

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.412/2024

**(Arising out of the 'Impugned Order' dated 13.09.2024 in I.A. No.253/2021
in C.P. (IB) No. 167/BB/2018 passed by the 'Adjudicating Authority', (National
Company Law Tribunal', Bengaluru Bench, Bengaluru)**

In the matter of:

Sri. K.M. Mudappa

S/o. Sri. K.S. Munihanumiah @ Munihamumiah,

Aged about 64 years,

Residing at Kalkere Village,

Banaswadi Post, KR Puram Hobli,

Bangalore East Taluk,

Bangalore – 560 043.

... Appellant

V

M/s. Sovereign Developers and Infrastructure Ltd.

Rep by its Resolution Professional,

Sri. Balakrishnan Venkatachalam,

Regn No.IBBI/IPA/PA-001/IP-P00229/2017-18/10458,

Registered Address, GF02, 'Ittina Padma – 1st Apartments',

Ramamurthy Nagar, Bangalore – 560 016.

...1st Respondent

Sri. K.M. Kalappa,

S/o. Sri. K.S. Munihanumiah @ Munihamumiah,

Aged about 66 years,

Residing at Kalkere Village,

Banaswadi Post, KR Puram, Hobli,

Bangalore East Taluk,

Bangalore – 560 043.

...2nd Respondent

Sri. K.M. Krishna Murthy,

S/o. Sri. K.S. Munihanumiah @ Munihamumiah,

Aged about 57 years,

Residing at Kalkere Village,

**Banaswadi Post, KR Puram, Hobli,
Bangalore East Taluk,
Bangalore – 560 043.**

...3rd Respondent

**Sri. K.M. Vasudeva Murthy,
S/o. Sri. K.S. Munihanumiah @ Munihamumiah,
Aged about 57 years,
Residing at Kalkere Village,
Banaswadi Post, KR Puram, Hobli,
Bangalore East Taluk,
Bangalore – 560 043.**

...4th Respondent

**Sri. K.M. Patalappa,
S/o. Sri. K.S. Munihanumiah @ Munihamumiah,
Aged about 55 years,
Residing at Kalkere Village,
Banaswadi Post, KR Puram, Hobli,
Bangalore East Taluk,
Bangalore – 560 043.**

...5th Respondent

**Sri. K.M. Kanakaraj,
S/o. Sri. K.S. Munihanumiah @ Munihamumiah,
Aged about 48 years,
Residing at Kalkere Village,
Banaswadi Post, KR Puram, Hobli,
Bangalore East Taluk,
Bangalore – 560 043.**

...6th Respondent

Present:

For Appellant : Ms. Pooja Jain & Ms. Nikitha, Advocates

WITH

Company Appeal (AT) (CH) (Ins) No. 416 of 2024

**(Arising out of the 'Impugned Order' dated 13.09.2024 in I.A. No.253/2021
in C.P. (IB) No. 167/BB/2018 passed by the 'Adjudicating Authority', (National
Company Law Tribunal', Bengaluru Bench, Bengaluru)**

In the matter of:

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Present:

For Appellant : Ms. Pooja Jain & Ms. Nikitha, Advocates

WITH

Company Appeal (AT) (CH) (Ins) No. 417 of 2024

**(Arising out of the 'Impugned Order' dated 13.09.2024 in I.A. No.250/2023
in C.P. (IB) No. 167/BB/2018 passed by the 'Adjudicating Authority', (National
Company Law Tribunal', Bengaluru Bench, Bengaluru)**

In the matter of:

**Sri. K.M. Krishna Murthy,
S/o. Sri. K.S. Munihanumiah @ Munihamumiah,
Aged about 57 years,
Residing at Kalkere Village,
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Bangalore East Taluk,
Bangalore – 560 043.**

...Appellant

V

M/s. Sovereign Developers and Infrastructure Ltd.

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Company Appeal (AT) (CH) (Ins) No. 418 of 2024

**(Arising out of the 'Impugned Order' dated 13.09.2024 in I.A. No.250/2023
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Present:

For Appellant : Ms. Pooja Jain & Ms. Nikitha, Advocates

JUDGMENT
(Hybrid Mode)

(Oral Judgment: Justice Sharad Kumar Sharma, Member (Judicial)):

These are four Company Appeals, which engages consideration of almost a common question of fact and law and hence, they are being taken up together.

- 1) **Company Appeal (AT) (CH) (Ins) No.412/2024** has been preferred by the Appellant / Applicant being aggrieved against the Impugned Order of 13.09.2024, which was passed by the Learned National Company Law Tribunal, Bengaluru Bench in IA No.253/2021, as preferred in CP(IB) No.167/BB/2018. By virtue of the Impugned Order which is under challenge, the Interlocutory Application being IA No.253/2021, has been rejected. The Appellant / Applicant has preferred the said application under Section 60(5) of I & B Code, 2016, interalia praying for declaration of the process memorandum requesting the submission of Resolution Plan as incomplete as it does not disclose the complete particulars and does not take into consideration of all the stakeholders including landowners. This Application stood rejected on the ground that since the order has already been passed in IA No.569/2022 and IA No.570/2022, this Application too would

automatically stand dismissed. If the Impugned Order is taken into consideration, it can be seen that the Application being IA No.253/2021 as preferred by the Appellant, has been rejected without assigning any specific reasons except for the fact that it has been rejected due to the earlier orders passed in IA No.569/2022 and IA No.570/2022. The decision of the Learned Adjudicating Authority in the said application is arbitrary without application of mind or assigning a valid reason.

At this point, it becomes relevant to scrutinize the orders passed on IA No.569/2022, in the aforesaid Company petition. In the said application, IA No.569/2022 the Applicant / Resolution Professional had prayed for condonation of 352 days of delay, (that is from 17.11.2021 to 04.11.2022) chanced in filing the Application for sanction of Resolution Plan under Section 30(6) of I & B Code, 2016, owing to various reasons such as lack of coordination with counsel, Covid-19 effects and inability to trace the application in the e-portal of NCLT and inability of the Applicant / Resolution Professional to comply with directions to rectify defects as pointed in the earlier application. However, by the order passed, on the said application IA No.569/2022, the Learned Adjudicating Authority held that no cogent reasons have been given for condonation of the long delay of 352 days, with effect from 17.11.2021 to 04.11.2022 except for raising an allegation against the Counsel

on record and based on the conclusion arrived at in para 13 of the said order, declined to condone the delay of 352 days caused in re-approaching the Tribunal on the ground that each day of delay had not been explained by the Appellant with sufficient reasons.

This order as passed in IA No.569/2022, as rendered in CP(IB) No.167/BB/2018, was made a subject matter of consideration in as many as five appeals before this Tribunal with the leading Company Appeal being CA (AT) (CH) (Ins) No.378/2024, Mr. S. Sankaranarayanan and 32 Ors., Vs Mr. Balakrishnan Venkatachalam, RP of M/s. Sovereign Developers and Infrastructure Private Limited. The said appeals were taken up together by this Tribunal and decided by the Judgment of 13.11.2024 whereby the delay was condoned, the Appeals were allowed and the matter has been remitted back to the Learned Adjudicating Authority, to consider the aspect of the approval of the Resolution Plan as preferred in IA 570/2022 in accordance with law. In the instant appeal too, the Impugned Order of 13.09.2024, as rendered in the aforesaid IA No.253/2021, has been based upon the aforesaid order of 13.09.2024 rendered in IA No.569/2022, which has already been considered by us in the Company Appeal (AT) (CH) (Ins) No.378/2024. Accordingly, this Appeal too would stand allowed in terms of the Judgment dated 13.11.2024 and

the said Judgment and the reasons assigned therein will also constitute as to be a part of the instant Judgment also.

- 2) **Company Appeal (AT) (CH) (Ins) No.416/2024**, in the matters of K.M. Krishna Murthy Vs M/s. Sovereign Developers and Infrastructure Ltd., as against the Impugned Order dated 13.09.2024, as rendered in IA No.253/2021 in CP(IB) No.167/BB/2018. By virtue of the Impugned Order which is under challenge, the Interlocutory Application being IA No.253/2021, has been rejected. The Appellant / Applicant has preferred the said application under Section 60(5) of I & B Code, 2016, interalia praying for declaration of the process memorandum requesting the submission of Resolution Plan as incomplete as it does not disclose the complete particulars and does not take into consideration of all the stakeholders including landowners. This Application stood rejected on the ground that since the order has already been passed in IA No.569/2022 and IA No.570/2022, this Application too would automatically stand dismissed. If the Impugned Order is taken into consideration, it can be seen that the Application being IA No.253/2021 as preferred by the Appellant, has been rejected without assigning any specific reasons except for the fact that it has been rejected due to the earlier orders passed in IA No.569/2022 and IA No.570/2022. The decision of the Learned

Adjudicating Authority in the said application is arbitrary without application of mind or assigning a valid reason.

At this point, it becomes relevant to scrutinize the orders passed on IA No.569/2022, in the aforesaid Company petition. In the said application, IA No.569/2022 the Applicant / Resolution Professional had prayed for condonation of 352 days of delay, (that is from 17.11.2021 to 04.11.2022) chanced in filing the Application for sanction of Resolution Plan under Section 30(6) of I & B Code, 2016, owing to various reasons such as lack of coordination with counsel, Covid-19 effects and inability to trace the application in the e-portal of NCLT and inability of the Applicant / Resolution Professional to comply with directions to rectify defects as pointed in the earlier application. However, by the order passed, on the said application IA No.569/2022, the Learned Adjudicating Authority held that no cogent reasons have been given for condonation of the long delay of 352 days, with effect from 17.11.2021 to 04.11.2022 except for raising an allegation against the Counsel on record and based on the conclusion arrived at in para 13 of the said order, declined to condone the delay of 352 days, caused in re-approaching the Tribunal on the ground that each day of delay had not been explained by the Appellant with sufficient reasons.

This order as passed in IA No.569/2022, as rendered in CP(IB) No.167/BB/2018, was made a subject matter of consideration in as many as five appeals before this Tribunal with the leading Company Appeal being CA (AT) (CH) (Ins) No.378/2024, Mr. S. Sankaranarayanan and 32 Ors., Vs Mr. Balakrishnan Venkatachalam, RP of M/s. Sovereign Developers and Infrastructure Private Limited. The said appeals were taken up together by this Tribunal and decided by the Judgment of 13.11.2024 whereby the delay was condoned, the Appeals were allowed and the matter has been remitted back to the Learned Adjudicating Authority, to consider the aspect of the approval of the Resolution Plan as preferred in IA 570/2022 in accordance with law. In the instant appeal too, the Impugned Order of 13.09.2024, as rendered in the aforesaid IA No.253/2021, has been based upon the aforesaid order of 13.09.2024 rendered in IA No.569/2022, which has already been considered by us in the Company Appeal (AT) (CH) (Ins) No.378/2024. Accordingly, this Appeal too would stand allowed in terms of the Judgment dated 13.11.2024 and the said Judgment and the reasons assigned therein will also constitute as to be a part of the instant Judgment also.

- 3) Company Appeal (AT) (CH) (Ins) No.417/2024**, in the matters of K.M. Krishna Murthy Vs M/s. Sovereign Developers and Infrastructure Ltd., the appellant seeks to challenge the Impugned Order dated 13.09.2024, as

rendered in IA No.250/2023 in CP(IB) No.167/BB/2018. By virtue of the Impugned Order which is under challenge, the Interlocutory Application being IA No.250/2023, has been rejected. In the said Application, the Appellant / Applicant has preferred the said application under Section 60(5) of I & B Code, 2016, claiming for inclusion of Rs.47,41,79,760/- as damages to be included in the process memorandum / Resolution Plan and this Application stood rejected on the ground that since the order has already been passed in the Application being IA No.569/2022 and IA No.570/2022 holding the Resolution Plan as not maintainable, this Application too would automatically stand dismissed. The dismissal of this Interlocutory Application has ultimately resulted in the denial of the relief, as sought for by the Appellant in the aforesaid application being IA No.250/2023 as preferred on 27.01.2023. If the Impugned Order is taken into consideration, the Application being IA No.250/2023 as preferred by the Appellant, has been rejected without assigning any specific reasons except for the fact that it has been rejected due to the earlier orders passed in IA No.569/2022 and IA No.570/2022. The decision of the Learned Adjudicating Authority in the said application is arbitrary without application of mind or assigning a valid reason.

At this point, it becomes relevant to scrutinize the orders passed on IA No.569/2022, in the aforesaid Company petition. In the said application, IA No.569/2022 the Applicant / Resolution Professional had prayed for condonation of 352 days of delay, (that is from 17.11.2021 to 04.11.2022) chanced in filing the Application for sanction of Resolution Plan under Section 30(6) of I & B Code, 2016, owing to various reasons such as lack of coordination with counsel, Covid-19 effects and inability to trace the application in the e-portal of NCLT and inability of the Applicant / Resolution Professional to comply with directions to rectify defects as pointed in the earlier application. However, by the order passed, on the said application IA No.569/2022, the Learned Adjudicating Authority held that no cogent reasons have been given for condonation of the long delay of 352 days, with effect from 17.11.2021 to 04.11.2022 except for raising an allegation against the Counsel on record and based on the conclusion arrived at in para 13 of the said order, declined to condone the delay of 352 days caused in re-approaching the Tribunal on the ground that each day of delay had not been explained by the Appellant with sufficient reasons.

This order as passed in IA No.569/2022, as rendered in CP(IB) No.167/BB/2018, was made a subject matter of consideration in as many as five appeals before this Tribunal with the leading Company Appeal being CA

(AT) (CH) (Ins) No.378/2024, Mr. S. Sankaranarayanan and 32 Ors., Vs Mr. Balakrishnan Venkatachalam, RP of M/s. Sovereign Developers and Infrastructure Private Limited. The said appeals were taken up together by this Tribunal and decided by the Judgment of 13.11.2024 whereby the delay was condoned, the Appeals were allowed and the matter has been remitted back to the Learned Adjudicating Authority, to consider the aspect of the approval of the Resolution Plan as preferred in IA 570/2022 in accordance with law. In the instant appeal too, the Impugned Order of 13.09.2024, as rendered in the aforesaid IA No.250/2023, has been based upon the aforesaid order of 13.09.2024 rendered in IA No.569/2022, which has already been considered by us in the Company Appeal (AT) (CH) (Ins) No.378/2024. Accordingly, this Appeal too would stand allowed in terms of the Judgment dated 13.11.2024 and the said Judgment and the reasons assigned therein will also constitute as to be a part of the instant Judgment also.

- 4) **Company Appeal (AT) (CH) (Ins) No.418/2024**, K.M. Muddappa Vs M/s. Sovereign Developers and Infrastructure Ltd., as against the Impugned Judgment dated 13.09.2024, as rendered in IA No.250/2023 in CP(IB) No.167/BB/2018. By virtue of the Impugned Order which is under challenge, the Interlocutory Application being IA No.250/2023, has been rejected. In the said Application, the Appellant / Applicant has preferred the said application

under Section 60(5) of I & B Code, 2016, claiming for inclusion of Rs.47,41,79,760/- as damages to be included in the process memorandum / Resolution Plan and this Application stood rejected on the ground that since the order has already been passed in the Application being IA No.569/2022 and IA No.570/2022 holding the Resolution Plan as not maintainable, this Application too would automatically stand dismissed. The dismissal of this Interlocutory Application has ultimately resulted in the denial of the relief, as sought for by the Appellant in the aforesaid application being IA No.250/2023 as preferred on 27.01.2023. If the Impugned Order is taken into consideration, the Application being IA No.250/2023 as preferred by the Appellant, has been rejected without assigning any specific reasons except for the fact that it has been rejected due to the earlier orders passed in IA No.569/2022 and IA No.570/2022. The decision of the Learned Adjudicating Authority in the said application is arbitrary without application of mind or assigning a valid reason.

At this point, it becomes relevant to scrutinize the orders passed on IA No.569/2022, in the aforesaid Company petition. In the said application, IA No.569/2022 the Applicant / Resolution Professional had prayed for condonation of 352 days of delay, (that is from 17.11.2021 to 04.11.2022) chanced in filing the Application for sanction of Resolution Plan under

Section 30(6) of I & B Code, 2016, owing to various reasons such as lack of coordination with counsel, Covid-19 effects and inability to trace the application in the e-portal of NCLT and inability of the Applicant / Resolution Professional to comply with directions to rectify defects as pointed in the earlier application. However, by the order passed, on the said application IA No.569/2022, the Learned Adjudicating Authority held that no cogent reasons have been given for condonation of the long delay of 352 days, with effect from 17.11.2021 to 04.11.2022 except for raising an allegation against the Counsel on record and based on the conclusion arrived at in para 13 of the said order, declined to condone the delay of 352 days caused in re-approaching the Tribunal on the ground that each day of delay had not been explained by the Appellant with sufficient reasons.

This order as passed in IA No.569/2022, as rendered in CP(IB) No.167/BB/2018, was made a subject matter of consideration in as many as five appeals before this Tribunal with the leading Company Appeal being CA (AT) (CH) (Ins) No.378/2024, Mr. S. Sankaranarayanan and 32 Ors., Vs Mr. Balakrishnan Venkatachalam, RP of M/s. Sovereign Developers and Infrastructure Private Limited. The said appeals were taken up together by this Tribunal and decided by the Judgment of 13.11.2024 whereby the delay was condoned, the Appeals were allowed and the matter has been remitted

back to the Learned Adjudicating Authority, to consider the aspect of the approval of the Resolution Plan as preferred in IA 570/2022 in accordance with law. In the instant appeal too, the Impugned Order of 13.09.2024, as rendered in the aforesaid IA No.250/2023, has been based upon the aforesaid order of 13.09.2024 rendered in IA No.569/2022, which has already been considered by us in the Company Appeal (AT) (CH) (Ins) No.378/2024. Accordingly, this Appeal too would stand allowed in terms of the Judgment dated 13.11.2024 and the said Judgment and the reasons assigned therein will also constitute as to be a part of the instant Judgment also.

The Learned Counsel for the Appellants submits that the issue involved in these appeals are the consequences of the order passed in IA No.569/2022 and IA No.570/2022. Since the propriety of the said order has already been considered by this Appellate Tribunal in the bunch of 5 Company Appeals with bearing Company Appeal (AT) (CH) (Ins) No.378/2024, and the same has been decided by this Tribunal by the Judgment dated 13.11.2024, these Appeals too would stand decided in terms of the aforesaid Judgment dated 13.11.2024.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

29.11.2024
VG/TM/MS