NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 1224 of 2022

&

I.A. No. 3727 of 2022

[Arising out of order dated 18.07.2022 passed by the National Company Law Tribunal, Kolkata Bench, Kolkata in I.A. (IBC) No. 69/KB/2021 in C.P. (IB) No. 932/KB/2018]

IN THE MATTER OF:

1. **Sarbjit Singh Johal** ....**Appellants.**
   S/O Joginder Singh Johal
   Aged about 53 years,
   R/O 6F, Shree Niket, 11 Ashoka Road,
   Kolkata-700027.
2. **Maninder Singh Johal**
   S/O Joginder Singh Johal
   Aged about 53 years,
   R/O 6F, Shree Niket, 11 Ashoka Road,
   Kolkata-700027.

Versus

Jitender Lohia ....**Respondent.**
S/O Lt. Sh. Rajendra Kumar Lohia
Aged about 45 Years,
Resolution Professional (RP)
(IBBI/IPA-001/IP-P00170/2017-18/10339)
Office at: 2, Lal Bazar Street,
Second Floor, Room No. 204 & 205,
Kolkata – 700001,
RP of M/s Madhusala Drinks Pvt. Ltd.

Present:
For Appellant:- **Mr. Jeevesh Mehta, Mr. Nihit Dalmia, Advocates.**

For Respondent:- **Mr. Shashank Agarwal, Advocate.**

O R D E R

Justice Anant Bijay Singh;

Two Appellants have preferred this Company Appeal (AT) (Insolvency) No. 1224 of 2022 under Section 61 of the Insolvency and Bankruptcy Code, 2016 being aggrieved and dissatisfied by the order dated 18.07.2022 passed by National Company Law Tribunal, Kolkata Bench, Kolkata in I.A. (IBC) No. 69/KB/2021 in C.P. (IB) No. 932/KB/2018, whereby the application filed by the Resolution Professional was allowed and Respondent Nos. 1 & 2 were jointly and/or severely directed to pay a sum of Rs. 72.45 crores on account of payments made to the related parties from the account of the Corporate Debtor. Further, in the event of their failure to pay the aforesaid amount, the Resolution Professional would be free to initiate appropriate action against the Respondents.

2. Aggrieved by the impugned order, the Appellants have filed the instant Appeal along with I.A. No. 3727 of 2022 with a prayer to condone the delay of 13 days in filing the present Appeal in which he has stated the reason that the order was communicated and the certified copy of the impugned order dated 18.07.2022 was received by the Appellants on 27.07.2022. The Appellants are resident of Kolkata and after receiving the judgment and order dated 18.07.2022, they searched for lawyers to prepare, file the present appeal and represent the Appellants before this Hon'ble Court. Because of the sudden rise of corona cases in Delhi and Kolkata, the Appellants were restrained from travelling and thus, could not complete the required process in time and that is the reason for delay in filing of the present appeal.

3. On the other hand, the Learned Counsel for the Respondent in the Reply Affidavit in para 6(e) have stated that the Appeal was filed, presumably on 10.09.2022 i.e. after the period of 45th days from the date of receipt of the Impugned Order on 27.07.2022. Therefore, it is submitted that the Appeal is filed after period of limitation, the limitation cannot be condoned.

4. Further, Counsel for the Respondent in the Reply have stated that although impugned order was passed on 18.07.2022 by National Company Law Tribunal, Kolkata Bench, Kolkata in I.A. (IBC) No. 69/KB/2021 in C.P. (IB) No. 932/KB/2018 but the said order was communicated to Appellants through email on 19.07.2022 (Annexure-A at page 18 of the Reply), therefore, it has been submitted by Counsel for the Respondent that the Appellants came to know about the impugned order on 19.07.2022, i.e. the very next day of the passing of the impugned order..

5. The Learned Counsel for the Respondent also relied on judgment of the Hon'ble Supreme Court in the case of ***"V. Nagarajan Vs. SKS Ispat and Power Limited & Another reported in (2022) 2 SCC 244, para 33",*** in which the Hon'ble Supreme Court has held as under:

***"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 Company Appeal (AT) (Insolvency) No. 1224 of 2022 & IA No. 3727 of 2022 3 of 3 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 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."*

6. We have considered the submissions of Learned Counsel for the parties and perused the record.

7. Section 61 of the Code deals with the appeals and appellate authority. Section 61 of the Code is reproduced as under:-

> ***"Section 61: Appeals and Appellate Authority.-***
>
> *(1) Notwithstanding anything to the contrary contained under the Companies Act 2013, any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.*
>
> *(2) Every appeal under sub-section (1) shall be filed within thirty days before the National Company Law Appellate Tribunal: Provided that the National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed fifteen days.*
>
> *(3) An appeal against an order approving a resolution plan under section 31 may be filed on the following grounds, namely:—*
>
> > *(i) the approved resolution plan is in contravention of the provisions of any law for the time being in force;*
> >
> > *(ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;*
> >
> > *(iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;*
> >
> > *(iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or (v) the*

resolution plan does not comply with any other criteria specified by the Board.

[(4) An appeal against a liquidation order passed under section 33, or sub-section (4) of section 54L, or sub-section (4) of section 54N, may be filed on grounds of material irregularity or fraud committed in relation to such a liquidation order.

(5) An appeal against an order for initiation of corporate insolvency resolution process passed under sub-section (2) of section 54-O may be filed on grounds of material irregularity or fraud committed in relation to such an order.]"

8. Counsel for the Respondent has filed the reply affidavit and during the course of argument, he has pleaded that although impugned order was passed on 18.07.2022 by National Company Law Tribunal, Kolkata Bench, Kolkata in I.A. (IBC) No. 69/KB/2021 in C.P. (IB) No. 932/KB/2018 but the said order was communicated to Appellants through email on 19.07.2022 (Annexure-A at page 18 of the Reply), therefore, it has been submitted by Counsel for the Respondent that the Appellants came to know about the impugned order on 19.07.2022.

9. The impugned order was passed on 18.07.2022 and the instant Appeal was filed on 13.09.2022 with delay of about 54 days. The Appellant applied for certified copy of the order on 26.07.2022 and received on 27.07.2022 even if the time consumed obtaining certified copy of the order is excluded, the Appeal has been filed beyond the limitation period. This Tribunal has power to condone the delay is only of 15 days. The Counsel for the Appellant sought to contend that the Limitation will start running when the Order is communicated to the

Appellant. The said submission cannot be accepted. The Order was passed on the Application filed by the Resolution Professional and from the date when the order was pronounced, limitation shall start running. There is no ground to condone the delay.

10. Keeping in view of the aforesaid facts and in view of the judgment of ***"V. Nagarajan Vs. SKS Ispat and Power Limited & Another reported in (2022) 2 SCC 244, para 33 (supra)",*** the instant appeal is time barred in as much as it has been filed beyond the period of limitation.

11. I.A. No. 3727 of 2022 (Delay Condonation Application) is dismissed. Consequently, the Memo of Appeal is rejected.

[Justice Anant Bijay Singh]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

New Delhi
02nd May, 2023
R. Nath.