NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

IA No. 166 of 2023

in

Company Appeal (AT) (CH) (INS.) No. 46 of 2023

(Filed under Rule 31 and read with Rule 11 of the National Company Law Appellate Tribunal Rules, 2016)

Southern Power Distribution Company of Telangana Limited (TSSPDCL),
Represented by the Superintending
Engineer/Operation Circle/Sangareddy
TSSPDCL Office, Kalvakunta
Main Road, Sangareddy,
Telangana – 502 001 ….. Petitioner / Appellant

v.

1. **CA. Swaminathan Prabhu**
   Liquidator, SPP & Co.
   Chartered Accountants
   No. 27 / 9, Nivedh Vikas,
   Pankaja Mill Road,
   Puliyakulam,
   Coimbatore – 641 045 ….. 1st Respondent / 1st Respondent

2. **Infiniti Metal Products India Ltd.**,
   No. 3, GNT Road,
   Opp.: Sivanesan Company,
   Gummadipoondi, Thiruvallur,
   Tamilnadu State – 601 201 ….. 2nd Respondent / 2nd Respondent

Present:

For Petitioner / Appellant : Mr. Adithya Reddy, Advocate

For Respondent No. 1 Liquidator : Mr. A.G. Sathyanarayana, Advocate

O R D E R
(Virtual Mode)

Justice M. Venugopal, Member (Judicial):

IA No. 166 of 2023 in Comp. App (AT) (CH) (INS.) No. 46 of 2023:

Heard the Learned Counsel for the Petitioner / Appellant in IA No. 166 of 2023 in Comp. App (AT) (CH) (INS.) No. 46 of 2023.

2. According to the Petitioner / Appellant, it is not a `Party', to the `Impugned Order' dated 09.09.2022 in IA No. 910 of 2022 in CP (IB) No. 229/7/HDB/2020, passed by the `Adjudicating Authority' (`National Company Law Tribunal', Hyderabad Bench – I, Hyderabad), and that it came to know about the `Impugned Order', only on 29.11.2022.

3. It is the stand of the Petitioner / Appellant, to `modify' the `List of Stakeholders', and to `include' the `Petitioner / Appellant's Claim', in the `Liquidation Process', of the `Corporate Debtor', the `1st Respondent' / `Liquidator', had preferred an `Interlocutory Application', before the `Adjudicating Authority', and that the `1st Respondent', had informed the `Appellant' that the said `Interlocutory Application', was heard and the `Order' was awaited, etc. In fact, from the Website of the `Adjudicating Authority' (`Tribunal'), the `Petitioner' / `Appellant', came to know the factum of `Dissolution Order', being passed, and the `Petition /

Application', was `Closed', long time back, due to `non-compliance' of the Adjudicating Authority's directions, by the `1st Respondent'.

4. Further, the instant Comp. App (AT) (CH) (INS.) No. 46 of 2023, was filed before the `Office of the Registry' of this `Tribunal', on 10.01.2023. As per Section 61 (1) of the I & B Code, 2016, `any `Person', Aggrieved by the `Order' of the `Adjudicating Authority', may prefer an `Appeal', to the `Appellate Tribunal', within `30 days', from the date of passing of the `Order', i.e., on or before 28.12.2022. But, due to the intervening `Holidays' for `Christmas' and `New Year', the `Petitioner / Appellant', could not file the instant `Appeal', within time and a `delay of 15 days', had occurred, and the said `delay', neither `wilful' nor `wanton', but, due to the factors beyond its control. Hence, the `delay' in question, may be `condoned', by this `Tribunal', and to `allow', the present `Petition'.

5. Added further, as per Section 61 (2) of the I & B Code, 2016, the `Appellate Tribunal', shall `condone the delay', not exceeding 15 days, if a sufficient cause is exhibited, on behalf of the `Petitioner / Appellant', in not preferring the `Appeal' in time, as required under the I & B Code, 2016.

6. In this connection, `this Tribunal', pertinently points out that `Rule 150 of the National Company Law Tribunal Rules, 2016, provides for `Pronouncement of Order', which runs 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.''*

7. As far as the present case is concerned, there is a `delay of more than 30 + 15 = 45 days' (being the outer limit) and precisely, the delay works out to `79 days' (and not `15 days', as computed by the `Petitioner / Appellant'), which in the considered opinion of this `Tribunal', has no power to `condone' the same.

8. Conversely, the Learned Counsel for the Respondent No. 1 / Liquidator, points out that the `Liquidation Order', in the instant case, was passed on 09.09.2022 and further that, the `delay', in the instant case, is more than the `condonable period', and as such, the `Petition', is liable to be `dismissed'.

9. This `Tribunal', worth recalls and recollects the Judgment of the Hon'ble Supreme Court in V. Nagarajan v. SKS Ispat and Power Limited and Ors., in Civil Appeal No. 3327 of 2020 dated 22.10.2021, wherein, at Paragraph 20, it is observed as follows:

> *20. ``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 [Union of India v. Popular Construction Co., (2001) 8 SCC 470.''

10. At this stage, this `Tribunal', aptly points out the `Order' of this `Tribunal' dated 02.09.2022 in Valency International Pte. Ltd v. Vasudevan and two Ors. (vide Comp. App (AT) (CH) (INS.) No. 209 of 2022), wherein, it is observed as under:

``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.''

11. That apart, in the Judgment of this `Tribunal' [Three Member Bench] dated 12.10.2022 in Exide Industries Limited v. Jitender Kumar Jain (vide Comp. App (AT) (INS.) No. 1169 of 2022, whereby and whereunder 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 27th 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.''

12. Moreover, in the Judgment of this `Tribunal' dated 01.12.2021, between M/s. Hasmukh N. Shah & Associates v. M/s. Victoria Entertainment Pvt. Ltd. (Three Member Bench – vide Comp. App (AT) (INS.) No. 918 of 2021, wherein at Paragraphs 31 and 32, it is observed and held as under:

31. ``In the present case, the case of the Appellant is that he applied certified copy of the order twice firstly on 21.01.2019 and secondly on 29.07.2021. Applying the ratio of the judgment of the "Sagufa Ahmed", in the present case, at best Appellant can claim that period of limitation did not start running till he applied for certified copy of the order i.e. till 21.01.2019.

The Appeals have been filed on the strength of certified copy of the judgment which was applied on 29.07.2021 which certified copy of the Application is claimed by the Appellant after more than three years of the delivery of the judgment whereas in Sagufa Ahmed's case certified copy of the judgment was applied within 27 days from the delivery of judgment. We are of the view the Appellant is not entitled to rely on the judgment of Sagufa Ahmed's case in the facts of the present case. In any view of the matter, Appeals have *been filed after expiry of limitation. The Appeals are barred by time and cannot be entertained. The three Judge Bench judgement of the Hon'ble Supreme Court in V. Nagarajan case (supra) fully covers the question which are up for consideration before us. In view of the law laid down by the Hon'ble Supreme Court in V. Nagarajan's case, the submissions raised by the Learned Counsel for the Appellant deserves to be rejected.*

32. All the Appeals are dismissed accordingly as barred by time.''

13. It cannot be gainsaid, that the `delay' in question, needs to be explained, from the `date', the `time' was `running out', till the `date' of `filing' of an `Appeal' or an `Application', as per the decision of the Hon'ble Supreme Court of India, in the matter of Ramlal v. Rewa Coal Fields Limited, reported in AIR 1962, SC Page 361.

14. The `Rules of Limitation', prescribe that a `Remedy', can be `exercised', only upto a certain point of time and not subsequently / later, as the case may be. In reality, the `Litigants' / `Parties' / `Stakeholders', are to be diligent, and they are not to be an `indolent persons', and not to adopt a careless and a negligent attitude, keeping in mind of the fact that `Speed' is the `gist' of the `I & B Code. 2016'.

15. In the light of foregoing detailed deliberations and this `Tribunal', taking note of the fact that in the present case, the `delay', that has occasioned in preferring the instant `Appeal', is `79 days', which is

beyond the specified period, contemplated under Section 61 of the I & B Code, 2016, the IA No. 166 of 2023 in Comp. App (AT) (CH) (INS.) No. 46 of 2023, filed by the `Petitioner / Appellant', is dismissed, to `secure the ends of Justice'. No costs.

Comp. App (AT) (CH) (INS.) No. 46 of 2023:

Consequent to the dismissal of IA No. 166 of 2023 in Comp. App (AT) (CH) (INS.) No. 46 of 2023, the main Comp. App (AT) (CH) (INS.) No. 46 of 2023 stands `Rejected'. The connected pending IA Nos. 163 to 165 of 2023 are `Closed'.

[Justice M. Venugopal]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

22/02/2023
SR / TM