

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL  
AT CHENNAI  
(APPELLATE JURISDICTION)**

**IA No. 149 of 2023**

**in**

**Company Appeal (AT) (CH) (INS) No. 41 of 2023**

**(Filed under Rule 11 of the NCLAT Rules, 2016, seeking Condonation of  
Delay under Section 5 of Limitation Act, 1963)**

**In the matter of:**

**M/s. SMS Foundation & Investment LLP**

Represented by its Designated Partner

Mr. Manish Kumar B. Shah,

No. 7, VII Cross Street, Shenoy Nagar,

Chennai – 600030, Tamil Nadu, India

**..... Petitioner/Appellant**

**v.**

**J. John Ohilvi,**

Resolution Professional of

M/s. Harsha Exito Engineering Pvt. Ltd.

No. 3 / 95A, East of Medical College,

Asaripallam, Nagercoil,

Kanyakumari District - 629201

**..... Respondent/Respondent**

**Present:**

For Petitioner / Appellant : Mr. K. Gaurav Kumar,  
Practising Company Secretary

For Respondent / Respondent : Mr. S.R. Rajagopal, Senior Advocate  
For Mr. T. Dhanasekaran, Advocate

**ORDER**  
**(Virtual Mode)**

**Justice M. Venugopal, Member (Judicial):**

**IA No. 149 of 2023 in Comp. App (AT) (CH) (INS.) No. 41 of 2023:**

**Preface:**

According to the Petitioner / Appellant, the `impugned order' dated 11.10.2022 in Ivn.P/7(CHE)/2022 in IA/248(CHE)/2022 in IBA/471/2020, was never pronounced by the `Adjudicating Authority' (National Company Law Tribunal', Division Bench, Court - I, Chennai), and the `Petitioner / Appellant', received the `Free and Certified True Copy' of the said `impugned order', only on 24.11.2022.

**Petitioner / Appellant's Pleas:**

2. It is represented on behalf of the Petitioner / Appellant that the Designated Partner, representing the `Petitioner / Appellant', was diagnosed with a Fistula Opening in the Perianal skin and thus was in the process of numerous Medical Tests, as required by his Doctor from 22.12.2022. Further, the `Petitioner / Appellant', had filed the `Appeal Type Set', along with the `Requisite papers', accompanying the same in `E-filing Portal' on 23.11.2022 and that the `Petitioner / Appellant', was not in a position to furnish the hardcopies of `Appeal' Type Set, since, by that time, the `Petitioner / Appellant', was ready with those papers and

Type set on 23.12.2022, the 'Registry' of this 'Tribunal', was closed in accordance with the Office Timing and on the subsequent days, from 24.12.2022 to 28.12.2022, the 'Office of the Registry', was 'Closed', due to 'Holidays'.

3. It is the version of the Petitioner /Appellant that through Notification F.No.23/4/2022 – Estt. / NCLAT dated 24.12.2022, issued by the Principal Bench of NCLAT, New Delhi, it was clarified that the Hard Copy of the Appeal Papers (Type Set), can be submitted within 7 days after e-filing, which in the present case would fall on 30.12.2022. As a matter of abundant caution, the 'Petitioner / Appellant', had filed the instant 'Condonation of Delay' in 'IA No. 149 of 2023', in the present 'Appeal', to avoid any discrepancy.

4. It is projected on the side of the Petitioner / Appellant that the 'Cause List of 11.10.2022', shows that the matter was 'Listed' for 'Hearing' alone, and thereby the fact emerges that the matter was never listed for Pronouncement nor Pronounced in 'Open Court' for 'Parties'. Also that, the detailed 'Order', was made available only on 21.11.2022, by way of 'Uploading' on the National Company Law Tribunal's Portal, after '42 days' from the date of the 'Order', and Physical Copy on 45<sup>th</sup> day from the date of the 'Order', thereby leaving the 'Petitioner /

Appellant', 'no option', to file an 'Appeal', within the time from the date of the Order.

5. The plea of the Petitioner / Appellant is that, there is no proof that the 'Order', was 'pronounced / dictated' Online on 11.10.2022, when the 'Appellant', was present and when the 'Order', is not 'Pronounced', then the date of receipt of Order alone, can be used to 'calculate', the 'Limitation', and further that the 'Tabular Form', is as under:

<i>Sl. No.</i>	<i>Particular</i>	<i>Relevant Dates</i>	<i>Delay</i>
1	<i>Date of E filing Appeal (As per notification F No. 23/4/2022 – Estt/NCLAT)</i>	23.12.2022	
2	<i>Date of Online Copy of Order Availability</i>	21.11.2022	<i>4 days if online upload of order is concerned</i>
3	<i>Date of Physical Receipt of Order Copy</i>	24.11.2022	<i>No delay if physical receipt of order is taken as there was no pronouncement or dictation ion open court</i>
4	<i>Date which cannot be taken for computation for limitation is the date of order</i>	<i>11.10.2022 as not pronounced and not dictated in open court and if pronounced then not uploaded till 21.11.2022 thereby making it impossible for appellant to prefer an appeal as per SC judgement as given above</i>	

6. In fine, on behalf of the Petitioner / Appellant, it is prayed that the `Delay of Five Days`, from 23.12.2022 to 28.12.2022, that has occurred in physical filing of Hard Copies of the `Appeal Type Set` of papers, may be `Condoned`, since the said `Delay`, is neither wilful nor wanton, but, due to the aforesaid reason, and that IA No. 149 of 2023 in Comp. App (AT) (CH) (INS.) No. 41 of 2023, may kindly be allowed, in the interest of Justice.

**Appellant's Decisions :**

7. On behalf of the Petitioner / Appellant, the Judgment of the Hon'ble Supreme Court of India dated 29.10.2020, in Balaji Baliram Mupade & Anr. v. The State of Maharashtra & Ors., (vide Civil Appeal No. 3564 of 2020 – SLP (C) No.11626 / 2020), is relied upon, wherein at Paragraphs 7 to 10, it is observed as under:

*7. ``We thus called upon the Registrar of the Aurangabad Bench of the Bombay High Court to verify the aforesaid fact and communicate to this Court forthwith as to why the order had not been uploaded. We also restrained any coercive action in pursuance of the impugned order as we were unable to appreciate the controversy in the absence of any reasons.*

*8. The report was submitted by the Registrar (Judicial) stating that the order was pronounced on 21.01.2020 being only the operative portion, and the reasons were received by the Registry only on 09.10.2020 after almost nine months. It was uploaded on the same date.*

9. *On the aforesaid short ground, without even looking at any other aspect, we issued notice returnable for today and stayed the operation of the impugned order.*

10. *We must note with regret that the counsel extended through various judicial pronouncements including the one referred to aforesaid appear to have been ignored, more importantly where oral orders are pronounced. In case of such orders, it is expected that they are either dictated in the Court or at least must follow immediately thereafter, to facilitate any aggrieved party to seek redressal from the higher Court. The delay in delivery of judgments has been observed to be a violation of Article 21 of the Constitution of India in Anil Rai's case (supra) and as stated aforesaid, the problem gets aggravated when the operative portion is made available early and the reasons follow much later.''*

8. On the side of the Petitioner / Appellant, a 'Judgment' of the Hon'ble Supreme Court of India dated 11.12.2020 (vide Civil Appeal No 4022 of 2020 – SLP (C) No. 15137 of 2020 – D No. 21991 of 2020), between Oriental Insurance Co. Ltd. v. Zaixhu Xie & Ors., is adverted to, wherein, it is observed as under:

*''On the basis of the report what emerges is that the file was received in the Chamber of the learned Judge on 11.07.2019 whereafter the matter was taken up on different dates but arguments were only heard on 30.07.2019 in part. It is stated that on 31.07.2019 at about 2.15 p.m. after hearing the further arguments the operative portion/conclusion of the decision was 'indicated' in the Court itself in the presence of the counsel for the parties. Thus, it appears that even the concluding paragraph was not penned down. The judgment is stated not to have been reserved.*

*The file was, however, sent back to the Registry after 9½ months on 15.05.2020 and the judgment was uploaded on the same date.*

*The certified copy of the order was applied on 29.01.2020 (it is the say of the appellants that there was no pronouncement of any order on 31.07.2019). There was some lapse in preparation of the certified copy due to Covid.*

*It is stated that from the report received from the Court Master of the concerned Court, some aspects of the different number of cases dealt with by the learned Judge have been set out as also some personal difficulty of the Judge for some period of time.*

*In a recent judgment in Balaji Baliram Mupade & Anr. v. The State of Maharashtra & Ors. [Civil Appeal No. 3564 of 2020] dated 29.10.2020, we had been called upon to comment on a similar scenario. We had emphasized that judicial discipline requires promptness in delivery of judgments, an aspect repeatedly emphasized by this Court when this problem gets compounded where the result may be known but not the reasons depriving the aggrieved party of opportunity to seek further judicial redressal. We have also referred to the Constitution Bench judgment of this Court delivered as far back as in 1983 in State of Punjab & Ors. vs. Jagdev singh Talwandi (1984) 1 SCC 596, which drew the attention of the High Court to serious difficulties caused on account of practice which was being increasingly adopted by several High Courts of pronouncing the final orders without reasoned judgments. We have also referred to the subsequent judgments even delivered by this Court in our aforesaid judgment but there is no purpose in repeating the same.*

*We appreciate that the learned Judge may have delivered a number of judgments and dealt with many cases and in the interregnum period may have even faced some personal difficulty as set out in the report but that does not take away from the fact*

*that the process which was required to be followed as set out in the judicial pronouncements has not been followed in the present case. If a judgment cannot be delivered on the same date or immediately thereafter, logically the judgment ought to have been at least reserved to facilitate the Judge to pen down the order. Result of not doing so is that the appellant being the aggrieved party, is unable to avail of the legal remedy.*

*We have to follow the same course of action as in the judgment referred to aforesaid and thus set aside the impugned order and remit the matter back for reconsideration of the High Court on merits, uninfluenced by the reasons which have been set out in the impugned order.’’*

**Respondent’s Stance:**

9. The Respondent in IA No. 149 of 2023 in Comp. App (AT) (CH) (INS.) No. 41 of 2023, had averred that the IA No. 149 of 2023, seeking to ‘Condone the Delay’, is clearly an ‘unsustainable’ one for the reason that the ‘Appeal Proceedings’ and the ‘Condonation of Delay’, could be initiated, under Section 61 of the I & B Code, 2016. While, remedy is provided as per Section 61(2) of the Code, it is not open to the ‘Petitioner / Appellant’, to resort to Rule 11 of the NCLAT Rules, 2016 or the ingredients of Section 5 of the Limitation Act, 1963.

10. According to the Respondent, the matter was heard by the ‘Tribunal’ (‘NCLT’, Division Bench, Court – I, Chennai) on 11.10.2022 in Ivn.P/7(CHE)/2022 in IA/248(CHE)/2022 in IBA/471/2020 (through

Video Conferencing), both sides Learned Counsels, were present at that time, when the matter was `Heard`.

11. It is represented on behalf of the Respondent that an `Order` in IA (IBC)/753/CHE/2021 in IBA/471/2020, was passed by the `Adjudicating Authority`, (`Tribunal`), on 08.07.2022, in rejecting the `Appellant`s Claim` to consider it as `Financial Creditor` and to include it in the `Committee of Creditors`. Because of the fact that the `Appellants`, came in the Category of `Shareholders`, the IA (IBC)/753/CHE/2021 in IBA/471/2020, was dismissed by the `Tribunal`, on 08.07.2022. Against which, Comp. App (AT) (CH) (INS.) No. 364 of 2022, is filed by the `Appellant`, and the same is pending.

12. The Learned Counsel for the Respondent submits that the `Tribunal` at once dismissed the Ivn.P/7(CHE)/2022 in IA/248(CHE)/2022 in IBA/471/2020, in the presence of Learned Counsel, who had immediate knowledge of the `Order` dated 11.10.2022. In fact, the `Order` dated 11.10.2022, was pronounced forthwith by the `Adjudicating Authority` (`National Company Law Tribunal`), as per Rule 150 (1) of the NCLT Rules, 2016, and in fact, the `Petitioner / Appellant`, has knowledge about the `Order` on 11.10.2022 itself, and

hence the Limitation runs from 11.10.2022, excluding the `Date of Order`.

13. The Learned Counsel for the Respondent points out that the `Computation of Limitation Period`, as per the I & B Code, 2016, runs as under:

<b><i>S. No.</i></b>	<b><i>Date</i></b>	<b><i>Event</i></b>	<b><i>Remarks</i></b>
<i>1</i>	<i>11/10/2022</i>	<i>NCLT Order dismissing the Intervention Petition.</i>	<i>Appellant has knowledge of the Order on 11/10/2022 itself and Limitation start from that date.</i>
<i>2</i>	<i>10/11/2022</i>	<i>30<sup>th</sup> day</i>	<i>Period within which Appeal has to be filed.</i>
<i>3</i>	<i>25/11/2022</i>	<i>15 days delay is allowed if sufficient cause shown.</i>	<i>Maximum Period allowed for condonation of delay beyond which NCLAT has no power to condone.</i>
<i>4</i>	<i>23/12/2022</i>	<i>E-filing of appeal memo by the Appellants</i>	<i>Filing on 73<sup>rd</sup> day – a delay of 43 days.</i>
<i>5</i>	<i>28/12/2022</i>	<i>Physical filing of above</i>	<i>Filing on 78<sup>th</sup> day – a delay of 48 days.</i>

14. The Learned Counsel for the Respondent contends that the `Petitioner / Appellant`, has E-filed the instant `Appeal`, after a `Delay of 43 days`, and the Physical Filing was done after a `Delay of 48 days`, and therefore, the `Petitioner / Appellant`, is not entitled to seek `Condonation of Delay` and the `IA No. 149 of 2023 in Comp. App (AT) (CH) (INS.) No. 41 of 2023`, is to be `dismissed`, with `Exemplary Costs`, for an abuse of process of `Law`.

15. The Learned Counsel for the Respondent submits that the ‘Medical reasons’ cited and the ‘Medical Reports’, furnished thereon for the purpose of satisfying ‘Sufficient Cause’, are irrelevant.

**Respondent’s Citations:**

16. The Learned Counsel for the Respondent, refers to the decision of Hon’ble Supreme Court in V. Nagarajan v. SKS Ispat and Power Limited & Ors., reported in India Kanoon (vide Civil Appeal No. 3327 of 2020), wherein at Paragraph 21, it is observed as under:

*21. “The answer to the two issues set out in Section C of the judgement- (i) when will the clock for calculating the limitation period run for proceedings under the IBC; and (ii) is the annexation of a certified copy mandatory for an appeal to the NCLAT against an order passed under the IBC – must be based on a harmonious interpretation of the applicable legal regime, given that the IBC is a Code in itself and has overriding effect. Sections 61(1) and (2) of the IBC consciously omit the requirement of limitation being computed from when the “order is made available to the aggrieved party”, in contradistinction to Section 421(3) of the Companies Act. Owing to the special nature of the IBC, the aggrieved party is expected to exercise due diligence and apply for a certified copy upon pronouncement of the order it seeks to assail, in consonance with the requirements of Rule 22(2) of the NCLAT Rules. Section 12(2) of the Limitation Act allows for an exclusion of the time requisite for obtaining a copy of the decree or order appealed against. It is not open to a person aggrieved by an order under the IBC to await the receipt of a free certified copy under Section 420(3) of the Companies Act 2013 read with Rule 50 of the*

*NCLT and prevent limitation from running. Accepting such a construction will upset the timely framework of the IBC. The litigant has to file its appeal within thirty days, which can be extended up to a period of fifteen days, and no more, upon showing sufficient cause. A sleight of interpretation of procedural rules cannot be used to defeat the substantive objective of a legislation that has an impact on the economic health of a nation.’*

17. The Learned Counsel for the Respondent, cites the Judgment of this ‘Tribunal’ (Three Member Bench), between Exide Industries Ltd. v. Jitender Kumar Jain of Morakhia Copper & Alloys Pvt. Ltd. in Comp. App (AT) INS. No. 1169 of 2022 dated 12.10.2022, wherein at Paragraph 6, it is observed as under:

*6. ‘In view of the law laid down by the Hon’ble Supreme Court, the limitation for filing the Appeal begins when Order was Pronounced. The mere fact that Appellant received free certified copy of the Impugned Order on 27<sup>th</sup> July, 2022, the period of limitation shall not stop running after passing of the Order / Judgment. Our jurisdiction to condone the delay is only limited to 15 days under Section 61 (2) proviso. There being delay of more than 15 days, the Delay Condonation Application cannot be allowed. Application is dismissed. Consequently, the Memo of Appeal is rejected.’*

18. The Learned Counsel for the Respondent, adverts to the ‘Order’ dated 19.10.2022 of this ‘Tribunal’, in Johnson Lifts Pvt. Ltd. v. Tracks and Towers Infratech Pvt. Ltd. (vide Comp. App AT CH INS. No. 370 of 2022), wherein at Paragraphs 7 and 8, it is observed and held as under:

7. *“Rule 150 of NCLT Rules, 2016 enjoins the ‘Pronouncement of Orders’ by the ‘Tribunal’. Rule 150 (3) of the Rules, 2016 ‘speaks’ of furnishing ‘Certified Copy of every Order’, passed by the ‘Tribunal’ to be given to the ‘Parties’.*

8. *More importantly, Section 421 (3) of the Companies Act, 2013 provides that ‘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. However, a mere running of the eye of the ‘ingredients of Section 61 (2) of the Insolvency & Bankruptcy Code, 2016, unerringly exhibits that the said ‘Section’ is conspicuously silent about the ‘words’, a copy of the order is made available to the person aggrieved, etc.’”*

19. The Learned Counsel for the Respondent, falls back upon the ‘Order’ of this ‘Tribunal’ dated 09.01.2023, in IA No. 1025 of 2022 in Comp. App (AT) (CH) (INS.) No. 418 of 2022, between Sanket Kumar Agarwal & Anr. V. APG Logistics Pvt. Ltd., whereby and whereunder, at Paragraphs 30 to 32, it is observed as under:

30. *“In the instant case, the ‘order’ impugned in CP/IB/113/CHE/2021 was passed by the ‘Adjudicating Authority’ (‘National Company Law Tribunal’, Special Bench – I, Chennai) on 26.08.2022. The ‘Appellants’, had preferred the instant Comp. App (AT) (CH) (INS.) No.418 of 2022 before this ‘Tribunal’, through E-Portal on 10.10.2022 (on the 46<sup>th</sup> day – vide Transaction Ref. No.: 1010220030268 dated 10.10.2022; 7.52 P.M.), whereby, a Sum of INR 6,000, through ‘Internet’ based Online payment, in the account of ‘Filing Fee’, was received by the ‘Office of the*

*Registry', of this 'Tribunal'. In the present case, this 'Tribunal', aptly points out that the 'Appellants', had filed the physical copy of the 'Appeal Paper Books', before the 'Office of the Registry' of this 'Tribunal', only on 31.10.2022.*

*31. It cannot be gainsaid, that the 'Expiry of 30 days', after the 'Pronouncement of the impugned order', dated 26.08.2022, was on 24.09.2022. The 30 days period in preferring the 'Appeal', by any 'Person Aggrieved', in respect of an 'Order', passed by the 'Adjudicating Authority', is the 'deadline' prescribed as per Section 61 (2) of the Insolvency and Bankruptcy Code, 2016. If an 'Appellate Tribunal' ('NCLAT'), is satisfied on 'sufficient cause', being shown to its 'subjective satisfaction', in regard to the preferring of an 'Appeal' (after the 'Expiry of 30 days period'), then, 'such period, shall not exceed 15 days', as per Section 61 (2) of the Code. Admittedly, the 'completion of 45 days' (30 + 15 days), was on 09.10.2022. In effect, the maximum 45 days being the outer limit (30 + 15 = 45 days), beyond which, the 'Appellate Tribunal' ('NCLAT), is 'bereft' of any power, to 'condone the delay', in the teeth of the mandate, prescribed under the I & B Code, 2016, as opined by this 'Tribunal'.*

*32. Apart from the above, the ingredients of Section 61 of the I & B Code, 2016, do not visualise that an 'Aggrieved Person' / 'Concerned Party', is to wait till he / it is in receipt of a 'Certified Copy' of the 'impugned order', for preferring an 'Appeal', before the 'National Company Law Appellate Tribunal'.'''*

20. The Learned Counsel for the Respondent, while rounding up, points out that the 'Outer Limit' for 'Preferring' an 'Appeal' (30 + 15 = 45 days), came to an end, on 25.11.2022. As a matter of fact, the instant 'Appeal', was filed by the 'Appellant' on the 78<sup>th</sup> day, and that, any

'Delay' beyond '45 days' of the 'Order', is ineligible for 'Condonation of Delay', by this 'Appellate Tribunal'. Also that, the IA No. 149 of 2023 ('Condone Delay Application') is to be 'Dismissed', in the interest of Justice.

**Assessment:**

21. At the outset, this 'Tribunal', points out that the 'Attendance-cum-Order Sheet' of the 'Hearing', held on 11.10.2022 at 2.30 P.M. of the 'National Company Law Tribunal', Division Bench, Court – I, Chennai (through Video Conferencing – vide Appeal Paper Book, Diary No. 1165 dated 28.12.2022 - Annexure I - Page 22), reads as under:

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*IN THE MATTER OF : M/s Harsha Exito Engineering Pvt Ltd*

*MAIN PETITION NUMBER : IBA/471/2020*

**(IA/MA) APPLICATION NUMBERS**

*IA/248(CHE)/2022, IVN.P/7(CHE)/2022, IA/829(CHE)/2022 IN IA/248(CHE)/2022*  
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22. It transpires that the 'Adjudicating Authority' ('NCLT', Division Bench, Court-I, Chennai) on 11.10.2022, had dismissed IVN.P/7(CHE)/2022. It comes to be known that before the 'Adjudicating Authority' ('Tribunal'), as Item No. 201 - IBA/471/2020 IVN.P/7(CHE)/2022, under Rule 11 of NCLT Rules, 2016; SMS

Foundation & Investment LLP v. RP of M/s. Harsha Exito Engineering Pvt. Ltd., came up for 'Hearing' at 2.30 P.M., under Ordinary List and name of the Practising Company Secretary is mentioned as 'K. Gaurav Kumar', and the 'Resolution Professional', is mentioned as 'J. John Ohilvi' and IVN.P/7(CHE)/2022 was 'Dismissed' on 11.10.2022 in 'Open Court' itself.

**NCLT Rules 2016:**

23. At this juncture, this 'Tribunal', significantly points out Rule '150 of NCLT Rules 2016', proceeds as under:

*''150. Pronouncement of Order.- (1) The Tribunal, after hearing the applicant and respondent, shall make and pronounce an order either at once or, as soon as thereafter as may be practicable but not later than thirty days from the final hearing.*

*(2) Every order of the Tribunal shall be in writing and shall be signed and dated by the President or Member or Members constituting the Bench which heard the case and pronounced the order.*

*(3) A certified copy of every order passed by the Tribunal shall be given to the parties.*

*(4) The Tribunal, may transmit order made by it to any court for enforcement, on application made by either of the parties to the order or suo motu.*

*(5) Every order or judgment or notice shall bear the seal of the Tribunal.''*

### **Explanation of Delay:**

24. To be noted that from the date, the time was running out, until the date of preferring an 'Appeal' or an 'Application', as per decision of the Hon'ble Supreme Court in Ramlal v. Rewa Coal Fields Ltd. AIR 1962, SC Page 361.

25. Undoubtedly, a 'Remedy', under the 'Limitation Rules', can be exercised only upto a particular point of time and not later, as the case may be. Indeed, the 'Stakeholders' / 'Litigants' / 'Entities', are to be quite diligent and they cannot remain 'negligent', and 'resort' to a 'callous attitude', especially, in the 'spirit' of the 'I & B Code', 2016, that 'Speed' is its 'Gist'.

### **Hon'ble Supreme Court's Judgment:**

26. In so far as the 'Plea' of the 'Petitioner / Appellant', is that the 'Impugned Order' in Ivn.P/7(CHE)/2022 in IA/248(CHE)/2022 in IBA/471/2020, was not 'Pronounced' by the 'Adjudicating Authority' ('Tribunal') on 11.10.2022, and the same was not available for a long period and further that it was uploaded by the 'NCLT' ('Tribunal') on 21.11.2022, this 'Tribunal', pertinently points out the Judgment of the Hon'ble Supreme Court dated 16.07.2003, in Central Bank of India v.

Vrajlal Kapurchand Gandhi & Anr. (vide Appeal (Civil) No. 4634 of 2003, reported in India Kanoon, wherein, it is observed as under:

*“Statements of fact as to what transpired at the hearing recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in Court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to cull the attention of the very Judges who have made the record. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. It is not open to a party to contend before this Court to the contrary. This Court cannot launch into an enquiry as to what transpired in the High Court. It is simply not done. Public policy and judicial decorum do not permit it. Matters of judicial record in that sense are unquestionable. However, the Court can pass appropriate orders if a party moves it contending that the order has not correctly reflected happenings in Court.”*

27. It cannot be gainsaid that in view of ‘Article 141 of the Constitution of India’, the ‘Law’, declared by the Hon’ble Supreme Court is binding on all ‘Subordinate Courts’, ‘Tribunals’, ‘Appellate Tribunal’, etc., as opined by this ‘Tribunal’.

28. Therefore, keeping in mind of the ‘Propriety’, ‘Sobriety’, ‘Public Policy’, ‘Judicial Decorum’ and ‘Comity of Judicial Discipline’, the ‘Attendance-cum-Order Sheet’, in respect of the ‘Impugned Order’ of the ‘Hearing’, held on 11.10.2022 at 2.30 P.M., through Video Conferencing

at `National Company Law Tribunal`, Division Bench, Court-I, Chennai, and in view of the assertion made on behalf of the `Respondent` that the `impugned order` of `Dismissal`, in respect of Ivn.P/7(CHE)/2022 in IA/248(CHE)/2022 in IBA/471/2020, was `Pronounced` at once, in `Open Court`, on 11.10.2022 itself, it is held by this `Tribunal`, that it is a matter of `Judicial Record` of the `Adjudicating Authority` (`NCLT`, Division Bench, Court-I, Chennai), presided over by the `Hon`ble President` and a `Technical Member`, and as such, the contra stand taken on behalf of the `Petitioner / Appellant`, is not acceded to, by this `Tribunal`.

29. In the instant case, the `Order`, dismissing Ivn.P/7(CHE)/2022 in IA/248(CHE)/2022 in IBA/471/2020, was Pronounced by the `Adjudicating Authority` (`Tribunal`) on 11.10.2022 in `Open Court` itself, at once, and hence, the `Petitioner / Appellant`, cannot have any grievance, because in the presence of its `Authorised Representative`, the `impugned order`, was passed and as such, there is sufficient compliance of Rule 150 (1) of the NCLT Rules, 2016, in the considered opinion of this `Tribunal`, Moreover, the `Petitioner / Appellant`s Authorised Representative` and the `Learned Counsel` for the `Appellant`, had knowledge of the `Order` on 11.10.2022 itself, and hence, the time for computing the `Limitation`, had commenced from 11.10.2022, and there

is no 'acceptable' / 'sufficient' justiciable reason on behalf of the 'Petitioner / Appellant', in remaining 'inactive' from 11.10.2022 to 24.11.2022.

30. In the instant case, the Petitioner / Appellant, from the date of 'Pronouncement of Order' of 'Dismissing' the Ivn.P/7(CHE)/2022 in IA/248(CHE)/2022 in IBA/471/2020, on 11.10.2022 (in Open Court), by the 'Adjudicating Authority' ('NCLT'), the instant 'Comp. App (AT) (CH) (INS.) No. 41 of 2023, ought to have been filed 'within 30 days', from the date of the 'Order', i.e. on 10.11.2022, as per Section 61(2) of the I & B Code, 2016. Further, as per Section 61 (2) of the 'Code', if a 'sufficient cause', for not filing an 'Appeal', within 30 days period, is established, then, the 'Appellate Tribunal', on being subjectively satisfied, as to the reason ascribed for not filing the 'Appeal' in 'Time', can 'Condone' the same, if the 'period shall not exceed 15 days' (after expiry of 30 days).

31. In the present case, the 45 days period lapsed on 25.11.2022. The E-filing of the Appeal Papers were made on the side of the 'Petitioner / Appellant', on 23.12.2022. After 45 days (30 + 15), there is a 'Delay' of '28 days'. In fact, the Certified Copy of the Impugned Order was issued to the 'Petitioner / Appellant', on 24.11.2022.

## **Result:**

From the above, it is candidly clear that the `Petitioner / Appellant`, had E-filed the `Appeal Papers` on 23.12.2022, i.e. on 73<sup>rd</sup> day, and the `physical filing`, was made, on 28.12.2022. By taking into account of the fact that `30 days Limitation Period`, ends `on 10.11.2022` (from the date of `Impugned Order`, i.e., on 11.10.2022) and the `45 days period`, comes to an end, `on 25.11.2022`, and keeping in mind of another fact that the `E-filing of the Appeal Papers`, were done on behalf of the `Petitioner / Appellant`, on 23.12.2022, and after deducting (30 + 15 = 45 days - the `Outer Limit Period`), still there is a `Delay` of `28 days`, and there is no power, enjoined upon `Appellate Tribunal`, to `condone` the `Delay`, beyond the `permissible / prescribed period`, as per Section 61 of the I & B Code, 2016. Looking at from that angle, the `IA No. 149 of 2023 in Comp. App (AT) (CH) (INS.) No. 41 of 2023` (Filed by the `Petitioner / Appellant` - `Condone Delay Application`), is `Dismissed`, by this `Tribunal`, to secure the `ends of Justice`.

## **Comp. App (AT) (CH) (INS.) No. 41 of 2023:**

Owing to the `dismissal` of `IA No. 149 of 2023 in Comp. App (AT) (CH) (INS.) No. 41 of 2023` (`Condone Delay Application`), preferred by the `Petitioner / Appellant`, the main Comp. App (AT) (CH)

(INS.) No. 41 of 2023 is not `entertained`, and the same is `Rejected`, by this `Tribunal`.

**[Justice M. Venugopal]**  
**Member (Judicial)**

**[Shreesha Merla]**  
**Member Technical)**

07/03/2023  
SR / TM