

**COMPANY LAW APPELLATE TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**I.A. No. 1110 of 2023 in  
Company Appeal (AT) (Insolvency) No.332 of 2023**

[Arising out of order dated 22.12.2022 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, Court-V in I.A. No. 111/2022 in CP (IB)/2354/ND/2019]

**IN THE MATTER OF:**

**Sciknow Techno Solutions Ltd.**

**...Appellant**

**Versus**

**Dinesh Kumar Gupta  
(Liquidator of Jarvis Infratech Pvt. Ltd.) & Ors.**

**...Respondents**

**Present:**

**For Appellant: Mr. Gaurav Mitra, Ms. Smiti Verma and Ms. Beleena Biju, Advocates.**

**For Respondents: Mr. Govind Bhardwaj, Ms. Mumal Jain, Mr. Pradeep Shukla, Advocates for R-1.**

**Mr. Vivek Sinha, Mr. Vivek Malik and Mr. Shubham Barara, Advocates for R-3, 4 & 5.**

**ORDER**

**ASHOK BHUSHAN, J.**

This is an application praying for condonation of delay in filing the Appeal. The Appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 has been filed against the order dated 22.12.2022 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, Court No.-V

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in I.A. No. 111/2022 filed by the Liquidator seeking directions under Section 43 of the Code. The Adjudicating Authority by the impugned order has allowed the application and directed for reversal of the transaction in favour of the Corporate Debtor. The Appellant was Respondent No.2 in the said application. The proceeding before the Adjudicating Authority against the Respondent No.2 proceeded ex-parte since despite serving notice, Respondent No.2 (Appellant herein) did not appear, it has been recorded in Para 7 of the order. This Appeal against the above order has been e-filed on 22.02.2023. In the application for condonation of delay, the Appellant has taken the case that the order dated 22.12.2022 was received by the Appellant on 08.01.2023 under the covering letter dated 29.12.2022 issued by the Liquidator. The Appeal having been filed on 22.02.2023 is well within 45 days and there is only delay of 14 days which may be condoned.

2. Notices were issued on the delay condonation application by this Tribunal and a reply has been filed by the Liquidator opposing the condonation application. It is submitted that in the application under Section 5 there are material concealment. The Liquidator has forwarded the order dated 22.12.2022 by email dated 04.01.2023 at the registered email id of the Appellant attaching the compliance notice dated 29.12.2022. The letter dated 29.12.2022 was also sent by Speed Post, which was delivered at the business address of the Appellant. It is submitted that the Appellant has not filed any material alongwith the delay condonation application to show that the letter dated 29.12.2022 was received on 08.01.2023. It is submitted that

08.01.2023 is an imaginary date given by the Appellant for the purposes of delay condonation application which has no basis or foundation.

3. We have heard Shri Gaurav Mitra, learned counsel for the Appellant as well as learned counsel appearing for the Liquidator.

4. Shri Gaurav Mitra, learned counsel for the Applicant/ Appellant submits that the impugned order being ex-parte to the Appellant, Appellant could have filed the appeal only after coming to know about the order, which he came to know on 08.01.2023 and from 08.01.2023 if limitation is computed, the Appeal being filed within 15 days after expiry of the limitation, there is delay of only 14 days, which need to be condoned. Learned counsel for the Appellant has referred to judgment of Hon'ble Supreme Court in "**V. Nagarajan vs. SKS Ispat and Power Limited & Ors., (2022) 2 SCC 244**" and "**Pr. Director General of Income Tax vs. Spartek Ceramics India Ltd., 2018 SCC OnLine NCLAT 289**".

5. Learned counsel for the Liquidator refuting the submissions of learned counsel for the Appellant submits that limitation for filling the appeal shall commence from the date order was passed and the Appellant had to file the Appeal within 30 days from the date of the order. In any view of the matter, the order was communicated by the Liquidator by email which was received by the Appellant on 05.01.2023, even from the date of knowledge of the order, Appeal is beyond limitation period and need to be rejected.

6. We have considered the submissions of learned counsel for the parties and perused the record.

7. The judgment of **“V. Nagarajan vs. SKS Ispat and Power Limited & Ors.” (supra)** has considered provisions of Section 61 of the I&B Code providing for period of limitation for filing the appeal. The Hon’ble Supreme Court while noticing the Section 61 has also noted the provisions of Section 421 of Companies Act, 2013 which provides for limitation for filing appeal. Hon’ble Supreme Court has noticed the legislative change under Section 61 and has held that change in the scheme of Section 61 is a notable difference and the absence of the words “from the date on which a copy of the order of the Tribunal is made available to the person aggrieved” has significance. In Para 24 of the judgment following has been held:

*“24. The IBC is a complete code in itself and overrides any inconsistencies that may arise in the application of other laws. Section 61 of the IBC, begins with a non-obstante provision - “notwithstanding anything to the contrary contained under the Companies Act, 2013” when prescribing the right of an aggrieved party to file an appeal before the NCLAT along within the stipulated period of limitation. The notable difference between Section 421(3) of the Companies Act and Section 61(2) of the IBC is in the absence of the words “from the date on which a copy of the order of the Tribunal is made available to the person aggrieved” in the latter. The absence of these words cannot be construed as a mere omission which*

*can be supplemented with a right to a free copy under Section 420(3) of the Companies Act read with Rule 50 of the NCLT Rules for the purposes of reckoning limitation. This would ignore the context of the IBC's provisions and the purpose of the legislation.”*

8. In the **V. Nagarajan's Case** two issues were framed; first issue in Para 16.1 framed was: “(i) when will the clock for calculating the limitation period run for proceedings under the IBC”. The Hon'ble Supreme Court after considering the extensively has clearly held that limitation for filing Appeals shall commence from the date order is pronounced and the applicant is entitled to exclude the period consumed for obtaining certified copy of the order, if it is filed within the limitation. In Para 32 and 33 following has been laid down:

*“32. The appellant had argued that the order of the NCLAT notes that the NCLT registry had objected to the appeal in regard to limitation, to which the appellant had filed a reply stating that the limitation period would begin from the date of the uploading of the order, which was 12 March 2020. The appellant submitted that the suo motu order of this Court dated 23 March 2020, taking retrospective effect from 15 March 2020, made under Article 142 of the Constitution, extended the limitation until further orders, which renders the appeal filed on 8 June 2020 within limitation. However it is important to note that this Court had only extended the period of limitation applicable in the proceedings, only in cases where*

*such period had not ended before 15 March 2020. In this case, owing to the specific language of Section 61(1) and 61(2), it is evident that limitation commenced once the order was pronounced and the time taken by the Court to provide the appellant with a certified copy would have been excluded, as clarified in Section 12(2) of the Limitation Act, if the appellant had applied for a certified copy within the prescribed period of limitation under Section 61(2) of the IBC. The construction of the law does not import the absurdity the appellant alleges of an impossible act of filing an appeal against an order which was uploaded on 12 March 2020. However, the mandate of the law is to impose an obligation on the appellant to apply for a certified copy once the order was pronounced by the NCLT on 31 December 2019, by virtue of Section 61(2) of the IBC read with Rule 22(2) of the NCLAT Rules. In the event the appellant was correct in his assertion that a correct copy of the order was not available until 20 March 2020, the appellant would not have received a certified copy in spite of the application till such date and accordingly received the benefit of the suo motu order of this Court which came into effect on 15 March 2020. However, in the absence of an application for a certified copy, the appeal was barred by limitation much prior to the suo motu direction of this court, even after factoring in a permissible fifteen days of condonation under Section 61(2). The Court is not empowered to condone delays beyond statutory prescriptions in special statutes containing a provision for limitation.*

33. *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.”*

9. The Hon'ble Supreme Court, thus, has clearly held that running of the limitation shall start from the date of pronouncement of the order and it is not dependent on the communication of the order to aggrieved person.

10. Learned counsel for the Appellant has submitted that the order was passed ex-parte to the Appellant. In the Para 7 of the impugned order, the Adjudicating Authority has made following observations:

*“7. That vide order dated 22.02.2022, it was recorded that the Respondents No. 2, 3, 4 & 6, despite service of notice, have not appeared before this bench to submit their defence. Accordingly. Respondents No. 2, 3, 4 & 6 have been proceeded ex-parte Further directions were also passed for respondent no. 5 to file an affidavit regarding the present position of the application filed against it, under Section 95 invoking personal guarantee. Thereafter, the respondent no. 5 failed to comply the order dated 19.01.2022 & 22.02.2022 or appear before this bench and file its defence. Accordingly, vide order dated 13.04.2022, it was also proceeded ex-parte.”*

11. The Appellant did not appear before the Adjudicating Authority despite service of notice, hence, it will be treated that it was served and the Appellant could not be heard in saying that the order dated 22.12.2022 is ex-parte and limitation to file appeal shall only begin when he has knowledge of the order. This submission of the Appellant cannot be accepted, in view of what has been stated above.

12. Learned counsel for the Appellant has also relied on Judgment of this Appellate Tribunal in **“Pr. Director General of Income Tax vs. Spartek Ceramics India Ltd.” (supra)**, where in Para 53 following observations have been made by this Tribunal:

*“53. As per sub-section (2) of Section 61, the appeal is required to be filed within thirty days before the NCLAT. The Appellate Tribunal is empowered to condone the delay of ‘another fifteen days’ after the expiry of the period of thirty days in preferring the appeal that too for sufficient cause. It has no power to condone the delay if appeal under Section 61 is preferred beyond fifteen days from the date of the expiry of the period of thirty days. Meaning thereby, no appeal under sub-section (1) of Section 61 can be entertained after forty-five days of knowledge of the order passed by the Adjudicating Authority.”*

13. The judgment of **“Pr. Director General of Income Tax vs. Spartek Ceramics India Ltd.”** was a case where this Tribunal was considering the question of limitation for filing the Appeal by Pr. Director General of Income Tax in pursuance of notification issued by the Central Government, where 90 days period for filing Appeal was provided. This Tribunal concluded that provision for filing appeal under Section 61 being 30 days, period of 90 days for filing appeal cannot be claimed to be available to the Appellant. In Para 55 and 56 following has been observed:

*“55. The limitation of thirty days has been prescribed under sub-section (2) of Section 61 for*

*preferring an appeal against an order passed by the Adjudicating Authority, including the order passed under section 31(1) of the 'I&B Code'. The Appellate Tribunal for sufficient cause can condone the delay but such period cannot exceed fifteen days. Therefore, no appeal can be entertained after forty-five days of knowledge of order. The Central Government, thereby cannot grant ninety days' period to prefer an appeal under section 61(1), which is contrary to Section 61(2) of the 'I&B Code'.*

56. *The 'difficulty' as contemplated under Section 242 of the 'I&B Code' has not been mentioned by the Central Government in the notification in question. The Central Government in exercise of its powers conferred under Section 242, is competent to make provision to remove the difficulty in giving effect to the provisions of the 'I&B Code', but it cannot be in conflict with nor can change the substantive provisions of the 'I&B Code'. The period of limitation as prescribed by Notification S.O. 1683(E) dated 24th May, 2017 being in conflict with the maximum period of limitation granted under sub-section (2) of Section 61 of the 'I&B Code' and beyond forty-five days, the NCLAT having not empowered to entertain the appeal. The NCLAT has no jurisdiction to entertain an appeal under Section 61 beyond the period of forty-five days."*

14. The observations made by this Tribunal in Para 53 in the last sentence that *"no appeal under sub-section (1) of Section 61 can be entertained after forty-five days of knowledge of the order passed by the Adjudicating*

*Authority*” could not be read to mean that limitation shall start only when the Appellant/Applicant has knowledge of the order. It is to be noted that starting of limitation from the knowledge of order was not an issue which came up for consideration in the said case. The reliance of learned counsel for the Appellant, on the above judgment is misplaced.

15. We may further observe that even the ground taken in the delay condonation application that Appellant came to know about the order when he received letter of the Liquidator on 08.01.2023 is unfounded and not supported by any material. Whereas the Liquidator in his reply has brought material on record which indicate that order was sent by Liquidator on 04.01.2023 by email to the Appellant. Thus, even if, for argument sake only, if limitation is calculated from date of receipt of email, then also the Appeal filed was beyond 15 days after expiry of limitation. We, thus, do not find any ground to allow the delay condonation application. The delay condonation application is dismissed. Consequently, the Memo of Appeal is rejected.

**[Justice Ashok Bhushan]  
Chairperson**

**[Barun Mitra]  
Member (Technical)**

**NEW DELHI**

**18<sup>th</sup> April, 2023**

*Archana*