

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 5106 OF 2025

CA RAMCHANDRA DALLARAM CHOUDHARY

...APPELLANT

VERSUS

**ADANI INFRASTRUCTURE & DEVELOPERS
PRIVATE LIMITED**

...RESPONDENT

ORDER

1. National Company Law Tribunal, Ahmedabad [Court-II]¹ by its order dated 21st June, 2024 partly allowed an application², which was filed by the respondent under Section 60(5) of the Insolvency and Bankruptcy Code, 2016³ read with Rule 11 of the National Company Law Tribunal Rules, 2016. In the process, the NCLT directed as follows:

- i) ***
- ii) Applicant is exonerated from paying interest charged on balance consideration by respondent. Respondent not to charge interest on balance consideration at this stage.
- iii) ***
- iv) Prayer for removal of encroachment and other issues are rejected.
- v) Liquidator is directed not to forfeit the EMD by the applicant at this stage.

1 NCLT

2 I.A. No.364 of 2023, filed in CP (IB) No.66 of 2017

3 IBC

vi) ***

vii) IA is disposed of.

2. The said order was carried in appeal by the Liquidator of the corporate debtor, i.e., M/s Anil Limited, by filing an appeal⁴ under Section 61 of the IBC before the National Company Law Appellate Tribunal, Principal Bench, New Delhi⁵. The appeal was presented on 3rd August, 2024, i.e., 13 days beyond the prescribed period of limitation of 30 days. An application seeking condonation of delay of 13 days was also filed along with the said appeal. Registry of the NCLAT marked the appeal as defective.

3. Upon curing the defects, the appeal was re-filed by the appellant online on 10th December, 2024 and physically on 12th December, 2024. An application was also filed seeking condonation of delay in refiling the appeal.

4. *Vide* judgment and order dated 6th February, 2025, the NCLAT considered the applications for condonation of delay in filing/refiling of the appeal. By a reasoned order, the applications were dismissed holding that the appellant had failed to show sufficient cause. As a consequence of such dismissal of the application for condonation of delay in refiling the appeal, the Memo of Appeal stood rejected.

5. The judgment and order dated 6th February, 2025 is the subject matter of challenge in this appeal under Section 62 of the IBC.

4 Company Appeal (AT) (Ins.) No.2316 of 2024

5 NCLAT

6. An e-auction notice was issued by the appellant inviting offers from interested parties in respect of sale of a land of the corporate debtor, on 31st October, 2022. The respondent submitted a bid to acquire the subject land and enclosed a demand draft of Rs.20 crore towards upfront payment. It emerged as the sole bidder. Faced with such situation, the appellant on 3rd December, 2022 issued a fresh e-auction sale notice along with tender documents. It is not too clear as to how many bids the appellant received pursuant to the fresh notice. In any event, certain concerns were raised by the respondent which allegedly the appellant did not address. On the contrary, on 29th December, 2022, the appellant issued a Sale Confirmation Advice declaring the respondent as the successful bidder for the subject land at Rs.325 crore. Rs.20 crore deposited on 1st December, 2022 was treated as an Earnest Money Deposit (EMD). The dispute reached the NCLT. By an order dated 15th June, 2023 passed in I.A. No.364 of 2023, the respondent was directed to pay the balance amount of Rs.255 crore within five days of intimation from the appellant. It was specifically recorded that the issue of waiver of interest prayed in clause (b) of the application was not being decided. It was thereafter that the NCLT passed the order, which was under challenge before the NCLAT. The issue that would have arisen before the NCLAT in the appeal under Section 61 of the IBC, had the applications for condonation of delay were allowed, is whether the NCLT was right in waiving the interest.

7. On behalf of the respondent, it has been contended that the appellant did not approach the NCLAT with clean hands and that incorrect

statements had been made by it. The plea taken by the appellant with regard to problems faced by it in view of the distance between Delhi and Ahmedabad has been referred to in this context.

8. The said plea was an unsound plea in support of the prayer for condonation of delay, which the NCLAT rightly rejected. But mere raising of an unsound plea cannot be equated with approaching the NCLAT with unclean hands.

9. Be that as it may, it is well-recognized principle of law that the courts view applications relating to lawyer's lapses more leniently than applications relating to litigant's lapses. The classic example is the difference in approach of courts to applications for condonation of delay in filing an appeal and applications for condonation of delay in refiling the appeal after rectification of defects. Useful reference may be made to the decision of the coordinate bench of this Court in ***Perumon Bhagvathy Devaswom v. Bhargavi Amma***⁶.

10. Having regard to the fact that the appellant despite limitations had done all that was necessary for filing of the appeal within 30 days, and then 15 days, i.e., within the prescribed and extended period of limitation, respectively, as well as dependency of the appellant on its lawyers who, in turn, were dependent on their clerk to re-file the appeal, and there were some missteps contributing to the present situation, coupled with the fact that the issue sought to be raised by the appellant in the appeal filed before the NCLAT, if answered in its favour, would enure to the benefit of the debtors, and also that better justice is always achieved when a *lis* is

6 (2008) 8 SCC 321

decided on a contested hearing rather than on default, we need to take an overall view of the matter. We are of the considered opinion that the words “sufficient cause” in this case ought to have been construed liberally and that interest of justice would be best served if, upon condonation of delay in refiling of the appeal, the NCLAT proceeds with the hearing of the appeal on merits. Ordered accordingly.

11. The impugned judgment and order of the NCLAT stands set aside. NCLAT shall now hear the appeal and decide the same on its own merits.

12. Consequently, the appeal is allowed.

13. All questions on merits are left open.

14. We hasten to add that this order of ours, having been passed in the special facts and circumstances, is not to be treated as a precedent.

.....J.
(DIPANKAR DATTA)

.....J.
(MANMOHAN)

**NEW DELHI;
MAY 05, 2025.**

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.....J.
(DIPANKAR DATTA)

.....J.
(MANMOHAN)

**NEW DELHI;
MAY 05, 2025.**

ITEM NO.24

COURT NO.14

SECTION XVII

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Civil Appeal No.5106/2025

CA RAMCHANDRA DALLARAM CHOUDHARY

Appellant(s)

VERSUS

ADANI INFRASTRUCTURE AND DEVELOPERS PRIVATE LIMITED

Respondent(s)

IA No. 90075/2025 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

Date : 05-05-2025 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPANKAR DATTA

HON'BLE MR. JUSTICE MANMOHAN

For Appellant(s) : Mr. Maninder Singh, Sr. Adv.

Mr. Kanu Agrawal , AOR

Ms. Rajeshwari Shankar, Adv.

Ms. Srishti Agrawal, Adv.

Mr. Gaurav Vats, Adv.

Mr. Atul Sharma, Adv.

Ms. Aditi Sharma, Adv.

For Respondent(s) : Mr. Dr. Abhishek M. Singhvi, Sr. Adv.

Mr. K Parameshwar, Sr. Adv.

Ms. Hetu Arora Sethi, AOR

Ms. Lalit Mohini Bhat, Adv.

Mr. Siddarth Agarwal, Adv.

Mr. Anirudh Bhat, Adv.

Mr. Nirmal Prasad, Adv.

UPON hearing the counsel the Court made the following

O R D E R

1. The Appeal is allowed in terms of the Signed Order placed on the file.
2. Pending application(s), if any, shall stand disposed of.

(VIJAY KUMAR)

ASTT. REGISTRAR-cum-PS

(SUDHIR KUMAR SHARMA)

COURT MASTER (NSH)