NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)
Company Appeal (AT)(CH)(Ins) No.209/2022 (IA Nos.458, 459, 460 and 461 of 2022)
(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)
(Arising out of the Impugned Order dated 12.06.2019 in MA/179/2019 in CP/39/IB/CB/2018
passed by the 'Adjudicating Authority' (National Company Law Tribunal, Chennai Bench)

In the matter of:

Valency International Pte Ltd … Applicant / Appellant
V
Vasudevan & 2 oths. ... Respondents

Present :

For Appellant : Mr. Vishal Nautiyal, Advocate

For Respondents : Mr. K.Moorthy, Advocate for R1
Mr. Ragavendran, Advocate for R2
Mr. Ashokapathy, Advocate R3

ORDER

(VIRTUAL MODE)

02.09.2022:

Heard both sides.

According to Mr. Vishal Nautiyal, the Learned Counsel for the Appellant, the instant Comp App (AT)(CH)(Ins) No.209/2022 is filed against the 'impugned order' passed by the 'Adjudicating Authority' (National Company Law Tribunal, Chennai Bench) dated 12.06.2019 in MA/179/2019 in CP/39/IB/CB/2018. However, the Appellant, who is to prefer the instant Comp App (AT)(CH)(Ins) No.209/2022 by 28.07.2019, before this 'Appellate

Tribunal', has not filed the same in time. In this process, there has occasioned a delay of '1027 days' in preferring the instant Comp App (AT) (CH) (Ins) No.209/2022, against the 'Impugned Order' dated 12.06.2019 in MA/179/2019 in CP/39/IB/CB/2018 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Chennai Bench).

The stand taken on behalf of the Applicant / Appellant is that because of the fact that it was only the Resolution Applicant had not received the 'Certified Copy' of the 'impugned order'. Thereafter, the connected matter was pending before the Hon'ble Supreme Court, wherein the 'Judgment' was delivered only on 03.12.2019 and from 15.03.2021, the Covid-19 scenario came in, due to which, the Applicant / Appellant was unable to file an 'Appeal'. Only after retrieving the 'documents', the Applicant / Appellant had preferred the instant Comp App (AT) (CH) (Ins) No.209/2022 before this 'Appellate Tribunal' in New Delhi on 30.11.2021. Because of the constitution of the 'Chennai Bench' of this 'Tribunal', the Applicant / Appellant has filed the instant Comp App (AT) (CH)(Ins) No.209/2022 before this 'Tribunal'.

The Applicant / Appellant had filed IA/460/2022 in Comp App (AT) (CH)(Ins) No.209/2022 seeking to 'Condone the Delay' of '1027 days' in preferring the 'instant Comp App (AT) (CH) (Ins) No.209/2022' against the

‘Impugned Order’ dated 12.06.2019 passed by the ‘Adjudicating Authority’ (National Company Law Tribunal, Chennai Bench).

The contention of the Learned Counsel for the Applicant / Appellant is that this ‘Appellate Tribunal’ has the ‘requisite power’ to condone the delay of ‘1027 days’ in preferring the ‘instant Comp App (AT) (CH) (Ins) No.209/2022’, before this ‘Tribunal’.

Per contra, it is the submission of the Learned Counsel for the 1st Respondent that the delay of ‘1027 days’ in preferring the ‘instant Comp App (AT)(CH)(Ins) No.209/2022’ by the Applicant / Appellant cannot be condoned in the eye of ‘Law’, because of the reason that the ‘Order’ of the ‘Adjudicating Authority’ (National Company Law Tribunal, Chennai Bench) in MA/179/2019 in CP/39/IB/CB/2018 was passed before the Covid-19 Pandemic itself, and the said Covid-19 Pandemic had commenced only in March 2020.

Moreover, as per the Hon’ble Supreme Court Order in MA/21/2022 in MA/655/2021 in Suo Motu Writ Petition No.03/2020, as per ‘Order’ dated 10.01.2022, the ‘Limitation’ was extended only from 15.03.2020 to 28.02.2022 and this will not on any account justify on the part of the Applicant / Appellant with a delay of over ‘9 months’, before the commencement of the Covid-19

Pandemic in preferring the 'instant Comp App (AT)(CH)(Ins) No.209/2022' on the part of the Applicant / Appellant.

The Learned Counsel for the 1st Respondent seeks in aid the decision of the Hon'ble Supreme Court in V. Nagarajan V SKS Ispat and Power Ltd.& Ors. reported in (2022) 2 SCC at Page No.244 at Spl. Page 257 wherein at Paragraph No.15, it is observed as under: -

> "*15. An appeal is a creature of statute, hence there is a fundamental distinction between the right to file an appeal. In terms of Section 9 of the Civil Procedure Code, 1908, there is an inherent right to bring a suit of a civil nature, unless the suit is barred by statute. On the other hand, an appeal is a creature of statute and must have the clear authority of law. IBC envisages a comprehensive dispute resolution process in Chapter VI. NCLT is the empowered "adjudicating authority" under Section 60 IBC with the jurisdiction to entertain any proceeding in relation to insolvency resolution or liquidation proceedings under IBC. An appeal lies against an order of the adjudicating authority to the appellate authority, NCLAT, under Section 61 (1) IBC. An order of NCLAT is subject to an appeal on a question of law to the*

Supreme Court under Section 62. The jurisdiction of civil courts has been explicitly ousted by Section 63 IBC."

Apart from the above, the Learned Counsel for the 1st Respondent adverts to Paragraph Nos.31 and 32 of the aforesaid decision of the Hon'ble Supreme Court in V. Nagarajan V SKS Ispat and Power Ltd.& Ors. at Spl. Page 265 whereby and whereunder it is observed as follows: -

> *31. The import of Section 12 of the Limitation Act and its Explanation is to assign the responsibility of applying for a certified copy of the order on a party. A person wishing to file an appeal is expected to file an application for a certified copy before the expiry of the limitation period, upon which the "time requisite" for obtaining a copy is to be excluded. However, the time taken by the court to prepare the decree or order before an application for a copy is made cannot be excluded. If no application for a certified copy has been made, no exclusion can ensue. In fact, the Explanation to the provision is a clear indicator of the legal position that the time which is taken by the court to prepare the decree or order cannot be excluded before the application to obtain a copy is made. It cannot be said that the right to receive a free copy under Section 420 (3) of the*

Companies Act obviated the obligation on the Appellant to seek a certified copy through an application. The appellant has urged that Rule 14 of the NCLAT Rules empowers NCLAT to exempt parties from compliance with the requirement of any of the Rules in the interests of substantial justice, which has been typically exercised in favour of allowing a downloaded copy in lieu of a certified copy. While it may well be true that waivers on filing an appeal with a certified copy are often granted for the purposes of judicial determination, they do not confer an automatic right on an applicant to dispense with compliance and render Rule 22 (2) of the NCLAT Rules nugatory. The act of filing an application for a certified copy is not just a technical requirement for computation of limitation but also an indication of the diligence of the aggrieved party in pursuing the litigation in a timely fashion. In a similar factual scenario, NCLAT had dismissed an appeal as time-barred under Section 61 (2) IBC since the appellant therein was present in court, and yet chose to file for a certified copy after five months of the pronouncement of the order.

32. The Appellant had argued that the order of the NCLAT notes that 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 12.3.2020. The appellant submitted that the suo motu order of this Court dated 23.03.2020 taking retrospective effect from 15.03.2020, made under Article 142 of the Constitution extended the limitation until further orders, which renders the appeal filed on 08.06.2020 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 15.03.2020. 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) 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 12.03.2020. 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 NCLT on 31.12.2019, by virtue of Section 61 (2) 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 20.03.2020, 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 15.03.2020. 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 statues containing a provision for limitation.*

The Learned Counsel for the 2nd Respondent contends that IA/460/2022 in Comp App (AT)(CH)(Ins) No.209/2022 filed by the Applicant / Appellant is per se not maintainable in the eye of 'Law' because of the latent and patent fact that the Insolvency & Bankruptcy Code, 2016 mandates as per Section 61 (2) that an 'Aggrieved person' has to prefer an 'Appeal' within 30 days and further that the 'Appellate Tribunal' may allow an 'Appeal' to be filed after 30 days subject to the 'Appellate Tribunal' that it is satisfied that there was a 'sufficient cause' in not filing the 'Appeal' but such period shall not exceed 15 days + 30 days.

The pith and substance of the 'Plea' taken on behalf of the 2nd Respondent is that beyond the time granted, as per Section 61 (2) of the Insolvency & Bankruptcy Code, 2016 viz., 30 + 15 days, the Applicant / Appellant cannot prefer an 'Appeal' thereafter, and in the present case, the 'instant Comp App (AT)(CH)(Ins) No.209/2022' was preferred after 'Three Years'. Hence IA/460/2022 (Condone Delay Application) is liable to be dismissed.

This 'Tribunal' has heard the Learned Counsels appearing for the parties and noticed their contentions.

This 'Appellate Tribunal' takes note of the primordial fact that the ingredients of Section 61 (1) of the Insolvency & Bankruptcy Code, 2016 enjoins that every 'Appeal' as per Section 61 (1) of the Insolvency & Bankruptcy Code, 2016 shall be filed within 30 days before the National Company Appellate Tribunal and thereafter the 'Appellate Tribunal' may allow an 'Appeal' to be preferred after the expiry of 30 days, only after if it was substantially satisfied, if sufficient cause for not filing the plea in subject period, shall not exceed 45 days.

At this juncture, this 'Tribunal' pertinently points out that Section 61 of the Insolvency & Bankruptcy Code, 2016 is a 'Hard Taskmaster'. The 'time limit' and the 'procedural wrangle' cannot be allowed to be 'shaked' or 'shackled' with by a 'Litigant'. No doubt, the 'Appellate Tribunal' at the time of dealing with the 'Condone Delay Application' is not required to go into the merits of the case, and in short, merits of the case should not an issue in an Application filed by the concerned Applicant for condoning the delay in preferring such Application. Suffice it for this 'Tribunal' to make a mention that the Provisions of the Insolvency & Bankruptcy Code, 2016 and the 'Regulations' made thereunder, are required to be adhered to by a Stakeholder / Litigant / Applicant in a scrupulous manner and that too in true 'Letter and Spirit'.

Admittedly, in the instant case, the present Comp App (AT)(CH)(Ins) No.209/2022 is preferred beyond 45 days (30 + 15) period, prescribed under the Insolvency & Bankruptcy Code, 2016. In reality, there has occasioned a delay of '1027 days' in preferring the 'instant Comp App (AT)(CH)(Ins) No.209/2022', which in the considered opinion of this 'Tribunal' is not to be condoned, as there is no power enjoined upon the 'Appellate Authority'

(National Company Law Appellate Tribunal) to condone the delay beyond the 'prescribed period', enunciated under the Insolvency & Bankruptcy Code, 2016.

Looking at from any angle, and also keeping in mind the decision of the Hon'ble Supreme Court in V. Nagarajan V SKS Ispat and Power Ltd.& Ors., reported in (2022) 2 SCC at Page 244 Spl. Pages 257 and 265, this 'Tribunal' holds that IA/460/2022 seeking to condone the delay of '1027 days' in preferring the 'instant Comp App (AT)(CH)(Ins) No.209/2022' is 'devoid of merits' and it fails.

In fine, IA/460/2022 in Comp App (AT)(CH)(Ins) No.209/2022 is **dismissed.** No Costs.

Consequent to the **dismissal** of IA/460/2022 in the 'instant Comp App (AT)(CH)(Ins) No.209/2022' passed by this 'Tribunal', 'Today', the 'instant Comp App (AT)(CH)(Ins) No.209/2022' preferred by the Appellant stands **'Rejected'.** No **Costs.** The connected IA/458/2022, IA/459/2022 and 461/2022 are **Closed.**

[Justice M. Venugopal]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

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