NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

I.A. No. 2256 of 2024 in
Company Appeal (AT) (Insolvency) No. 626 of 2024

(Arising out of Order dated 07.06.2023 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Court III in IA No.2121/2023 in IB-761(ND)/2018)

IN THE MATTER OF:

Srigopal Choudhary
Having Office At:
Flat No. 7J, Tower 3 South City,
Kolkata-700068 ... Appellant

Versus

Srei Equipment Finance Limited
Having Office At:
Vishwakarma, 86 C, Topsia Road (South)
Kolkata-700046 ... Respondent

Present:

For Appellant	**:**	**Mr. Abhishek Anand, Mr. Kushal Bansal, Advocates.**
For Respondent	**:**	**Mr. Anirban Bhattacharya, Ms. Priyanka Bhatt, Mr. Rajeev Chowdhary, Advocates.**

J U D G M E N T

ASHOK BHUSHAN, J.

In this Appeal, the Appellant has filed IA No.2256 of 2024 praying for condonation of 209 days in filing of the Appeal. The Appeal has been e-filed against the order dated 07.06.2023 on 12.01.2024. The background facts necessary to be noticed for deciding the application are:

(i) The Corporate Insolvency Resolution Process ("**CIRP**") against the Corporate Debtor M/s Ortel Communication Limited commenced on 27.11.2018. On 01.02.2019, the Appellant was confirmed as Resolution Professional ("**RP**") in the CIRP. On 20.08.2019, the Resolution Plan was approved by the Committee of Creditors ("**CoC**") and IA No.576/2019 was filed by the RP for approval of the Resolution Plan.

(ii) An IA No.2121/2023 was filed by Respondent No.1 - Srei Equipment Finance Limited having vote share of 53.45% before the Adjudicating Authority, praying for removal of the Appellant as RP. On the IA No. 2121/2023, notices were issued to the Appellant and Appellant was asked to file the reply. The Appellant could not file reply to the IA. The Adjudicating Authority considered the IA No.2121/2023 and by order dated 07.06.2023 directed for removal of the Appellant as RP.

(iii) The Appellant after order dated 07.06.2023, filed an Application before the Adjudicating Authority being IA No.3216/2023 under Rule 49 of the National Company Law Tribunal Rules, 2016 ("**NCLT Rules**") for recall of the order dated 07.06.2023, which Application came to be heard and rejected by the Adjudicating Authority vide order dated 12.12.2023.

(iv) The Appellant aggrieved by the order dated 12.12.2023, filed an Appeal being Company Appeal (AT) (Insolvency) No.1690 of 2023, which Appeal was heard and dismissed by this Tribunal vide judgment dated 03.01.2024.

(v) After the order dated 03.01.2024, the Appellant filed this Appeal on 12.01.2024 and IA No.2256 of 2024 has been filed for condonation of 209 days delay in filing the Appeal. In the Application for condonation of delay, the Appellant has prayed exclusion of time from 08.06.2023 till 03.01.2024 under Section 14 of the Limitation Act, 1963.

2. We have heard Shri Abhishek Anand, learned Counsel appearing for the Appellant and Shri Anirban Bhattacharya, learned Counsel appearing for the Respondent.

3. The submission of the learned Counsel for the Appellant is that the Appellant has been bonafide prosecuting the Application IA No.3216/2023 for recall of the order dated 07.06.2023 before the Adjudicating Authority under Rule 11 read with Rule 49 of the NCLT Rules, which was although rejected on 12.12.2023, against which order, an Appeal was filed in this Tribunal, which also came to be dismissed on 03.01.2024. Thus, the time from 08.06.2023 to 03.01.2024 be excluded for computing the limitation and by giving benefit of Section 14 of the Limitation Act. It is submitted that a litigant when bonafide is prosecuting another proceeding, in which he could not get a relief, the said

period during which the Appellant has been bonafide prosecuting the proceeding, need to be excluded.

4. The submission of the Appellant has been refuted by learned Counsel for the Respondent, who submits that the Appellant is not entitled for any benefit under Section 14 of the Limitation Act for the period 08.06.2023 to 03.01.2024, since the Application filed by the Appellant for recall of the order dated 07.06.2023 was fully maintainable under Rule 49 of the NCLT Rules and the said Application was heard and decided on merits. The Adjudicating Authority did not lack jurisdiction to entertain IA No.3216/2023 filed by the Appellant, nor the Application came to be dismissed due to defect of jurisdiction or any other cause of like nature. Hence, the principles underlying Section 14 are not attracted in the facts of the present case.

5. The learned Counsel for the parties have relied on various judgments of the Hon'ble Supreme Court and this Tribunal, which we shall refer to while considering submissions in detail.

6. The only question to be answered in this Application is as to whether the period from 08.06.2023 to 03.01.2024 need to be excluded by extending the benefit of Section 14 of the Limitation Act. In event, the exclusion is not allowed under Section 14, the delay in filing of the Appeal being 209 days is uncondonable. Our jurisdiction to condone the delay limited to only 15 days, after the expiry of limitation. Whether the Appellant is entitled for benefit of Section 14 of the Limitation Act is the question to be answered.

7. Section 14 of the Limitation Act provides as follows:

> "**Section 14. Exclusion of time of proceeding bona fide in court without jurisdiction**
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> (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.
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> (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.
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> (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.
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> *Explanation*.—For the purposes of this section,—
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> (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;
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> (b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;
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> (c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction."

8. The Hon'ble Supreme Court had occasion to consider the ingredients, which need to be fulfilled for applicability of Section 14 of the Limitation Act. The Hon'ble Supreme Court in ***(2008) 7 SCC 169 – Consolidated Engineering Enterprises vs. Principal Secretary, Irrigation Department and Ors***. had occasion to consider the provisions of Section 14 of the Limitation Act. It is useful to refer paragraphs 21 and 22 of the judgment of the Hon'ble Supreme Court, which are as follows:

> "**21.** Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:
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> (1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;
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> (2) The prior proceeding had been prosecuted with due diligence and in good faith;
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> (3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;
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> (4) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;
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> (5) Both the proceedings are in a court.
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> **22.** The policy of the section is to afford protection to a litigant against the bar of limitation when he institutes a proceeding which by reason of some technical defect cannot be decided on merits and is dismissed. While considering the provisions of Section 14 of the Limitation Act, proper approach will have to be adopted and the provisions will have to be interpreted so as to advance the cause of justice rather than abort the proceedings. It will be well to bear in mind that an element of

> mistake is inherent in the invocation of Section 14. In fact, the section is intended to provide relief against the bar of limitation in cases of mistaken remedy or selection of a wrong forum. On reading Section 14 of the Act it becomes clear that the legislature has enacted the said section to exempt a certain period covered by a bona fide litigious activity. Upon the words used in the section, it is not possible to sustain the interpretation that the principle underlying the said section, namely, that the bar of limitation should not affect a person honestly doing his best to get his case tried on merits but failing because the court is unable to give him such a trial, would not be applicable to an application filed under Section 34 of the Act of 1996. The principle is clearly applicable not only to a case in which a litigant brings his application in the court, that is, a court having no jurisdiction to entertain it but also where he brings the suit or the application in the wrong court in consequence of bona fide mistake or (*sic* of) law or defect of procedure. Having regard to the intention of the legislature this Court is of the firm opinion that the equity underlying Section 14 should be applied to its fullest extent and time taken diligently pursuing a remedy, in a wrong court, should be excluded."

9. From what has been stated in paragraph 21 of the judgment, one of the conditions, which need to be satisfied for pressing Section 14 into service is "*The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature*". Thus, the question to be answered is as to whether earlier Application, which was filed by the Appellant being IA No.3216/2023 under Rule 11 read with Rule 49 of the NCLT Rules suffer from lack of defect of jurisdiction or other cause of like nature. The IA No.3216/2023 was filed praying for recall of order under Rule 49 of NCLT Rules. Rule 49 of NCLT Rules is as follows:

"**49. Ex-parte Hearing and disposal.-** (1) Where on the date fixed for hearing the petition or application or on any other date to which such hearing may be adjourned, the applicant appears and the respondent does not appear when the petition or the application is called for hearing, the Tribunal may adjourn the hearing or hear and decide the petition or the application ex-parte.

(2) Where a petition or an application has been heard ex-parte against a respondent or respondents, such respondent or respondents may apply to the Tribunal for an order to set it aside and if such respondent or respondents satisfies the Tribunal that the notice was not duly served, or that he or they were prevented by any sufficient cause from appearing (when the petition or the application was called) for hearing, the Tribunal may make an order setting aside the ex-parte hearing as against him or them upon such terms as it thinks fit.

Provided that where the ex-parte hearing of the petition or application is of such nature that it cannot be set aside as against one respondent only, it may be set aside as against all or any of the other respondents also."

10. The Adjudicating Authority heard the IA No.3216/2023 and concluded that there was no sufficient cause for exercising jurisdiction under Rule 49 of the NCLT Rules for recalling order dated 07.06.2023. In paragraphs 23 and 24 of the judgment dated 12.12.2023, rejecting the IA No.3216/2023, following was held by the Adjudicating Authority:

"**23.** According to our considered view, the only cause shown by the Applicant for non-appearance on 07.06.2023 is that the Applicant noted a wrong date in the diary. It is not denied that the the Applicant's counsel appeared and was present on 12.05.2023.

> **24.** We do not consider it to be a sufficient cause for exercising the power under the provisions of Rule 49 of the NCLT Rules, 2016 for recalling of the order dated 07.06.2023. We further may note that on 07.06.2023 this Adjudicating Authority has appointed Mr. Ranjan Chakraborti, as a new RP in place of Mr. Srigopal Choudhary, RP."

11. Further, the Appellant has challenged the order dated 12.12.2023 in this Tribunal and this Tribunal vide its judgment dated 03.01.2024 has also affirmed the judgment of the Adjudicating Authority. The learned Counsel for the Respondent in the reply has also brought on the record the order of the Hon'ble Supreme Court passed on 05.03.2024 by which Civil Appeal No.2602 of 2024 filed by the Appellant challenging the order of this Tribunal dated 03.01.2024 was dismissed.

12. The learned Counsel for the Respondent has also placed reliance on judgment of this Tribunal in ***SREI Equipment Finance Limited vs. Kalpataru Properties Pvt. Ltd. and Ors.***, in which this Tribunal decided IA No.130 of 2023 in Company Appeal (AT) (Insolvency) No.37 of 2023. This Tribunal had occasion to consider the ingredients of Section 14 of the Limitation Act. It is useful to extract paragraph 18 of the judgment, where this Tribunal noted following:

> "**18.** One of the condition which required to be fulfilled for applicability of Section 14 is that the earlier proceeding failed **"from defect of jurisdiction or other cause of like nature"**. The provision further provides that earlier Court where the proceedings from defect of jurisdiction or other cause of like nature cannot be entertained. The expression used in Section 14 Sub-section (1) and (2) is **"is unable to**

> **entertain it"**. Thus, defect of jurisdiction and other cause of like nature should result in inability of the Court to entertain it."

13. This Tribunal after noticing the earlier judgment of the Hon'ble Supreme Court, came to the conclusion that IA No.2623 of 2021 on the basis of which limitation of Section 14 was sought to be extended was decided on merits and it cannot be held that Court was unable to entertain the Application due to defect of jurisdiction or other cause of like nature. In paragraph 32 of the judgment, following was laid down:

> "**32.** We, thus, are satisfied that the I.A. No. 2623 of 2021 came to be decided on merits and it cannot be said that the Court was unable to entertain the application due to defect of jurisdiction or other cause of like nature. This essential condition being not satisfied, the benefit of Section 14 cannot be extended."

14. When we look into the order passed by the Adjudicating Authority on 12.12.2023 in IA No.3216/2023, it is clear that IA was decided on merits and it cannot be held that the decision suffers from any defect of jurisdiction or other cause of like nature. One of the ingredients, which was required to be proved by the Applicant to attract the benefit of Section 14, being absent, benefit of Section 14 cannot be extended.

15. The learned Counsel for the Appellant has also placed reliance on the judgment of the Hon'ble Supreme Court in ***N. Mohan vs. R. Madhu – Civil Appeal No.8898 of 2019****I,* in which case, after dismissal of Application under Order IX Rule 13 CPC, the ex-parte decree was challenged upto the Hon'ble

Supreme Court and belated appeal was filed under Section 96, sub-section (2) by the defendant, in which Application, condonation of delay under Section 5 of the Limitation Act was rejected. In the facts of the case, delay in filing the Appeal was condoned. In paragraph 18, 19 and 20, the Hon'ble Supreme Court passed an order for condonation of delay, subject to deposit of Rs.20 lakhs before the Trial Court. Paragraphs 18, 19 and 20 of the judgment is as follows:

> "**18.** Thereafter, the appellant has preferred the first appeal with the application to condone the delay of 546 days in filing the first appeal. As pointed out earlier, there was a delay of 276 days in filing the application to set aside the ex-parte decree. Pursuing the proceedings in the application filed under Order IX Rule 13 CPC has caused further delay of 270 days. Thus, there has been a total delay of about 546 days in filing the first appeal. In the application for condonation of delay, of course, the appellant has raised the very same ground which was taken in the application filed under Section 5 of the Limitation Act to set aside the *ex-parte* decree which was not accepted in the earlier proceedings.
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> **19.** The learned counsel for the appellant-defendant has submitted that a huge amount of Rs.45,00,000/- is said to have been paid by cash which according to the learned counsel raises serious doubts about the genuineness of such transaction. Per contra, the learned Senior counsel for the respondent-plaintiff has submitted that lending of Rs.45,00,000/- as hand loan is substantiated by issuance of two post-dated cheques in favour of the respondent by the appellant – one for the sum of Rs.25,00,000/- and another for the sum of Rs.20,00,000/- . We are not inclined to go into the merits of the contention of the parties. All that is to be pointed out is that the appellant would have been well advised that if he had filed the first appeal simultaneously along with the application under Order IX Rule 13 CPC. The appellant

has however shown his bona fide by depositing Rs.25,00,000/- in compliance with the orders of this Court dated 13.08.2018. The said amount of Rs.25,00,000/- was permitted to be withdrawn by the respondent-plaintiff. Considering the facts and circumstances of the case and in the interest of justice, in our view, the appellant deserves an opportunity to put forth his defence in the suit for recovery of money. But to avail this opportunity, he must deposit the balance amount of Rs.20,00,000/- as a condition precedent for condonation of delay. In these terms, the impugned judgment is accordingly liable to be set aside.

20. The delay of 546 days in filing the first appeal shall therefore be condoned with condition that the appellant should deposit Rs.20,00,000/- before the trial court-Principal District Judge, Tiruchirappalli, to the credit of OS No.76 of 2015 on or before 28.02.2020, failing which, the application for condonation of delay shall stand dismissed. On such deposit of Rs.20,00,000/- the same shall be invested in a nationalised bank for a period of six months with the provision of auto-renewal. The deposit of Rs.20,00,000/- and also the earlier deposit of Rs.25,00,000/- would be subject to the outcome of the appeal. On deposit of Rs.20,00,000/-, the impugned judgment passed by the Madurai Bench of Madras High Court in CMP(MD) No.6566 of 2017 in AS(MD) SR No. 27805 of 2017 is set aside and this appeal is allowed. The delay in filing the appeal is condoned. The appeal shall be taken on file and the High Court shall proceed with the same in accordance with law. We make it clear that we have not expressed any opinion on the merits of the matter. It is also made clear that the criminal complaints filed under Section 138 of NI Act be proceeded on its own merits without being influenced by any of the views expressed by this Court or by the High Court."

16. The Hon'ble Supreme Court in the above case was considering Application filed under Section 5 of the Limitation Act for condonation of delay in filing of the Appeal. The said case was not a case where benefit of Section

14 of the Limitations Act was sought or accepted. Thus, the case is clearly distinguishable. More so, the Hon'ble Supreme Court took into notice the bonafide of the Appellant, where he deposited Rs.25 lakhs in compliance of the order of the Hon'ble Supreme Court, which was permitted to be withdrawn by the Plaintiff. The reasons given by the Hon'ble Supreme Court in paragraph 19 and 20, clearly indicate that order for condoning the delay was in the facts of the said case. The above judgment does not support the submission of the Appellant that benefit of Section 14 of the Limitation Act, can be extended to the Appellant.

17. Learned Counsel for the Appellant referred to judgment of the Hon'ble Supreme Court in ***Consolidated Engg. Enterprises v. Principal Secy. Irrigation Department***, which we have already noticed above, and further he has referred to judgment of Hon'ble Supreme Court in ***M.P. Steel Corporation v. CCE4 – (2015) 7 SCC 58***. The learned Counsel for the Appellant has relied on relevant portion of paragraphs 10 and 49 of the judgment of the Hon'ble Supreme Court in M.P. Steel Corporation, which are as follows:

> "**10.** We might also point out that Conditions 1 to 4 mentioned in the Consolidated Engg. case [(2008) 7 SCC 169] have, in fact, been met by the appellant. It is clear that both the prior and subsequent proceedings are civil proceedings prosecuted by the same party. The prior proceeding had been prosecuted with due diligence and in good faith, as has been explained in Consolidated Engg. [(2008) 7 SCC 169] itself. These phrases only mean that the party who invokes Section 14

should not be guilty of negligence, lapse or inaction. Further, there should be no pretended mistake intentionally made with a view to delaying the proceedings or harassing the opposite party……. .

49. …. the expression "the time during which the plaintiff has been prosecuting with due diligence another civil proceeding" needs to be construed in a manner which advances the object sought to be achieved, thereby advancing the cause of justice."

18. This Tribunal in judgment in **SREI Equipment Finance Limited** (supra) had noticed both the judgments of Hon'ble Supreme Court, i.e., **Consolidated Engineering Enterprises vs. Principal Secretary, Irrigation Department and others** and **M. P. Steel Corporation vs. Commissioner of Central Excise**. It is useful to refer paragraphs 23 and 24 of the judgment of this Tribunal in **SREI Equipment Finance Limited**, which are as follows:

"**23.** Next judgment relied by learned counsel for the Appellant is judgment of Hon'ble Supreme Court in ***"M. P. Steel Corporation vs. Commissioner of Central Excise" (supra)***, where Hon'ble Supreme Court has laid down that that wherever Section 14 is not applicable, the principles on which Section 14 is based can be applied. In Para 35, Hon'ble Supreme Court has observed that civil proceedings are of many kinds and need not be confined to suits, appeals and applications which are made only in courts stricto sensu. Following has been laid down in Para 35:

"35. This judgment is in line with a large number of authorities which have held that Section 14 should be liberally construed to advance the cause of justice – see: Shakti Tubes Ltd. v. State of Bihar, (2009) 1 SCC 786 and the judgments cited therein. Obviously, the context of Section 14 would require that the term "court" be liberally construed to include within it quasi-

judicial Tribunals as well. This is for the very good reason that the principle of Section 14 is that whenever a person bonafide prosecutes with due diligence another proceeding which proves to be abortive because it is without jurisdiction, or otherwise no decision could be rendered on merits, the time taken in such proceeding ought to be excluded as otherwise the person who has approached the Court in such proceeding would be penalized for no fault of his own. This judgment does not further the case of Shri Viswanathan in any way. The question that has to be answered in this case is whether suits, appeals or applications referred to by the Limitation Act are to be filed in courts. This has nothing to do with "civil proceedings" referred to in Section 14 which may be filed before other courts or authorities which ultimately do not answer the case before them on merits but throw the case out on some technical ground. Obviously the word "court" in Section 14 takes its colour from the preceding words "civil proceedings". Civil proceedings are of many kinds and need not be confined to suits, appeals or applications which are made only in courts stricto sensu. This is made even more clear by the explicit language of Section 14 by which a civil proceeding can even be a revision which may be to a quasi-judicial tribunal under a particular statute."

24. Last judgment relied by learned counsel for the Appellant is Kalpraj Dharamshi (supra), in which case after order of the NCLT dated 28.11.2019, KIAL filed a Writ Petition before the Bombay High Court, which Writ Petition was dismissed by the High Court on 28.01.2020 on the ground that KIAL had an alternate and efficacious remedy of filing an appeal before NCLAT. Thereafter, KIAL filed appeals before NCLAT on 18.02.2020. The Appeals were allowed by NCLAT vide its judgment dated 05.08.2020, which judgment was challenged before the Hon'ble Supreme Court in the Civil Appeals, which were decided by the Hon'ble Supreme Court. One of the arguments which was raised before the Hon'ble Supreme Court was that appeal was barred by time, which

argument was repelled holding that the KIAL was entitled to the benefit of principles underlying Section 14. In Para 65 and 78, the Hon'ble Supreme Court laid down following:

> *"65. In Consolidated Engineering Enterprises31, it has been observed, that while considering the provisions of Section 14 of the Limitation Act, proper approach will have to be adopted and the provisions will have to be interpreted, so as to advance the cause of justice, rather than abort the proceedings. It has been observed, that an element of mistake is inherent in the invocation of Section 14. The section, in fact, is intended to provide a relief against the bar of limitation in cases of mistaken remedy or selection of a wrong forum. It has been observed, that the legislature has enacted Section 14 to exempt a certain period covered by a bona fide litigious activity. It has been held, that the equity underlying Section 14 should be applied to its fullest extent and time taken diligently pursuing a remedy, in a wrong court, should be excluded. It could thus be seen, that this Court has in unequivocal terms held, that when a litigant bona fide under a mistake litigates before a wrong forum, he would be entitled for exclusion of the period, during which he was bona fide prosecuting such a wrong remedy. Though strictly, the provisions of Section 14 of the Limitation Act would not be applicable to the proceedings before a quasi-judicial Tribunal, however, the principles underlying the same would be applicable i.e. the proper approach will have to be of advancing the cause of justice, rather than to abort the proceedings."*
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> *"78. In the present case, perusal of the writ petition would reveal, that it was the specific case of KIAL, that its application, objecting to the application of RP for approval of the resolution plan was heard by a Member (Judicial), whereas, the final orders were passed by a Bench consisting of Member (Judicial) and Member (Technical). It has specifically averred, that though an alternate*

remedy was available to it, it was invoking the jurisdiction of the High Court since the question involved was also with regard to the manner in which the jurisdiction was exercised by NCLT. It could thus be seen, that KIAL was bona fide prosecuting the proceedings before the High Court in good faith. Perusal of the dates referred to herein above would also reveal, that KIAL was prosecuting the proceedings before the High Court with due diligence. Even before the availability of the certified copy, it had knocked the doors of the High Court. The matter before the High Court was hotly contested and ultimately, the petition was dismissed by an elaborate judgment relegating KIAL to the alternate remedy available to it in law. As such, the conditions which enable a party to invoke the provisions of Section 14 of the Limitation Act are very much available to KIAL. If the period during which KIAL was bona fide prosecuting the writ petition before the High Court and that too with due diligence, is excluded applying the principles underlying Section 14 of the Limitation Act, the appeals filed before NCLAT would be very much within the limitation. We find, that KIAL would be entitled to exclusion of the period during which it was bona fide prosecuting the remedy before the High Court with due diligence."

19. As noticed above that after noticing the judgment of the Hon'ble Supreme Court, this Tribunal in **SREI Equipment Finance Limited** concluded that IA was decided on merits and it cannot be said that the Court was unable to entertain the Application due to defect of jurisdiction or other cause of like nature. In paragraph 30 of the above judgment, following was held by this Tribunal:

"**30.** The judgment dated 03.01.2023, thus, in result, dismissed the Company Appeal (AT) (Ins.) No. 880 of 2021 as withdrawn and has

rejected the I.A. No. 2623 of 2021. The rejection of the I.A. was after consideration on the merit of the I.A. and entitlement of the Intervenor in the I.A. which was filed. Thus, present is not a case where it can be said that in earlier proceeding the Court was unable to entertain the I.A. The I.A. No. 2623 of 2021 was entertained, heard on merits and rejected. It is further to be noted that the Appellate Tribunal which decided the I.A. No. 2623 of 2021 had no defect of jurisdiction nor its rejection was on "other cause of like nature". The civil proceeding which was initiated by the Appellant by I.A. No. 2623 of 2021 was prosecuted on merits and rejected. The condition as required to be fulfilled under Section 14(1) cannot be said to be fulfilled. We may in this context refer to two judgments of High Courts. In "AIR 1977 Cal 443, Corporation of Calcutta vs. Pulin Chandra Daw & Ors", the question of extending benefit of Section 14 of the Limitation Act arose. It was held by the Hon'ble High Court of Calcutta that when the prior suit being adjudicated upon and disposed of on merits, the conditions were not fulfilled. In Para 14 following has been laid down:

> *"14. On a careful consideration of the respective contention of the parties I find the defendant's case to be of more sub-stance. In my view the claim of the plaintiff in the prior suit having been ad-judicated upon and disposed of on merits, it can hardly be said that the previous suit filed in 1952 was altogether misconceived, or that the Courts were under any infirmity or there was any defect of jurisdiction or any defect of like nature which prevented the Courts from entertaining the earlier suit."*

20. The judgment of the Hon'ble Supreme Court relied by the Appellant in **Consolidated Engineering Enterprises** and **M. P. Steel Corporation**, does not support the submissions of the Appellant. In **M.P. Steel Corporation**, the Hon'ble Supreme Court has held that for invoking Section 14, the Application

should not be guilty of negligence, lapse or inaction and further there should be no pretended mistake intentionally made with a view to delaying the proceedings or harassing the opposite party. The present is a case where one of the ingredients as laid down by the Hon'ble Supreme Court in **Consolidated Engineering Enterprises** is not being fulfilled, i.e., "*failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature*". It has been held that all the ingredients as noted in the judgment of the Hon'ble Supreme Court need to be fulfilled.

21. Another judgment relied by learned Counsel for the Appellant is the judgment of this Tribunal in ***State Bank of India vs. Visa Steel Ltd.*** in ***Company Appeal (AT) (Insolvency) No.294 of 2020***, where reliance have been placed on paragraphs 29, 30, 31 and 35, which are as follows:

> "**29.** One cannot ignore a prime fact that the 'term' 'sufficient cause' implies no negligence, nor inaction nor want of bonafides on the part of the litigant. In fact, in excluding the time, the period starting from the institution of former proceeding till the end of the said proceeding, would be calculated. If a litigant was bonafide prosecuting his rights in a 'Court'/'Tribunal' due to wrong advise, the limitation shall remain in 'limbo', which is the underlying Principle of Section 14 of the Limitation Act, 1963.
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> **30.** The essence of 'sufficient cause' is whether it was an act of prudence or reasonable man on the part of person filing an 'Appeal'. It is to be taken note of that whether the 'Appellant' had acted with reasonable diligence in prosecuting his 'Appeal'.
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> **31.** It is to be remembered that if an individual permits 'limitation' to expire and plead 'sufficient cause' for not filing an 'Appeal' earlier, he

ought to establish that because of some event or circumstances arising before the limitation expired, it was not possible for him to prefer an 'Appeal' within time. It cannot be gainsaid that if 'sufficient cause' is shown, the 'Court of Law'/'Tribunal' is to exercise its discretion.

xxx xxx xxx

35. As far as the present case is concerned, the action of the Petitioner/Appellant in moving the Hon'ble Supreme Court of India in Civil Appeal No.3169 of 2019 after the 'Impugned Order' dated 25.6.2019 passed by the 'Adjudicating Authority', instead of preferring an 'Appeal' before this 'Tribunal' and later filing of the 'Review Proceeding' before the 'Adjudicating Authority', pursuant to the liberty granted by the Hon'ble Supreme Court as per order dated 29.7.2019 are bonafide, of course based on act of prudence or reasonable person in prosecuting the concerned proceeding with reasonable due diligence. Suffice it for this 'Tribunal' to point out that the 'time spent' in prosecuting the legal remedy by the Petitioner/Appellant/Bank is required to be excluded while computing the period of limitation as envisaged under section 61(2) of the 'Insolvency & Bankruptcy Code, 2016, in the considered opinion of this 'Tribunal'. In any event, the Petitioner/Appellant/Bank cannot be attributed with 'Lack of Bonafides' in resorting to the legal proceedings and time spent in this regard. Therefore, this 'Tribunal' by adopting a practical, purposeful, meaningful, a rational approach and by taking a pragmatic view of the matter in a lenient and liberal manner condones the delay of 193 days in furtherance of substantial cause of justice."

22. The above judgment clearly hold that while computing the period of limitation under Section 61, sub-section (2), time spent in prosecuting the legal remedy need to be excluded. There cannot be any quarrel to the above preposition laid down in the above case. Whereas, the question in the present

case is as to whether condition precedent required for applicability of Section 14, are fulfilled in the facts of the case or not?

23. Another judgment of the Hon'ble Supreme Court relied by learned Counsel for the Appellant is ***Purni Devi & Anr. vs. babu Ram & Anr. – Civil Appeal No.4633 of 2024***, which was a case where the Hon'ble Supreme Court again has reiterated that exclusion of time should be allowed when following conditions are satisfied:

> "(1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;
>
> (2) The prior proceeding had been prosecuted with due diligence and in good faith;
>
> (3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;
>
> (4) The earlier proceeding and the latter proceeding must relate to the same matter in issue; and
>
> (5) Both the proceedings are in a court."

24. The above prepositions laid down by the Hon'ble Supreme Court is reiteration of law laid down by the Hon'ble Supreme Court in its various judgments. The present is a case where we have held that Condition No.3 as noted above, is not fulfilled in the facts of the present case, since failure of the earlier proceedings was not due to defect of jurisdiction or other cause of like nature.

25. In view of the foregoing discussions, we are satisfied that no case has been made out to extend the benefit of Section 14 of the Limitation Act for excluding the period from 08.06.2023 to 03.01.2024. The Appeal having been filed with the delay of 209 days, and the delay being beyond the condonable period of 15 days, IA No.2256 of 2024 field for condonation of delay of filing the Appeal, is rejected. In result the Memorandum of Appeal is also dismissed. There shall be no order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical

[Arun Baroka]
Member (Technical)

NEW DELHI

7th August, 2024

Ashwani