

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1499 of 2023 & I.A. No. 5394 of 2023

IN THE MATTER OF:

Rajnish Gupta

...Appellant

Versus

Delicious Coco Water Pvt. Ltd.

...Respondent

Present:

For Appellant : Mr. Prakhar Mithal, Advocate

For Respondents : Mr. Abhijeet Sinha, Ms. Anju Bhushan, Mr. Aditya Goel, Advocates for Liquidator and Ms. KG. Somani, Liquidator /R-1
Mr. Anand Varma, Ms. Apoorva Pandey, Mr. Ayush Gupta, Advocates for SIDBI

O R D E R

(Hybrid Mode)

06.12.2023: I.A. No. 5394 of 2023. This is an application praying for condonation of delay in filing the Appeal.

2. The Appeal has been filed against the Order dated 30th August, 2023 passed by National Company Law Tribunal, New Delhi, Special Bench, Court-II. The ground taken in the Delay Condonation Application is that order passed by the Adjudicating Authority was uploaded on the NCLT, E-Portal only on 10th September, 2023 hence the period from 30th August, 2023 to 10th September, 2023 shall be excluded for the purpose of limitation.

3. Learned Counsel for the Appellant further submitted that although he was present on the date of the pronouncement but he was only informed about the operative portion of the Order.

4. Learned Counsel for the Respondent opposing the submission submits that learned counsel who was appearing for the Appellant was present on the date when the order was delivered and further limitation shall start from the date of the Order and not from the date when it was uploaded. It is submitted that Hon'ble Supreme Court has already dealt with this issue and has held that limitation shall begin from the date when the order is pronounced and the period on which it was uploaded shall not stop running the limitation. He has relied on Judgment of this Tribunal in Company Appeal (AT) Ins. No. 1071 of 2023 in the matter of **Raiyan Hotels and Resorts Pvt. Ltd. Vs. Unrivalled Projects Private Limited**, paragraph 23 and 28 which are as follows:

“23. The Hon’ble Supreme Court in “V. Nagarajan vs. SKS Ispat and Power Limited and Ors.- (2022) 2 SCC 244” has elaborately considered the question of all aspects of limitation for filing an Appeal under Section 61 of the IBC. In paragraph 16 of the judgment, two issues were noticed in following manner:-

“16.1. (i) when will the clock for calculating the limitation period run for appeals filed under IBC; and

16.2. (ii) is the annexing of a certified copy mandatory for an appeal to NCLAT against an order passed under IBC.”

28. We may also refer to the judgment of the Hon'ble Supreme Court in Civil Appeal No.2212 of 2021- "*Safire Technologies Pvt. Ltd. V. Regional Provident Fund Commissioner & Anr.*" decided on 29.04.2022. It is to be noticed that in the above case, judgment of the Hon'ble Supreme Court in "*Raja Harish Chandra Raj*" (supra) was relied. In the above case, contention of the Appellant was that the limitation for filing an Appeal under Section 61 shall arise from the date of knowledge. The said contention was rejected. Following was held by the Hon'ble Supreme Court in the above case:-

"The appellant contends that an appeal against an order passed by the NCLT has to be filed within 45 days from the date of passing of the order. In support of the said contention, the appellant relied upon the judgment of this Court in Civil Appeal Nos. 2943-2944 of 2020 etc. dated 10.03.2021 titled Kalpraj Dharamshi & Anr. vs. Kotak Investment Advisors Ltd. & Anr.

Learned counsel appearing for the respondent stated that period of limitation would start from the date of knowledge. Though, the claim was filed by Respondent No.1 before the Resolution Professional, it was not a party before the NCLT which passed the order approving the resolution plan. According to the learned counsel for 1st Respondent, he came to know about the order passed by the NCLT much later. Support was sought from a judgment of this Court in Raja Harish Chandra Raj Singh vs. Dy. Land Acquisition officer [1962 (1) SCR 676] for

submitting that provisions relating to limitation have to be given a liberal construction.

The judgment that is relied upon by the Respondent No. 1 relates to Section 18 of the Land Acquisition Act. However, we are concerned with the limitation prescribed by Section 61 of the IBC which fell for consideration of this Court in Kalpraj Dharamshi (supra). In the said judgment, it was categorically held by this Court that an appeal against the order of NCLT shall be preferred within a period of 30 days from the date on which the order was passed by the NCLT. The Appellate Tribunal has the power to extend the period of limitation by another 15 days.

In view of the aforesaid judgment, we are of considered view that the Appellate Tribunal committed an error in issuing notice in an appeal that was filed by Respondent No.1 with delay of 388 days.

The appeal is, accordingly, allowed. Pending application(s), if any, shall stand disposed of.”

5. The only explanation given by the Appellant in this Application that limitation will commence from the date when the order was uploaded does not commend us in view of the settled law as noticed above. Appellant's submission that he was only informed about the operative portion of the Order shall not stop the commencement of the limitation period.

6. The Appeal has been admittedly filed on 19.10.2023 i.e. beyond the period of 45 days. Our jurisdiction to condone the delay is limited to only 15 days. The Appeal having been filed beyond 15 days after expiry of the limitation, we are unable to condone the delay and Delay Condonation Application is dismissed. Consequently, the Memo of Appeal is rejected.

**[Justice Ashok Bhushan]
Chairperson**

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

**Arun Baroka]
Member (Technical)**

Basant/nn