) No. 54 of 2025 has been filed by the Appellant i.e. Amit Somani, under Section 132(5) of the Companies Act, 2013 (“**the Act**”), challenging the Impugned Order dated 19.08.2024 passed by the National Financial Reporting Authority, New Delhi (**NFRA**) ‘in the matter of M/s BSR & Associates LLP, CA Aravind Maiya and CA Amit Somani, under section 132 (4) (c) of the Companies Act, 2013’, Order No. 020/2024).
2. National Financial Reporting Authority (“**NFRA**”) is the Respondent herein.
3. The Impugned Order dated 19.08.2024 pertains to the statutory audit of M/s Coffee Day Enterprises Ltd. (**CDEL**) for the financial year 2018-19, conducted by M/s BSR & Associates LLP, with CA Aravind Maiya as the Engagement Partner (**EP**) and CA Amit Somani as the Engagement Quality Control Reviewer (**EQCR**).
4. On 17.01.2024, the NFRA issued a Show Cause Notice (**SCN**) alleging deficiencies in the EQCR’s role. It has been brought out that a comprehensive reply was filed by the Appellant on 29.03.2024, addressing each allegation and detailing compliance with SA 220 and SQC 1. A personal hearing was conducted on 31.05.2024, where, with legal counsel, the Appellant clarified the distinct roles of the EP and EQCR, emphasizing adherence to applicable standards. Written

submissions by the Appellant dated 14.06.2024 reiterated these points, collectively forming the Responses.

5. It has been brought to our notice that the Impugned Order dated 19.08.2024 charged the Appellant i.e. CA Amit Somani with professional misconduct under Clause 7, Part I of the Second Schedule of the Chartered Accountants Act, 1949, for alleged failure to exercise due diligence or gross negligence. The Impugned order imposed: (a) a 5-year debarment from being appointed as an auditor, internal auditor, or undertaking valuations under Section 247 of the Companies Act, 2013; and (b) a monetary penalty of INR 25,00,000 (collectively, the "Sanctions").

6. The Impugned Order indicate the failure of the Appellant to report the CDEL's non-compliance with Section 185 of the Companies Act, 2013, and violations of the Companies (Auditor's Report) Order (CARO). The Appellant stated that the role of the EQCR, as defined by SA 220, is limited to objectively evaluating significant judgments and conclusions of the Engagement Team (ET) or EP before the audit report's issuance. The Appellant argued that the primary responsibility for verifying compliance with Section 185 and CARO rested with the EP, CA Aravind Maiya, who performed the audit procedures and issued the report.

Findings

7. However, before we examine the merit of the appeal, we note that there has been delay in refiling of 147 days for which the Appellant filed IA No. 1337 of 2025, justifying the delay and requested this Appellate Tribunal to condone the delay in refiling the appeal.

8. We note that as per Rule No. 26 of the NCLAT Rules, 2016, the refiling delay can be condoned, if sufficient reasons are brought out by the Appellant to the satisfaction of the Appellant Tribunal. The rule reads as under: -

“26. Endorsement and scrutiny of petition or appeal or document

(2) If, on scrutiny, the appeal or document is found to be defective, such document shall, after notice to the party, be returned for compliance and if there is a failure to comply within seven days from the date of return, the same shall be placed before the Registrar who may pass appropriate orders.

(3) The Registrar may for sufficient cause return the said document for rectification or amendment to the party filing the same, and for this purpose may allow to the party concerned such reasonable time as he may consider necessary or extend the time for compliance.

(4) Where the party fails to take any step for the removal of the defect within the time fixed for the same, the Registrar may, for reasons to be recorded in writing, decline to register

the appeal or pleading or document.”

(Emphasis Supplied)

9. Thus, we are duty bound to examine and satisfy ourselves that sufficient reasons existed for condoning such huge refiling delay of 147 days. We shall deal this in the following discussions.

10. We note that Hon’ble Registrar of this Appellate Tribunal examined the issue of delay in refiling and recorded its detailed order dated 27.02.2025 which reads as under: -

“This is an application to extend the time granted for curing the defects.

The facts of the case are that the Appellant e-filed the Memo of Appeal on 18.09.2024. The Office after scrutiny of the Memo of Appeal on 20.09.2024, intimated the defects to the Appellant on the same day. The Appellant re-filed the Memo of Appeal on 21.02.2025. it is stated in the Interlocutory Application (IA) that the registry raised defects on several occasions, which were cured by the Applicant on every occasion. Also, the counsel for the Appellant was informed that some defects were marked on 16.01.2025, while no intimation of the defects was notified to the Appellant or his counsel, the Applicant expeditiously cleared the defects on 19.02.2025. Hence, there is delay of 147 days in refiling the IA, so the same may be condoned.

Heard learned Counsel appearing for the Appellant and perused the averments made in the IA as well as Office report.

The Appellant was required to re-file the Memo of Appeal within seven days from the date of intimation of the defects. However, the Appellant re-filed the Memo of Appeal with a delay of 147 days, hence, the case may be placed before the Hon'ble Bench for appropriate orders.

List the case before the Hon'ble Bench under the heading 'for admission with defect (fresh case)''

(Emphasis Supplied)

11. From the Registrar's above order, we note that the Appellant was required to re-file the Memo of Appeal within seven days from the date of intimation of the defects. However, the Appellant re-filed the Memo of Appeal with a delay of 147 days.

12. The Appellant vide IA 1337 of 2025 submitted that further defects were marked by the registry on 16.10.2024, 21.11.2024, 02.12.2024, 10.12.2024, 19.12.2024 and 06.01.2025 which were cured by the Appellant within 7 days of marking such defects.

13. Hence, we need to look into the defects pointed by the registry and rectification of the same by the Appellant while submitting back to registry in every occasion. We need to examine, if same defects were pointed out by the registry again and again, meaning, the Appellant merely kept resubmitting without curing the pointed defects. Alternatively, we also need to examine whether registry kept on raising defects in piecemeal rather than in one stroke. To

understand these, we will look into defects pointed out by Registry from time to time by Emails to the Appellant. The correspondence in the regard reads as under:

i.The defect sheet dated 16.10.2024:

Defects Sheet F.No 16.10.2024/NCLAT/UR/10535 National Company Law Appellate Tribunal New Delhi Company Appeal(AT) No.. of 2024 e-filing number : 9910110/10535/2024	
AMIT SOMANI	....Appellant / Petitioner
And	
National Financial Reporting Authority	....Respondent
<u>The noticed defects are as under:-</u>	
1. Pre-deposit 10% of the penalty amount is not deposited i.e., Rs 2.5 lakh.. 2. The index, memo of the party, declaration-verification, and memorandum of appeal are not signed.. 3. Bookmarking is defective.. 4. Pagination is not marked at point no.18 etc onward in the master index.. 5. PDF of the application should be removed from the pdf of the appeal and uploaded separately on the portal, fees should be paid accordingly.. 6. Fill in the blank page no.13,57.. 7. Page no.15, affidavit, para no.1 is defective.. 8. page no.175 should be upload in landscape mode.. 9. Remove the old annexures pages no.182-183,185-186,189.....etc onwards, .. 10. Vakalathnama, caveat report undertaking, proof of service, proof fo payment, etc are, mentioned in the master index but not uploaded.. 11. Same PDF is uploaded 3 time extra, remove it. 12. Upload the receipt of payment according to the uploaded pdf. (Upload payment of appeal and Application accordingly.) And Submit the undertaking of the Bharat kosh payment with Reference number etc. which did not use other appeals and applications.. 13. Note: Please check and ensure that all details and all documents are uploaded with correct indexing and ensure that the pagination is properly done in all the volumes with Original COLORED SCAN documents, Signatures, notary, stamps, etc. It's mandatory.. 14. Upload I.A for delay in re-filing separately, days should be calculated based on first-time defects marked on the next date.. <u>Note: If the User/Appellant/Authorised Representative feel any difficulty in removing defects or unable to cure any defects, they can get assistance from registry as required.</u>	
Date of scrutiny: 16.10.2024	

We observe that, on 16.10.2024, 14 defects were mentioned in the defect sheet which needed corrections by the Appellant. The Defects reads as: -

“(1) Pre-deposit 10% of the Penalty amount is not deposited i.e., Rs. 2.5 lakhs

- (2) The index, memo of the party, declaration-verification, and memorandum of appeal are not signed
- (3) Bookmarking is defective
- (4) Pagination is not marked at point no. 18 etc. onward in the master index
- (5) PDF of the application should be removed from the pdf of the appeal and uploaded separately on the portal, fees should be paid accordingly
- (6) Fill in the blank page no. 13, 57
- (7) Page no. 15, affidavit, para no. 1 is defective
- (8) Page no. 175 should be upload in landscape mode
- (9) Remove the old annexures pages no. 182-183, 185-186, 189.... etc onwards
- (10) Vakalathnama, caveat report undertaking, proof of service, proof of payment, etc. are mentioned in the master index but not uploaded
- (11) Same PDF is uploaded 3 time extra, remove it
- (12) Upload the receipt of payment according to the uploaded pdf. (Upload payment of appeal and Application accordingly.) and submit the undertaking of the Bharat kosh payment with Reference number etc. which did not use other appeals and applications
- (13) Note: Please check and ensure that all details and all documents are uploaded with correct indexing and ensue that the pagination is properly done in all the volumes with Original COLORED SCAN documents, Signatures. Notary, stamps, etc. It's mandatory
- (14) Upload I.A. for delay in refiling separately, days should be calculated based on first-time defects marked on the next date”

(Emphasis Supplied)

We note that, on 22.10.2024, the Appellant refiled the matter and only 1 defect was cured, which is “(11) Same PDF is uploaded 3 time extra, remove it”. Apart from this, all other 13 defects remained uncured every time, which was further notified to the Appellant again and again as mentioned as under: -

ii. The defect sheet dated 21.11.2024:

Defects Sheet F.No 21.11.2024/NCLAT/UR/10535 National Company Law Appellate Tribunal New Delhi Company Appeal(AT) No.. of 2024 e-filing number : 9910110/10535/2024	
AMIT SOMANI	....Appellant / Petitioner
And	
National Financial Reporting Authority	....Respondent
<u>The noticed defects are as under:-</u>	
1. Pre-deposit 10% of the penalty amount is not deposited i.e., Rs 2.5 lakh.. 2. The index, memo of the party, declaration-verification, and memorandum of appeal are not signed.. 3. Bookmarking is defective.. 4. Pagination is not marked at point no.18 etc onward in the master index.. 5. PDF of the application should be removed from the pdf of the appeal.. 6. Fill in the blank page no.13,57.. 7. Page no.15, affidavit, para no.1 is defective.. 8. page no.175 should be upload in landscape mode.. 9. Remove the old annexures pages no.182-183,185-186,189.....etc onwards, .. 10. Caveat report undertaking, proof of service, proof fo payment, etc are, mentioned in the master index but not uploaded.. 11. Upload the receipt of payment according to the uploaded pdf. (Upload payment of appeal and Application accordingly.) And Submit the undertaking of the Bharat kosh payment with Reference number etc. which did not use other appeals and applications.. 12. Note: Please check and ensure that all details and all documents are uploaded with correct indexing and ensure that the pagination is properly done in all the volumes with Original COLORED SCAN documents, Signatures, notary, stamps, etc. It's mandatory.. 13. Upload I.A for delay in refiling separately, days should be calculated based on first-time defects marked on the next date..	
<u>Note: If the User/Appellant/Authorised Representative feel any difficulty in removing defects or unable to cure any defects, they can get assistance from registry as required.</u>	
Date of scrutiny: 21.11.2024	
Date of intimation to the appellant: 21.11.2024 Mode of intimation to the appellant: 9999291467 , asomani@bsraffiliates.com	

Note: All 13 defect continues.

iii. The defect sheet dated 02.12.2024:

Defects Sheet	
<u>F.No 02.12.2024/NCLAT/UR/10535</u>	
<u>National Company Law Appellate Tribunal</u>	
<u>New Delhi</u>	
Company Appeal(AT) No.. of 2024	
e-filing number : 9910110/ 10535/2024	
AMIT SOMANI	....Appellant / Petitioner
And	
National Financial Reporting Authority	....Respondent
<u>The noticed defects are as under:-</u>	
<ol style="list-style-type: none"> 1. Pre-deposit 10% of the penalty amount is not deposited i.e., Rs 2.5 lakh.. 2. The index, memo of the party, declaration-verification, and memorandum of appeal are not signed.. 3. Bookmarking is defective.. 4. Pagination is not marked at point no.18 etc onward in the master index.. 5. PDF of the application should be removed from the pdf of the appeal.. 6. Fill in the blank page no.13,57.. 7. Page no.15, affidavit, para no.1 is defective.. 8. page no.175 should be upload in landscape mode.. 9. Remove the old annexures pages no.182-183,185-186,189.....etc onwards, .. 10. Caveat report undertaking, proof of service, proof fo payment, etc are, mentioned in the master index but not uploaded.. 11. Upload the receipt of payment according to the uploaded pdf. (Upload payment of appeal and Application accordingly.) And Submit the undertaking of the Bharat kosh payment with Reference number etc. which did not use other appeals and applications.. 12. Note: Please check and ensure that all details and all documents are uploaded with correct indexing and ensure that the pagination is properly done in all the volumes with Original COLORED SCAN documents, Signatures, notary, stamps, etc. It's mandatory.. 13. Upload I.A for delay in refiling separately, days should be calculated based on first-time defects marked on the next date.. 	
<p><u>Note: If the User/Appellant/Authorised Representative feel any difficulty in removing defects or unable to cure any defects, they can get assistance from registry as required.</u></p>	
<p>Date of scrutiny: 02.12.2024</p>	
<p>Date of intimation to the appellant: 02.12.2024</p>	
<p>Mode of intimation to the appellant: 9999291467 , asomani@bsraffiliates.com</p>	

Note: All 13 defect continues.

iv.The defect sheet dated 10.12.2024:

Defects Sheet	
F.No 10.12.2024/NCLAT/UR/10535	
National Company Law Appellate Tribunal	
New Delhi	
Company Appeal(AT) No.. of 2024	
e-filing number : 9910110/10535/2024	
AMIT SOMANI	....Appellant / Petitioner
And	
National Financial Reporting Authority	....Respondent
<u>The noticed defects are as under:-</u>	
<ol style="list-style-type: none"> 1. Pre-deposit 10% of the penalty amount is not deposited i.e., Rs 2.5 lakh.. 2. The index, memo of the party, declaration-verification, and memorandum of appeal are not signed.. 3. Bookmarking is defective.. 4. Pagination is not marked at point no.18 etc onward in the master index.. 5. PDF of the application should be removed from the pdf of the appeal.. 6. Fill in the blank page no.13,57.. 7. Page no.15, affidavit, para no.1 is defective.. 8. page no.175 should be upload in landscape mode.. 9. Remove the old annexures pages no.182-183,185-186,189.....etc onwards, .. 10. Caveat report undertaking, proof of service, proof fo payment, etc are, mentioned in the master index but not uploaded.. 11. Upload the receipt of payment according to the uploaded pdf. (Upload payment of appeal and Application accordingly.) And Submit the undertaking of the Bharat kosh payment with Reference number etc. which did not use other appeals and applications.. 12. Note: Please check and ensure that all details and all documents are uploaded with correct indexing and ensure that the pagination is properly done in all the volumes with Original COLORED SCAN documents, Signatures, notary, stamps, etc. It's mandatory.. 13. Upload I.A for delay in refiling separately, days should be calculated based on first-time defects marked on the next date.. 	
<p><u>Note: If the User/Appellant/Authorised Representative feel any difficulty in removing defects or unable to cure any defects, they can get assistance from registry as required.</u></p>	
<p>Date of scrutiny: 10.12.2024</p>	
<p>Date of intimation to the appellant: 10.12.2024</p>	
<p>Mode of intimation to the appellant: 9999291467 , asomani@bsraffiliates.com</p>	

Note: All 13 defect continues.

v.The defect sheet dated 19.12.2024:

Defects Sheet	
<u>F.No 19.12.2024/NCLAT/UR/10535</u>	
<u>National Company Law Appellate Tribunal</u>	
<u>New Delhi</u>	
Company Appeal(AT) No.. of 2024	
e-filing number : 9910110/10535/2024	
AMIT SOMANI	....Appellant / Petitioner
And	
National Financial Reporting Authority	....Respondent
<u>The noticed defects are as under:-</u>	
<ol style="list-style-type: none"> 1. Pre-deposit 10% of the penalty amount is not deposited i.e., Rs 2.5 lakh.. 2. The index, memo of the party, declaration-verification, and memorandum of appeal are not signed.. 3. Bookmarking is defective.. 4. Pagination is not marked at point no.18 etc onward in the master index.. 5. PDF of the application should be removed from the pdf of the appeal.. 6. Fill in the blank page no.13,57.. 7. Page no.15, affidavit, para no.1 is defective.. 8. page no.175 should be upload in landscape mode.. 9. Remove the old annexures pages no.182-183,185-186,189.....etc onwards, .. 10. Caveat report undertaking, proof of service, proof fo payment, etc are, mentioned in the master index but not uploaded.. 11. Upload the receipt of payment according to the uploaded pdf. (Upload payment of appeal and Application accordingly.) And Submit the undertaking of the Bharat kosh payment with Reference number etc. which did not use other appeals and applications.. 12. Note: Please check and ensure that all details and all documents are uploaded with correct indexing and ensure that the pagination is properly done in all the volumes with Original COLORED SCAN documents, Signatures, notary, stamps, etc. It's mandatory.. 13. Upload I.A for delay in refiling separately, days should be calculated based on first-time defects marked on the next date.. 	
<u>Note: If the User/Appellant/Authorised Representative feel any difficulty in removing defects or unable to cure any defects, they can get assistance from registry as required.</u>	
Date of scrutiny: 19.12.2024	
Date of intimation to the appellant: 19.12.2024	
Mode of intimation to the appellant: 9999291467 , asomani@bsraffiliates.com	

Note: All 13 defect continues.

vi. The defect sheet dated 06.01.2025:

Defects Sheet
F.No 06.01.2025/NCLAT/UR/10535
National Company Law Appellate Tribunal
New Delhi
 Company Appeal(AT) No.. of 2024
 e-filing number : 9910110/10535/2024

AMIT SOMANIAppellant / Petitioner

And

National Financial Reporting AuthorityRespondent

The noticed defects are as under:-

1. Pre-deposit 10% of the penalty amount is not deposited i.e., Rs 2.5 lakh..
2. The index, memo of the party, declaration-verification, and memorandum of appeal are not signed..
3. Bookmarking is defective..
4. Pagination is not marked at point no.18 etc onward in the master index..
5. PDF of the application should be removed from the pdf of the appeal..
6. Fill in the blank page no.13,57..
7. Page no.15, affidavit, para no.1 is defective..
8. page no.175 should be upload in landscape mode..
9. Remove the old annexures pages no.182-183,185-186,189.....etc onwards, ..
10. Caveat report undertaking, proof of service, proof fo payment, etc are, mentioned in the master index but not uploaded..
11. Upload the receipt of payment according to the uploaded pdf. (Upload payment of appeal and Application accordingly.) And Submit the undertaking of the Bharat kosh payment with Reference number etc. which did not use other appeals and applications..
12. Note: Please check and ensure that all details and all documents are uploaded with correct indexing and ensure that the pagination is properly done in all the volumes with Original COLORED SCAN documents, Signatures, notary, stamps, etc. It's mandatory..
13. Upload I.A for delay in refiling separately, days should be calculated based on first-time defects marked on the next date..

Note: If the User/Appellant/Authorised Representative feel any difficulty in removing defects or unable to cure any defects, they can get assistance from registry as required.

Date of scrutiny: 06.01.2025 ✓

Date of intimation to the appellant: 06.01.2025 ✓

Mode of intimation to the appellant: 9999291467 , asomani@bsraffiliates.com

Note: All 13 defect continues.

14. The Appellant has also submitted that he was not notified about any other existing defects and upon inquiring from the registry, the counsel for the Appellant was informed that the defects were already marked on 16.01.2025. However, it is to be noted that proper intimation via email and on mobile no. was sent to the Appellant regarding the defects on 16.01.2025 itself, which can be seen as under: -

Defects Sheet F.No 16.01.2025/NCLAT/UR/10535 National Company Law Appellate Tribunal New Delhi Company Appeal(AT) No.. of 2024 e-filing number : 9910110/10535/2024		
AMIT SOMANI National Financial Reporting Authority	And	....Appellant / Petitioner Respondent
<u>The noticed defects are as under:-</u>		
1. Pre-deposit 10% of the penalty amount is not deposited i.e., Rs 2.5 lakh.. 2. The index, memo of the party, declaration-verification, and memorandum of appeal are not signed by the counsel and appellant.. 3. Bookmarking is defective.. 4. Pagination is not marked at point no.18 etc onward in the master index.. 5. PDF of the application should be removed from the pdf of the appeal.. 6. Fill in the blank page no.13,57.. 7. Page no.15, affidavit, para no.1 is defective.. 8. page no.175 should be upload in landscape mode.. 9. Remove the old annexures pages no.182-183,185-186,189.....etc onwards, .. 10. Caveat report undertaking, proof of service, proof fo payment, etc are, mentioned in the master index but not uploaded.. 11. Upload the receipt of payment according to the uploaded pdf. (Upload payment of appeal and Application accordingly.) And Submit the undertaking of the Bharat kosh payment with Reference number etc. which did not use other appeals and applications.. 12. Note: Please check and ensure that all details and all documents are uploaded with correct indexing and ensure that the pagination is properly done in all the volumes with Original COLORED SCAN documents, Signatures, notary, stamps, etc. It's mandatory.. 13. Upload I.A for delay in refiling separately, days should be calculated based on first-time defects marked on the next date.. <u>Note: If the User/Appellant/Authorised Representative feel any difficulty in removing defects or unable to cure any defects, they can get assistance from registry as required.</u> Date of scrutiny: 16.01.2025 Date of intimation to the appellant: 16.01.2025 Mode of intimation to the appellant: 9999291467 , asomani@bsraffiliates.com		

15. After re-filing by the appellant on 19.02.2025, 3 defects remained uncured from the 14 abovementioned defects, which were notified to the Appellant on 20.02.2025. the same can be observed below: -

Defects Sheet	
<u>F.No 20.02.2025/NCLAT/UR/10535</u>	
<u>National Company Law Appellate Tribunal</u>	
<u>New Delhi</u>	
Company Appeal(AT) No.. of 2024	
e-filing number : 9910110/ 10535/2024	
AMIT SOMANI	....Appellant / Petitioner
And	
National Financial Reporting Authority	....Respondent
<u>The noticed defects are as under:-</u>	
1. Pre-deposit 10% of the penalty amount is not deposited i.e., Rs 2.5 lakh..	
2. Note: Please check and ensure that all details and all documents are uploaded with correct indexing and ensure that the pagination is properly done in all the volumes with Original COLORED SCAN documents, Signatures, notary, stamps, etc. It's mandatory..	
3. Upload I.A for delay in refiling separately, days should be calculated based on first-time defects marked on the next date..	
<u>Note: If the User/Appellant/Authorised Representative feel any difficulty in removing defects or unable to cure any defects, they can get assistance from registry as required.</u>	
Date of scrutiny: 20.02.2025	
Date of intimation to the appellant: 20.02.2025	
Mode of intimation to the appellant: 9999291467 , asomani@bsraffiliates.com	
Name of person intimated: Amit Somani	
	Dealing Head: Jyoti Kumari

16. We observe that even after re-filing again by the appellant on 20.02.2025, 2 defects still remained uncured from the 14 abovementioned defects, which were notified to the Appellant on 21.02.2025. the same can be observed below: -

Defects Sheet

F.No 21.02.2025/NCLAT/UR/10535

National Company Law Appellate Tribunal

New Delhi

Company Appeal(AT) No.. of 2024

e-filing number : 9910110/10535/2024

AMIT SOMANI

....Appellant / Petitioner

And

National Financial Reporting Authority

....Respondent

The noticed defects are as under:-

1. Note: Please check and ensure that all details and all documents are uploaded with correct indexing and ensure that the pagination is properly done in all the volumes with Original COLORED SCAN documents, Signatures, notary, stamps, etc. It's mandatory..
2. Upload I.A for delay in refiling separately, days should be calculated based on first-time defects marked on the next date..

Note: If the User/Appellant/Authorised Representative feel any difficulty in removing defects or unable to cure any defects, they can get assistance from registry as required.

Date of scrutiny: 21.02.2025

Date of intimation to the appellant: 21.02.2025

Mode of intimation to the appellant: 9999291467 , asomani@bsraffiliates.com

Name of person intimated: Amit Somani

Dealing Head: Jyoti Kumari

17. It has been brought out that the defect mentioning that pre-deposit 10% of the penalty amount is now deposited i.e. Rs. 2.5 Lakhs and was cured finally on 21.02.2025. the proof of depositing the said amount is mentioned below: -

Payee
kotak
Kotak Mahindra Bank
8066-M.G.ROAD

Valid for three months from date of issue
दिनांक
Date 1 2 0 9 2 0 2 1
D D M M Y Y Y Y

PAY AND ACCOUNTS OFFICER, MINISTRY OF CORPORATE AFFAIRS,
NEW DELHI

145 Rupees Two Lakh Fifty Thousand only

अदा करें। ₹ 2,50,000.00

Payable At *** Not Over INR. 2,50,000.00 ***

For Value Received
for Kotak Mahindra Bank Ltd.

NEW DELHI-K G MARG
(4599)

Purchaser:
AMIT SOMANI

Mukesh Kumar Kashyap
Emp. No. : 152687

Madhusmita Palra
Emp. No. : 83603

#688004# 000485000#

18. We consciously take into consideration that finally, all defects were cured by the Appellant on 21.02.2025, after a prolonged delay of 147 days as correctly pointed by Hon'ble Registrar of this Appellate Tribunal in his order dated 27.02.2025 as we noted earlier.

19. As per the records of the registry, we gather that out of 14 defects, only 1 defect was cured on 22.10.2024 and the other 13 defects remained as it is on all dates, i.e. 21.11.2024, 02.12.2024, 10.12.2024, 19.12.2024 up until 06.01.2025.

20. The Appellant herein prays to this Appellate Tribunal that the delay in re-filing is due to factors and circumstances beyond the reasonable control of the Appellant and his counsel. However, no reason or cause of delay is mentioned by the Appellant in the Application No. 1337 of 2025 for condonation of delay.

21. We take into consideration the relevant part of the condonation of delay in refiling Application No. 1337 of 2025 which reads as under: -

“7. Upon inquiring from the registry, the counsel for the Appellant was informed that the defects were already marked on 16.01.2025. While no intimation of the defects was notified to the Appellant or his counsel, the Applicant expeditiously cleared the defects on 19.02.2025.

8. It is humbly submitted that the delay in re-filing is due to factors and circumstances beyond the reasonable control of the Appellant and his counsel. While the counsel for the Appellant cleared all defects marked by the registry within the prescribed period of 7 days of marking of each defect on every occasion, there is an inevitable delay of 147 days in refiling the present Appeal.

9. It is submitted that the circumstances causing the aforesaid delay are bona fide and genuine. The delay in re-filing the present Appeal is not deliberate and deserves to be condoned in the interest of justice. It is therefore, prayed that this Hon'ble Tribunal be pleased to condone the

delay of 147 days in re-filing the Appeal.

10. *It is submitted that irreparable harm would be caused to the Appellant if the delay in filing of the present Appeal is not condoned, whereas no prejudice would be caused to the Respondents.*

11. *The present Application has been filed bona-fide and in the interest of justice. The Appellant submits that in the interest of justice and balance of convenience it is required that the reliefs prayed in the present Application be granted.*

(Emphasis Supplied)

22. After examining above, we are not in position to convince ourselves that sufficient case has been made out by the Appellant to cross hurdles of Rule 26 of NCLAT Rules, 2016.

23. We are also bound by the judgement of the larger bench of 5 members of this Appellate Tribunal in the case of **V.R. Ashok Rao and Ors. Vs. TDT Copper Ltd.**, [(2022) SCC OnLine NCLAT 3516], where the 5-member bench of this Appellate Tribunal held that,

“1. This larger bench has been constituted to answer following two questions referred by a three-member bench of this Tribunal by its order dated 12.08.2022:

(a) Whether the law laid down by this Tribunal in “Mr. Jitendra Virmani v. MRO-TEK Realty Ltd.” and three Member Bench Judgment in “Arul Muthu Kumaara Samy v. Registrar of Companies” that when the defect in appeal is cured and the Appeal is refiled before the Appellate Tribunal

beyond seven days, the date of re-presentation of the Appeal shall be treated as a fresh Appeal, lays down correct law?

(b) Whether the limitation prescribed for filing an Appeal before this Appellate Tribunal under Section 61 of Insolvency and Bankruptcy Code, 2016 or Section 421 of the Companies Act, 2013 shall also govern the period under which a defect in the Appeal is to be cured and this Appellate Tribunal shall have no jurisdiction to condone the delay in refiling/re-presentation if it is beyond the limitation prescribed in Section 61 of the IBC or Section 421 of the Companies Act, 2013.

2. The question of refiling delay is involved in all these Appeals. We have heard learned counsel for the parties appearing in the above appeals on the two questions as noted above. For answering the questions, it shall be sufficient to notice the facts pertaining to refiling delay in Company Appeal (AT) (Insolvency) No. 780 of 2022.

...

5. Learned counsel for the Appellant in support of their 'Application for Condonation of Refiling Delay' submits that as per Rule 26 of NCLAT Rules, 2016, the Registrar is fully empowered to pass appropriate orders if there is failure in rectifying the defects within the 7 days. The scheme of Rule 26 does not indicate that if the defects are not removed within seven days, the re-presentation of the appeal after removal of defects beyond 7 days shall be treated as fresh appeal. The first presentation of the appeal is the date which is to be reckoned for the purpose of computation of limitation in filing of appeal and the re-presentation of the appeal has no

bearing on the question of computation of limitation. The judgments of this Tribunal in “Mr. Jitendra Virmani v. MRO-TEK Realty Ltd.” and “Arul Muthu Kumaara Samy v. Register of Companies” holding that when the defects in the appeal is cured after 7 days and the appeal is represented, the appeal shall be treated as a fresh appeal does not lay down correct law. Learned counsel for the Appellant further submits that filing of appeal and re-presentation of the appeal with the Registry are two different concepts which have two different consequences. Under the Code or Rules, no limitation has been provided for re-presentation (refiling). The period of limitation provided under Section 61 of the Code and Section 421 of the Companies Act, 2013 are applicable with regard to filing of the appeal and the said limitation cannot be applied for the purpose of re-presentation (refiling) of the appeal. When the Legislature and Rulemaking Authority have not provided any limitation for re-presentation/refiling, no period of limitation can be imported on the basis of limitation which is provided for filing of an appeal.

6. Learned counsel for the Respondent refuting the submissions of learned counsel for the Appellant contends that the defects in appeal has to be cured within the period of 7 days as provided under Rule 26 Sub-rule (2) and if the defects are not cured within 7 days and appeal was represented thereafter it should be treated as fresh filing and from the date of fresh filing, the limitation for filing appeal has to be computed. It is submitted that any delay in re-presentation of the appeal, if it is beyond the limitation

prescribed for filing an appeal under Section 61 of the Code or Section 421 of the Companies Act, 2013 shall also be applicable on the re-presentation of the appeal which has been re-presented beyond 7 days provided for removal of defects. In event, defects are not cured within the time fixed for the same, the Registrar is obliged to decline to register the appeal and after such rejection to register the appeal, Appellant has to file appeal afresh and with regard to such appeal limitation has to be computed from the said fresh filing. The limitation prescribed for filing an appeal under Section 61 and Section 421 is a limitation prescribed by statute and there shall be no power to condone the delay on re-presentation which is beyond the limitation prescribed for filing of appeal under Section 61 of the Code and Section 421 of the Companies Act, 2013.

...

8. The National Company Law Appellate Tribunal Rules, 2016 (NCLAT Rules) has been framed under Section 469 of the Companies Act, 2013 for carrying out the provision of the Companies Act, 2013. Part III of the Rules deals with 'Institution of Appeals - Procedure'. Rule 22 deals with 'Presentation of Appeal'. Rule 22 is as follows:

"22. Presentation of appeal. -(1) Every appeal shall be presented in Form NCLAT-1 in triplicate by the appellant or petitioner or applicant or respondent, as the case may be, in person or by his duly authorised representative duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same.

(2) Every appeal shall be accompanied by a certified copy of the impugned order.

(3) All documents filed in the Appellate Tribunal shall be accompanied by an index in triplicate containing their details and the amount of fee paid thereon.

(4) Sufficient number of copies of the appeal or petition or application shall also be filed for service on the opposite party as prescribed.

(5) In the pending matters, all other applications shall be presented after serving copies thereof in advance on the opposite side or his advocate or authorised representative.

(6) The processing fee prescribed by the rules, with required number of envelopes of sufficient size and notice forms as prescribed shall be filled along with memorandum of appeal.”

9. Rule 26 deals with ‘Endorsement and Scrutiny of Petition or Appeal or Document’, which rule has come up for consideration and interpretation in the present appeal. Rule 26 is as follows:

“26. Endorsement and scrutiny of petition or appeal or document.-(1) The person in charge of the filing-counter shall immediately on receipt of appeal or document affix the date and stamp of the Appellate Tribunal thereon and also on the additional copies of the index and return the acknowledgement to the party and he shall also affix his initials on the stamp affixed on the first page of the copies and enter the particulars of all such documents in the register after daily filing and assign a diary number which shall be

entered below the date stamp and thereafter cause it to be sent for scrutiny.

(2) If, on scrutiny, the appeal or document is found to be defective, such document shall, after notice to the party, be returned for compliance and if there is a failure to comply within seven days from the date of return, the same shall be placed before the Registrar who may pass appropriate orders.

(3) The Registrar may for sufficient cause return the said document for rectification or amendment to the party filing the same, and for this purpose may allow to the party concerned such reasonable time as he may consider necessary or extend the time for compliance.

(4) Where the party fails to take any step for the removal of the defect within the time fixed for the same, the Registrar may, for reasons to be recorded in writing, decline to register the appeal or pleading or document.”

....

25. We may now also consider submissions of learned counsel for the parties with regard to Question no. (b).

26. Section 61 of the Code and Section 421 of the Companies Act, 2013 lay down limitation for filing of appeal. Section 61(2) of the Code and Section 421 of the Companies Act are as follows:

“61(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.”

“421. Appeal from the orders of Tribunal. - (1) Any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.

(2) No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

(4) On the receipt of an appeal under sub-section (1), the Appellate Tribunal shall, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against

(5) The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and the parties to appeal.”

27. The limitation which has been provided under Section 61(2) and Section 421 is the limitation for filing an appeal. The Rules, neither the Code nor the Companies Act, 2013 lay

down any limitation for representation/refiling of the appeal. Rule 26 of NCLAT Rules, 2016, which govern the re-presentation/refiling of the appeal does not provide for any limitation. When Sub-rule (3) of Rule 26 empowers the Registrar to allow the parties concerned a reasonable time or to extend the time for compliance, which power is not hedged by any period of limitation, it can be safely said that no limitation is prescribed for re-presentation/refiling of an appeal.

.....

33. We, thus, are of clear opinion that limitation prescribed for filing an appeal under Section 61 and Section 421 of Companies Act cannot be imported while considering condonation of delay in refiling/representation. We may, however, hasten to add that condonation of delay in refiling/re-presentation has to be examined on case to case basis. As noticed above, the criterion for considering an application for condonation of delay under Section 5 may not be strictly applicable when question of condonation of delay in refiling/re-presentation arises. A party who is exercising its right to file a statutory appeal in time has not to be shut out on some procedural or technical defects and when defects notified have been removed although with some delay, **question to be considered is as to whether there was justifiable cause for delay or not.** The time period allowed for removal of the defects is only directory.

34. In view of the foregoing discussion, reasons and conclusions, we answer the two questions in following manner:

(a) The law laid down by this Tribunal in “Mr. Jitendra Virmani v. MRO-TEK Realty Ltd.” and three Member Bench Judgment in “Arul Muthu Kumaara Samy v. Registrar of Companies” that when the defects in appeal are cured after seven days and the same is refiled, it shall be treated as a fresh Appeal, does not lay down a correct law. The re-presentation of appeal after expiry of a period of 7 days or after extended period shall not be a fresh filing and shall only be refiling/representation.

(b) The limitation prescribed in filing an appeal under Section 61 of the Code or Section 421 of the Companies Act, 2013 shall not govern the period taken in an appeal for removal of the defects in refiling/re-presentation. Even if, there is a delay in refiling/re-presentation which is more than the period of limitation prescribed for filing an appeal under Section 61 of the Code and Section 421 of Companies Act, 2013, the same can be condoned on sufficient justification.
The reference is answered accordingly.”

(Emphasis Supplied)

24. From above, we note that the larger bench has held that no limitation prescribed for refiling of appeal and party who is exercising its right to file the statutory appeal in time has not to be shut out on procedure or technical defects however, they should be justifiable cause for delay. The larger bench also held that representation of appeal after expire of period of 7 days or after extended period was not to be a fresh filing and shall only be refiling/ representation.

25. It is important to note that the larger bench only held that given in refiling which is more the period of limitation prescribed for filing appeal under Section 61 of the Code or Section 421 of the Companies Act, 2013 shall not governed the period taken in appeal for removal of the defects in refiling/ representation, the same can be condoned on “sufficient justification”. Hence, although there should not be any upper limit on days prescribed for refiling, however, the applicant is required to be responsible and careful and has to submit the reasons for delay in refiling beyond his control. In the present case, we do not find such prevailing circumstances which could have prevented the Appellant from refiling within time.

26. Further, the judgement pronounced by this Appellate Tribunal in the case of ***Dhanlaxmi Bank Ltd. vs Ritu Rastogi (RP) & Ors.*** [*Company Appeal (AT) (Ins.) No. 2131 of 2024*], the same issue of re-filing has been considered. The relevant paragraphs are mentioned below: -

*“11. Learned Counsel for the Respondent No.3 and 4 have relied upon the judgement of this Hon’ble Tribunal in **Goverdhan Nirman Pvt. Ltd. vs Vaihav Khandelwal & Anr.** **Company Appeal (AT) (Insolvency) No.1524 of 2024**, which a consistent stand has been taken by this Tribunal that “since the time of intimation of defects, the Applicant was prevaricating over the defects for nearly four months. No credible, genuine endeavours were made by the Applicant to correct the defects. This shows that the Applicant was casual, callous, careless and negligent in refiling the appeal on time*

and such inaction or dereliction cannot be countenanced. We are of the view that the Applicant cannot be shown indulgence keeping in view that the IBC proceedings have stringent timelines to be followed and the adjudicatory proceedings have to be completed in a prompt, expeditious and time bound manner.”

12. Learned Counsel for the Respondent No.3 and 4 have also relied upon the judgement of this Hon’ble Tribunal in ***Employees Provident Fund Organization Vs. H L Buildwell Pvt. Ltd. in IA No.3202 of 2024 in Company Appeal (AT) (Insolvency) No.1700 of 2024***, has held that:

“....

11. Under IBC, CIRP is envisaged to be a time-bound process which has to be completed in 330 days. Allowing refiling delay of 205 days without convincing reasons would tantamount to encouraging parties to play havoc with timelines and put unwarranted speed-breakers in the resolution process which does not commend us. In the given circumstances, we are reluctant to allow the Applicant the luxury of 205 days delay in refiling in IBC proceedings.”

13. Furthermore, in accordance with National Company Law Appellate Tribunal Rules, 2016, the Appellant should have cured the defects within a period of 7 days i.e., on or before 11.07.2024 from the date of notification of defects by the Registry. The relevant extract of the 2016 rules is reproduced herein below:

“26. Endorsement and scrutiny of petition or appeal or document

(2) *If, on scrutiny, the appeal or document is found to be defective, such document shall, after notice to the party, be returned for compliance and if there is a failure to comply within seven days from the date of return, the same shall be placed before the Registrar who may pass appropriate orders.*

(3) *The Registrar may for sufficient cause return the said document for rectification or amendment to the party filing the same, and for this purpose may allow to the party concerned such reasonable time as he may consider necessary or extend the time for compliance.*

(4) Where the party fails to take any step for the removal of the defect within the time fixed for the same, the Registrar may, for reasons to be recorded in writing, decline to register the appeal or pleading or document.”

14. It is contended that Rule 14 of the NCLAT Rules, 2016 which deals with Power to exempt, provides a mandate to this Hon'ble Appellate Authority to exempt compliance with any requirement of the rules prescribed only in situations where sufficient cause has been shown, in the interest of justice.

15. To condone the delay, the Appellant has to carefully explain each day's delay in filing/re-filing the appeal. In the present case, the only reasoning provided to explain the delay is the fact that the father of the counsel handling the matter fell ill in September and suffered a brain stroke on 29.09.2024. However, the Appellant has failed to provide any explanation whatsoever for not taking any steps from 11.07.2024 all the way till 31.08.2024.

16. In the present case, the impugned order was passed on 30.04.2024.

The Appeal was e-filed on 13.06.2024 which was well within period of 45 days including condonation of delay. However, when the defects were notified by the NCLAT registry on 04.07.2024, the Appeal was finally refiled on 23.10.2024 after rectification of defects, with a delay of 104 days. From the explanation we find no reasons except for medical condition with the father of one of the Advocates which occurred sometime on end September. There is total silence from July to end September, 2024. Explanation provided doesn't inspire much confidence. We don't find the reasons explained at paras 3, 4, 5 reproduced earlier to be sufficient to condone the delay in refiling. We find that the Appellant has been negligent in prosecuting the refiling, which in turn indicates lack of diligence of the Appellant or its bona fides. The catena of judgements as noted in previous paragraphs support the case of the Respondent and go against the Appellant. In the facts and circumstances, we therefore don't find sufficient justification to condone the refiling delay of 104 days in time bound IBC proceedings.

17. Such delay of 104 days in refiling is not reasonable and justifiably explained. The application is therefore dismissed. Consequently, Company Appeal (AT) (Insolvency) No. 2131 of 2024 is also dismissed.””

(Emphasis Supplied)

27. From above judgement, we note that this Appellate Tribunal has categorically stated that to condone the delay, the Appellant has to clearly explain

each day of delay in refiling of the appeal. Finally, this Appellate Tribunal in the above case, did not condone the delay of 104 days as they did not find sufficient reason to do so. In contrast, we note that in the present appeal, there is a delay of 147 days for no appropriate reason. Hence, the above judgement is also equally applicable in the present case.

28. We are aware that the above case was in reference to IBC and not in relation to Company Act, 2013 as in present case. However, there is only one common Rule No. 26 of NCLAT Rules, 2016, which is applicable to all cases filed before this Appellate Tribunal arising of IBC or Company Act, 2013, as even noted by 5-members bench of this Appellate Tribunal in the case of **V.R. Ashok Rao** (*Supra*). Thus, the above judgement of this Appellate Tribunal is applicable in present case also.

29. In fine, we find that there are no reasonable reasons for justifying delay of 147 days in re-filing and curing the defects. We note that in spite of multiple intimations made by the Registry, same defects remained uncured, which shows the carelessness on the part of the Appellant. Defects that could have been cured together were unnecessarily prolonged by the Appellant, without any justifiable reason.

30. In view of above detailed examination of the facts and law, we are not satisfied with the reasons given in I.A. No.1337 of 2025 for condonation of delay in refiling. The Application No. I.A. No.1337 of 2025 fails and stand rejected. Since, the Application for condonation of delay in refiling fails, the main appeal

is treated as legally not constituted, the same stands dismissed without examining and going into merits of the case. No cost. I.A., if any, are closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

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