NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No. 367/2025

(Arising from IA (IBC) (Plan) No. 8 / 2024
in
CP (IB) No. 296 / 2022)
IA Nos. 1098, 1099 & 1100 / 2025)

In the matter of:

Mr. Uday Kumar Sahu
Alpha 209, Jayabheri Silicon Colony,
Kothaguda, Hyderabad- 500 084,
Telangana **… Appellant No.1**

Mr. Abhyuday Sahu,
represented by Mr. Uday Kumar Sahu,
Alpha 209, Jayabheri Silicon Colony,
Kothaguda, Hyderabad- 500 084,
Telangana **… Appellant No.2**

V

Mr. Birendra Kumar Agarwal,
Resolution Professional of
M/s. Manjeera Retail Holdings Pvt. Ltd.
711, Manjeera Trinity Corporate,
Beside Manjeera Mall, JNTU-Hitech City Road,
Kukatpally, Hyderabad, Telangana – 500 072 **… Respondent No.1**

Monitoring Committee of
M/s. Manjeera Retail Holdings Private Limited
711, Manjeera Trinity Corporate,
Beside Manjeera Mall, JNTU-Hitech City Road,
Kukatpally, Hyderabad, Telangana-500 072 **… Respondent No.2**

M/s. Lulu International Shopping Malls Pvt. Ltd.
34 / 1000, NH-47, Edappally, Kochi – 682 024, India **… Respondent No.3**

Present :

For Appellants : Mr. Arun C. Mohan, Advocate

For Respondents : Mr. VVSN. Raju, Advocate for R1
Mr. Pradeep Joy, Advocate for R3

J U D G M E N T
(Hybrid Mode)

Per : Justice Sharad Kumar Sharma, Member (Judicial):

1. In the Company Appeal (AT) (CH) (INS) No. 367 / 2025, the incidental question, which could have been the subject matter of consideration, would be as regards to the question of maintainability of the Company Appeal itself, as it was arising out of a proceedings of IA (IBC) (Plan) No. 8 / 2024, resulting into approval of Resolution Plan.

But, owing to the fact that the Company Appeal is accompanied with a Condone Delay Application being IA No. 1100 / 2025 and the same has been vehemently opposed by the Respondents Counsels, we will have to consider and answer the arguments that has been extended by the Ld. Counsels for the Appellant in support of the Condone Delay Application, before we venture into the Company Appeal itself, which we may not be required to, since the question of maintainability of the Appeal as against the order of approval of Resolution Plan will have to be decided first.

2. Few chronological dates, which would be relevant for the purposes of the instant Company Appeal would be that;

(a) The order, which is under challenge was pronounced on 26.03.2025.

(b) The Company Appeal was e-filed before the Registry of this Tribunal of 11.05.2025.

(c) The impugned order of the Company Appeal was uploaded by the Tribunal on 27.03.2025.

(d) The period of limitation i.e. 30 days as prescribed under sub-section (1) of Section 61 of I & B Code, 2016, computed from the date of pronouncement ends on 25.04.2025.

3. The Appellant's contends that, the limitation to file the Appeal, may be extended by another 15 days, which is permissible under the proviso to sub-section (2) of Section 61 of the Code as he has shown sufficient cause and that, since the extended period was expiring during the vacations period of this Bench, the benefit of Section 4 of the Limitation Act, 1963 may be extended in his case by excluding the period, which was falling during the vacation.

4. This has been objected by the Ld. Counsel for the Respondent contending that, the number of days of delay, which has been sought to be condoned is ``16 days'', which is beyond the period of 15 days for which this Appellate Tribunal can condone the delay as per Section 61(2) of the Code and therefore, the Appeal is barred by limitation.

5. The Ld. Counsel for the Respondent, has further submitted that, the extension of the benefit of limitation on account of intervening vacation as prescribed by

Section 4 of Limitation Act, will not be available to the Applicant / Appellant in the instant case because the vacation period commences only from 01.05.2025 and it does not fall within the limitation period of 27.03.2025 - 25.04.2025 and the said benefit will not be available, if vacation commences during the condonable period of 15 days. Section 61 of I & B Code, 2016, which provides for limitation period for filing of an Appeal is read as under:

> *``(1) Notwithstanding anything to the contrary contained under the Companies Act 2013 (18 of 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.*
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> *(2) Every appeal under sub-section (1) shall be filed within thirty days before the National Company Law Appellate Tribunal:*
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> *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.''*

6. His contention is that, the statutory period of limitation of 30 days for filing of Appeal against orders of Ld. Adjudicating Authority is defined by the provisions contained under sub-section (2) of Section 61 and that the additional period of 15 days, beyond 30 days as provided under the proviso to sub-section (2) cannot be said to be the part of limitation period as prescribed under law. He submits that, additional time upto a maximum of 15 days beyond the period of 30 days can be granted to parties to file their Appeals at the discretion of the Appellate Tribunal, depending upon the circumstances of each Appeals, which cannot be claimed by the Appellants as a matter of right. Therefore, this period of 15 days would not be falling within the

period of limitation as provided under sub-section (2) of Section 61 of I & B Code, 2016.

7. He submits that the benefit of Section 4 of Limitation Act, will only be available for Appeals filed under Section 61 of I & B Code, 2016, when the Court vacation commences during and before the expiry of the **``prescribed period''** of limitation of 30 days and that, it will not be available if the vacation commences during the 15 days period beyond the 30 days prescribed period, because the said 15 days period is not included in the prescribed period of limitation as per Section 61(2) of the Code.

8. In relation thereto, he has referred to a Judgment as reported in ***2025 SCC OnLine SC 1042, Tata Steel V. Raj Kumar Banerjee*** and particularly he has referred to Para 4.1 of the said judgment which is extracted hereunder:-

> *``4.1. Adding further, it is submitted that after the expiry of the 30- day limitation period and the additional 15-day grace/condonable period, respondent No. 1 e-filed the appeal along with an application for condonation of delay before the National Company Law Appellate Tribunal, on May 23, 2022, which was the 46th day from the date of the National Company Law Tribunal's order. The physical filing of the appeal was done on May 24, 2022, i.e., on the 47th day. Accordingly, the appeal was clearly barred by limitation and not maintainable in law. However, by the order impugned herein, the National Company Law Appellate Tribunal erroneously allowed the application for condonation of delay by observing that respondent No. 1 was entitled to the benefit of section 4 of the Limitation Act, 1963. It incorrectly held that the 30-day limitation period for filing the appeal expired on May 9, 2022 instead of May 7, 2022, on the ground that May 7, 2022 was a Saturday and, therefore, a court holiday. Consequently, the National Company Law Appellate Tribunal wrongly computed the additional/grace/condonable period of 15 days from May 10, 2022 instead of May 8, 2022, and concluded*

that this period expired on May 24, 2022-the date on which respondent No. 1 physically filed the appeal before the National Company Law Appellate Tribunal.''

9. In a nutshell, we could summarize the reasonings, which has been assigned in the said paragraph by the Hon'ble Apex Court, where it had laid down that the period of limitation is of 30 days only and the grace period of 15 days for filing which may be granted for filing of an Appeal will not be falling within the prescribed period of limitation for filing of the Appeal.

10. Thus, if the Appeal was filed on 46th day, it would be barred by limitation, which would be the case at hand, irrespective of whether the vacation had commenced by that time, because in the instant case, the e-filing of the Appeal was done only on 11.05.2025, which is on the 46th day, for which the benefit of Section 4 of Limitation Act, could not be extended, because vacation started on 01.05.2025 whereas the prescribed period under sub-section (2) of as being beyond the prescribed period under sub-section 2 of Section 61 of I & B Code, 2016, expired on 25.04.2025.

11. The Hon'ble Apex Court in the aforesaid Paragraph 4.1 has stated in categorical terms that Section 4 of the Limitation Act, will be applicable only when the prescribed period of limitation expires during the period of the closure of the Court and it will not be applicable in respect of the period extendable by the Court at its discretion.

12. The implication of the ``prescribed period'' of limitation, has been elaborated in detail in the aforesaid Judgment vide the observations that have been made in Para 10.1 and 10.2 of the said Judgment. Therein, the Hon'ble Apex Court has explained as to how would the term ``prescribed period'' of limitation, as defined under Section 2(j) of the Limitation Act, 1963, is to be considered in the context of provisions contained under Section 4 of the Limitation Act, 1963, which provides for the extension of the limitation period till re-opening of the Court, if the prescribed period of limitation expires on a day when the Court is closed. In Para 10.1, it has been held that the prescribed period under Section 4 of the Limitation Act, will have to be read with Section 2(j) which defines the ``period of limitation'', and the ``prescribed period'', and that the benefit of limitation under Section 4 of Limitation Act, 1963, will only be available to the period of limitation as contemplated under the statute, and not to the period which may be granted at the discretion of the Court.

The aforesaid rational has been determined in Para 10.2 of the said Judgment which is extracted hereunder:

> *``10.2. At the same time, this court has, in the following decisions, categorically explained the meaning of the term "prescribed period" as defined under section 2(j) of the Limitation Act, 1963, and clarified the scope and applicability of section 4 of the said Act, particularly, in cases where the last date for filing an appeal or application falls on a court holiday:*
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> *(i) Assam Urban Water Supply and Sewerage Board v. Subash Projects and Marketing Ltd. [(2012) 2 SCC 624, 627; (2012) 1 SCC (Civ) 831; 2012 SCC OnLine SC 68.] :*
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> *"10. The facts in the present case are peculiar. The arbitral awards were received by the appellants on August 26, 2003. No application for setting aside the arbitral awards was made by the appellants before elapse of*

three months from the receipt thereof. As a matter of fact, three months from the date of the receipt of the arbitral award by the appellants expired on November 26, 2003. The district court had Christmas vacation for the periods from December 25, 2003 to January 1, 2004. On reopening of the court, i.e. on January 2, 2004, admittedly, the appellants made applications for setting aside those awards under section 34 of the 1996 Act. If the period during which the District Court, Kamrup, Guwahati, remained closed during Christmas vacation, 2003 is extended and the appellants get the benefit of that period over and above the cap of thirty days as provided in section 34(3), then the view of the High Court and the District Judge cannot be sustained. But this would depend on the applicability of section 4 of the 1963 Act.

11. The question, therefore, that falls for our determination is whether the appellants are entitled to extension of time under section 4 of the 1963 Act in the above facts ?

12. Section 4 of the 1963 Act reads as under:

> *'4. Expiry of prescribed period when court is closed.—Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens.*
>
> *Explanation.—A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day.'*

The above section enables a party to institute a suit, prefer an appeal or make an application on the day the court reopens where the prescribed period for any suit, appeal or application expires on the day when the court is closed.

13. The crucial words in section 4 of the 1963 Act, are 'prescribed period'. What is the meaning of these words ?

14. Section 2(j) of the 1963 Act defines:

> *'2(j) "period of limitation" (which) means the period of limitation prescribed for any suit, appeal or application by the Schedule, and "prescribed period" means the period of limitation computed in accordance with the provisions of this Act;'*

Section 2(j) of the 1963 Act when read in the context of section 34(3) of the 1996 Act, it becomes amply clear that the prescribed period for making an application for setting aside an arbitral award is three months. The period *of 30 days mentioned in the proviso that follows sub-section (3) of section 34 of the 1996 Act is not the 'period of limitation' and, therefore, not the 'prescribed period' for the purposes of making the application for setting aside the arbitral award. The period of 30 days beyond three months which the court may extend on sufficient cause being shown under the proviso appended to sub-section (3) of section 34 of the 1996 Act being not the 'period of limitation' or, in other words, the 'prescribed period', in our opinion, section 4 of the 1963 Act is not, at all, attracted to the facts of the present case.*

15. Seen thus, the applications made by the appellants on January 2, 2004 for setting aside the arbitral award dated August 26, 2003 were liable to be dismissed and have rightly been dismissed by the District Judge, Kamrup, Guwahati, as timebarred."

(ii) Sagufa Ahmed v. Upper Assam Plywood Products P. Ltd. [(2020) 222 Comp Cas 559, 566 (SC); (2021) 2 SCC 317; (2021) 2 SCC (Civ) 178; 2020 SCC OnLine SC 755.] :

"The words 'prescribed period' appear in several sections of the Limitation Act, 1963. Though these words 'prescribed period' are not defined in section 2 of the Limitation Act, 1963, the expression is used throughout, only to denote the period of limitation. We may see a few examples:

(i) Section 3(1) makes every proceeding filed after the prescribed period, liable to be dismissed, subject however to the provisions in sections 4 to 24.

(ii) Section 5 enables the admission of any appeal or application after the prescribed period.

(iii) Section 6 uses the expression prescribed period in relation to proceedings to be initiated by persons under legal disability.

Therefore, the expression 'prescribed period' appearing in section 4 cannot be construed to mean anything other than the period of limitation. Any period beyond the prescribed period, during which the court or Tribunal has the discretion to allow a person to institute the proceedings, cannot be taken to be 'prescribed period'.

In Assam Urban Water Supply and Sewerage Board v. Subash Projects and Marketing Ltd. [(2012) 2 SCC 624; (2012) 1 SCC (Civ) 831; 2012 SCC OnLine SC 68.] , this court dealt with the meaning of the words 'prescribed period' in paragraphs 13 and 14 as follows : (SCC pages 627-28)

'13. The crucial words in section 4 of the 1963 Act are "prescribed period". What is the meaning of these words ?

14. Section 2(j) of the 1963 Act defines:

"2. (j) 'period of limitation' which means the period of limitation prescribed for any suit, appeal or application by the Schedule, and 'prescribed period' means the period of limitation computed in accordance with the provisions of this Act."

Section 2(j) of the 1963 Act when read in the context of section 34(3) of the 1996 Act, it becomes amply clear that the prescribed period for making an application for setting aside arbitral award is three months. The period of 30 days mentioned in proviso that follows sub-section (3) of section 34 of the 1996 Act is not the "period of limitation" and, therefore, not "prescribed period" for the purposes of making the application for setting aside the arbitral award. The period of 30 days beyond three months which the court may extend on sufficient cause being shown under the proviso appended to sub-section (3) of section 34 of the 1996 Act being not the "period of limitation" or, in other words, "prescribed period",in our opinion, section 4 of the 1963 Act is not, at all, attracted to the facts of the present case.'

Therefore, the appellants cannot claim the benefit of the order passed by this court on March 23, 2020 (Cognizance for Extension of Limitation, In re [(2020) 220 Comp Cas 447 (SC); (2020) 424 ITR 314 (SC); (2020) 19 SCC 10; (2021) 3 SCC (Cri) 801; 2020 SCC OnLine SC 343.]), for enlarging, even the period up to which delay can be condoned. The second contention is thus untenable. Hence the appeals are liable to be dismissed. Accordingly, they are dismissed."

(iii) Bhimashankar Sahakari Sakkare Karkhane Niyamita v. Walchandnagar Industries Ltd. (WIL) [(2023) 8 SCC 453, 468; 2023 SCC OnLine SC 382.] :

"50. Section 34(3) of the Arbitration Act, and sections 2(j) and 4 of the Limitation Act, 1963 fell for consideration before this court in Assam Urban Water Supply and Sewerage Board v. Subash Projects and Marketing Ltd. [(2012) 2 SCC 624; (2012) 1 SCC (Civ) 831; 2012 SCC OnLine SC 68.] . Even the very issue raised in the present appeal fell for consideration before this court in Assam Urban [Assam Urban Water Supply and Sewerage Board v. Subash Projects and Marketing Ltd., (2012) 2 SCC 624; (2012) 1 SCC (Civ) 831; 2012 SCC OnLine SC 68.] . In the aforesaid decision, this court interpreted the aforesaid provisions and has specifically observed and held that the benefit of exclusion of period during which court is closed is available only when application for setting aside the award is filed within 'prescribed period of limitation' and it is not available in respect of period extendable by the court in exercise of its discretion…

52. Before this court there existed, similar facts like in the present case. In the case before this court, the arbitral awards were received by the appellants on August 26, 2003. No application for setting aside the arbitral award was made before elapse of three months from the receipt thereof. Three months from the date of receipt of the award expired on November 26, 2003. The district court had Christmas vacation for the period from December 25, 2003 to January 1, 2004. On reopening of the court, i.e., on January 2, 2004, the appellants made application for setting aside the award under section 34 of the Arbitration Act. Considering the aforesaid facts and thereafter considering sections 2(j) and 4 of the Limitation Act, 1963, this court observed and held and concluded in paragraphs 11 to 15 as under : (Assam Urban [Assam Urban Water Supply and Sewerage Board v. Subash Projects and Marketing Ltd., (2012) 2 SCC 624; (2012) 1 SCC (Civ) 831; 2012 SCC OnLine SC 68.] [Assam Urban Water Supply and Sewerage Board v. Subash Projects and Marketing Ltd., (2012) 2 SCC 624; (2012) 1 SCC (Civ) 831; 2012 SCC OnLine SC 68.] case)…

53. Therefore, as such the question involved in the present appeal is squarely answered against the appellant and the said issue is as such not res integra…

58. Therefore, in light of the application of the Limitation Act, 1963 to the proceedings under the Arbitration Act and when section 10 of the General Clauses Act, 1897 specifically excludes the applicability of section 10 to any act or proceeding to which the Limitation Act, 1963 applies and in light of the definition of 'period of limitation' as defined under section 2(j) read with section 4 of the Limitation Act and as observed and held by this court in Assam Urban [Assam Urban Water Supply and Sewerage Board v. Subash Projects and Marketing Ltd., (2012) 2 SCC 624; (2012) 1 SCC (Civ) 831; 2012 SCC OnLine SC 68.] , benefit of exclusion of period during which the court is closed shall be available when the application for setting aside award is filed within 'prescribed period of limitation' and shall not be available in respect of period extendable by court in exercise of its discretion."

(iv) My Preferred Transformation and Hospitality P. Ltd. v. Faridabad Implements P. Ltd. [2025 SCC OnLine SC 70.]:

"25. As per section 4, if the 'prescribed period', which is defined in section 2(j) of the Limitation Act as the period of limitation computed in accordance with its provisions, expires on a day when the court is closed, the application may be made on the day when the court reopens.

26. This court in Assam Urban [Assam Urban Water Supply and Sewerage Board v. Subash Projects and Marketing Ltd., (2012) 2 SCC 624; (2012) 1 SCC (Civ) 831; 2012 SCC OnLine SC 68.] considered the applicability of section 4 of the Limitation Act, in a situation when the condonable period of 30 days expired on a court holiday. The brief facts are that the appellants received the arbitral *awards on August 26, 2003, the 3- month limitation period expired on November 26, 2003, on which date the court was open. The further condonable period of 30 days expired during court vacation between December 25, 2003 to January 1, 2004. The application under section 34 was filed on January 2, 2004, on the date of court reopening. This court upheld the dismissal of the section 34 application on the ground of delay, as the same could not be condoned.*

26.1. First, the court held that by virtue of section 43(1), the Limitation Act, applies to matters of arbitration, 'save and except to the extent its applicability has been excluded by virtue of the express provision contained in section 34(3) of the 1996 Act'.

26.2. It then considered the meaning of the expression 'prescribed period' in section 4, to determine whether the appellants in this case would be entitled to an extension of time. Reading section 2(j) of the Limitation Act, in the context of section 34(3) of the Arbitration and Conciliation Act, 1996, it held that the 'prescribed period' for an application to set aside the arbitral award is 3 months. The 30-day period is not the period of limitation, but the condonable period, and is therefore not the 'prescribed period'. Hence, it held that section 4 was not attracted to the facts of the case.

27. Contrary to the interpretation of the judgment put forth by Mr. Kaul during the hearings, a reading of the entire judgment does not indicate that the court in Assam Urban [Assam Urban Water Supply and Sewerage Board v. Subash Projects and Marketing Ltd., (2012) 2 SCC 624; (2012) 1 SCC (Civ) 831; 2012 SCC OnLine SC 68.] held section 4 of the Limitation Act, to be inapplicable. The wording of paragraph 9 of the judgment makes it clear that the Limitation Act, does not apply only to the extent that its applicability is excluded by an express provision in section 34(3). While the court did not explicitly deal with whether section 4 of the Limitation Act, was excluded, a reading of the entire judgment makes it clear that the court proceeded on the basis that section 4 applies. Therefore, we find it difficult to accept Mr. Kaul's submission that section 4 was held to be excluded in Assam Urban [Assam Urban Water Supply and Sewerage Board v. Subash Projects and Marketing Ltd., (2012) 2 SCC 624; (2012) 1 SCC (Civ) 831; 2012 SCC OnLine SC 68.] . His further submission that once the Limitation Act, is inapplicable, there was no occasion for the court to decide on the applicability of section 4 only to the prescribed period of 3 months, must also be rejected for the same reason.

28. The position of law after Assam Urban [Assam Urban Water Supply and Sewerage Board v. Subash Projects and Marketing Ltd., (2012) 2 SCC 624; (2012) 1 SCC (Civ) 831; 2012 SCC OnLine SC 68.] is that while section 4 of the Limitation Act, applies to section 34(3) of the Arbitration and Conciliation Act, 1996, it only applies in relation to the prescribed period of 3 months. It does not *apply when the condonable period of 30 days expires on a day when the court is not working.*

29. This position of law was subsequently considered and reiterated in Bhimashankar [Bhimashankar Sahakari Sakkare Karkhane Niyamita v. Walchandnagar Industries Ltd. (WIL), (2023) 8 SCC 453; 2023 SCC OnLine SC 382.] as well. Here, the arbitral award was made on August 24, 2016, the 3-month period of limitation expired on November 24, 2016, and further 30 days came up to December 24, 2016, which fell during the court's winter/Christmas vacation. The court here considered the applicability of section 4 of the Limitation Act and section 10 of the General Clauses Act, 1897.

29.1. On the issue of section 4 of the Limitation Act, it held that the issue is covered by Assam Urban [Assam Urban Water Supply and Sewerage Board v. Subash Projects and Marketing Ltd., (2012) 2 SCC 624; (2012) 1 SCC (Civ) 831; 2012 SCC OnLine SC 68.] , where it was held that the benefit of exclusion of the period when the court is closed is only available with respect to the 'prescribed period of limitation' and not the period extendable by the court in exercise of its discretion.

29.2. To determine the applicability of section 10 of the General Clauses Act, 1897, it considered whether the Limitation Act, applies to the Arbitration and Conciliation Act. It specifically rejected the submission that the Limitation Act, does not apply. It further referred to Assam Urban [Assam Urban Water Supply and Sewerage Board v. Subash Projects and Marketing Ltd., (2012) 2 SCC 624; (2012) 1 SCC (Civ) 831; 2012 SCC OnLine SC 68.] on the extent of exclusion and held as follows in paragraph 54:

> *'54. Now, so far as the submission on behalf of the appellant that the Limitation Act shall not be applicable to the proceedings under the Arbitration Act is concerned, the aforesaid has no substance. Section 43(1) of the Arbitration Act, specifically provides that the Limitation Act, 1963 shall apply to arbitrations as it applies to proceeding in Court. However, as observed and held by this court in Assam Urban, the Limitation Act, 1963 shall be applicable to the matters of arbitration covered by the 1996 Act save and except to the extent its applicability has been excluded by virtue of express provision contained in section 34(3) of the Arbitration Act.'*

(emphasis supplied)

In paragraphs 55 and 56, it discussed Popular Construction [Union of India v. Popular Construction Co., (2001) 8 SCC 470; 2001 SCC OnLine SC 1186.] and Hindustan Construction [State of Maharashtra v. Hindustan Construction Co. Ltd., (2010) 4 SCC 518; (2010) 2 SCC (Civ) 207; 2010 SCC

OnLine SC 429.] on the inapplicability of section 5 of the Limitation Act, and the mandatory nature of the 30-day time limit for condonation of delay, respectively.

29.3. Finally, in paragraphs 57 and 58, in light of the proviso to section 10 of the General Clauses Act, 1897 which specifically excludes its applicability to any act or proceeding to which the Limitation Act, applies, the court rejected the applicability of section 10 of the General Clauses Act, 1897 to section 34(3).

30. The logic of the above reasoning in Bhimashankar [Bhimashankar Sahakari Sakkare Karkhane Niyamita v. Walchandnagar Industries Ltd. (WIL), (2023) 8 SCC 453; 2023 SCC OnLine SC 382.] , like in Assam Urban [Assam Urban Water Supply and Sewerage Board v. Subash Projects and Marketing Ltd., (2012) 2 SCC 624; (2012) 1 SCC (Civ) 831; 2012 SCC OnLine SC 68.] , proceeds on the basis that section 4 of the Limitation Act, applies to section 34(3), as the same is not expressly or impliedly excluded. Reading paragraphs 54 to 58 together, it is clear that any apparent contradiction within them, which was raised by Mr. Kaul, does not in fact exist. The judgment is consistent throughout, in that it necessarily affirms the applicability of section 4 of the Limitation Act, while calculating limitation under section 34(3), and consequently, relies on the proviso of section 10 of the General Clauses Act, 1897 to hold that section 10 of the General Clauses Act, 1897 does not apply.

31. The applicability of section 4 of the Limitation Act, is also implicit in the recent decision in State of West Bengal v. Rajpath Contractors and Engineers Ltd. [(2024) 7 SCC 257; 2024 SCC OnLine SC 1655.] . Here, the award was served on the appellant on June 30, 2022. The 3-month limitation was reckoned from July 1, 2022, which came up to September 30, 2022. The court vacation started from October 1, 2022. The further 30-day period ended on October 30, 2022, which was during the court vacation. The application was filed on October 31, 2022. The court held that the prescribed limitation period ended on September 30, 2022, when the court was working. Hence, by referring to Assam Urban [Assam Urban Water Supply and Sewerage Board v. Subash Projects and Marketing Ltd., (2012) 2 SCC 624; (2012) 1 SCC (Civ) 831; 2012 SCC OnLine SC 68.] , it held that the appellant could not benefit from section 4 of the Limitation Act, as only the 30-day period expired on a court holiday. Hence, it held that the application was filed beyond the time under section 34(3) and the delay could not be condoned."

Thus, it is clear that the benefit of exclusion of period during which the court is closed shall be available when the application is filed within "prescribed period of limitation" and shall not be available in respect of period extendable by court in exercise of its discretion.''

13. In elaboration to the rational of determining the period of limitation by virtue of a prescription under law, the Hon'ble Apex Court apart from the aforesaid fact has also considered the implication of the judgment of ***V. Nagarajan V. SKS Ispat & Power Limited*** in Para 10.3 of its Judgment, as to how the aspect of prescribed period has to be considered for the purposes of extension of benefit of limitation in the light of the provisions contained under Section 61 of I & B Code, 2016. Relevant Para 10.3 is extracted hereunder:-

> *`` 10.3. In V. Nagarajan v. SKS Ispat and Power Ltd. [(2022) 231 Comp Cas 284 (SC); (2022) 2 SCC 244; (2022) 1 SCC (Civ) 741; 2021 SCC OnLine SC 959.] , this court provided crucial clarifications regarding the computation of limitation periods under the Insolvency and Bankruptcy Code, 2016. It was held that under section 61(2) of the Insolvency and Bankruptcy Code, 2016, the limitation period for filing an appeal to the National Company Law Appellate Tribunal commences from the date of pronouncement of the order by the National Company Law Tribunal, not from the date when the order is received or made available to the aggrieved party. This court further clarified that while rule 22(2) of the National Company Law Appellate Tribunal Rules, mandates the filing of a certified copy of the impugned order along with the appeal, the limitation period is not contingent upon the receipt of such a copy. However, if an appellant applies for a certified copy, the time taken to obtain it can be excluded from the limitation period under section 12(2) of the Limitation Act. Thus, this decision underscores the Insolvency and Bankruptcy Code's objective of ensuring timely resolution of insolvency proceedings and the parties are expected to act diligently and within the prescribed timelines, with Ltd. scope for condonation of delay. The relevant paragraphs of the said decision read as under [See page 300 of 231 Comp Cas.] :*
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> > *"The Insolvency and Bankruptcy Code is a complete code in itself and overrides any inconsistencies that may arise in the application of other laws. Section 61 of the Insolvency and Bankruptcy Code, 2016, 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 National Company Law Appellate Tribunal along within the stipulated period of limitation. The notable difference*

between section 421(3) of the Companies Act, and section 61(2) of the Insolvency and Bankruptcy Code, 2016 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 National Company Law Tribunal Rules for the purposes of reckoning limitation. This would ignore the context of the Insolvency and Bankruptcy Code's provisions and the purpose of the legislation…

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 National Company Law Appellate Tribunal Rules empowers the National Company Law Appellate Tribunal 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 National Company Law Appellate Tribunal 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, the National Company Law Appellate Tribunal had dismissed an appeal [See Prowess International P. Ltd. v. Action Ispat and Power P. Ltd., (2018) 2 Comp Cas-OL 663 (NCLAT), Company Appeal (AT) (Insolvency) No. 223 of 2017, dated March 26, 2018.] as time-barred under section 61(2) of the Insolvency and Bankruptcy Code, 2016 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…

The answer to the two issues set out in section C of the judgment—(i) when will the clock for calculating the limitation period run for proceedings under the Insolvency and Bankruptcy Code; and (ii) is the annexation of a certified copy mandatory for an appeal to the National Company Law Appellate Tribunal against an order passed under the Insolvency and Bankruptcy Code—must be based on a harmonious interpretation of the applicable legal regime, given that the Insolvency and Bankruptcy Code is a Code in itself and has overriding effect. Section 61(1) and (2) of the Insolvency and Bankruptcy Code, 2016 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 Insolvency and Bankruptcy Code, 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 National Company Law Appellate Tribunal 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 Insolvency and Bankruptcy Code, to await the receipt of a free certified copy under section 420(3) of the Companies Act, 2013 read with rule 50 of the National Company Law Tribunal Rules and prevent limitation from running. Accepting such a construction will upset the timely framework of the Insolvency and Bankruptcy Code. 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.

On the second question, rule 22(2) of the National Company Law Appellate Tribunal Rules mandates the certified copy being annexed to an appeal, which continues to bind litigants under the Insolvency and Bankruptcy Code. While it is true that the Tribunals, and even this court, may choose to exempt parties from compliance with this procedural requirement in the interest of substantial justice, as reiterated in rule 14 of the National Company Law Appellate Tribunal Rules, the discretionary waiver does not act as an automatic exception where litigants make no efforts to pursue a timely resolution of their grievance. The appellant having failed to apply for a certified copy, rendered the appeal filed before the National Company Law Appellate Tribunal as clearly barred by limitation."

14. The ultimate conclusion has been drawn by the Hon'ble Apex Court in Para 11.1 of the Judgment in the matter of V. Nagarajan (supra). In the said Paragraph, Hon'ble Apex Court has categorically laid down that the ``prescribed period'' and ``condonable period'' are 30 days and 15 days respectively under Section 61(2) of I & B Code, 2016, and the Tribunals, must operate within the bounds of the Code, in the light of the Judgment of ***Mobilox Innovations Private Limited V. Kirusa Software Private Limited*** as reported in 2018 (1) SCC 353. The said Paragraph is extracted hereunder:

> *``11.1. Once the prescribed and condonable periods (i.e., 30 + 15 days) expire, the National Company Law Appellate Tribunal has no jurisdiction to entertain appeals, regardless of the reason for the delay. In Mobilox Innovations P. Ltd. v. Kirusa Software P. Ltd. [(2017) 205 Comp Cas 324 (SC); (2018) 1 SCC 353; (2018) 1 SCC (Civ) 311; 2017 SCC OnLine SC 1154.] , while interpreting section 9 of the Insolvency and Bankruptcy Code, 2016, this court underscores the Insolvency and Bankruptcy Code's strict procedural discipline, i.e., only applications strictly conforming to statutory requirements can be entertained. This principle is also applicable to limitation issues under section 61(2), as it supports the idea that Tribunals must operate within the bounds of the Code, without adding equitable or discretionary powers not conferred by statute. This court in Kalpraj Dharamshi v. Kotak Investment Advisors Ltd. [(2021) 225 Comp Cas 565 (SC); (2021) 10 SCC 401; 2021 SCC OnLine SC 204.] has categorically held that the National Company Law Appellate Tribunal cannot condone any delay beyond 15 days even on equitable grounds; and that the appellate mechanism under the Insolvency and Bankruptcy Code is strictly time-bound by design to preserve the speed and certainty of the insolvency resolution process.''*

15. From the above, it is clear that the prescribed period as per Section 61(2) of the Code is 30 days and the condonable period is 15 days and that as per the ratio of

Tata Steel (supra), benefit of Section 4 of Limitation Act will accrue only when the prescribed period expires during the Court Holiday / Vacation.

16. One another important feature, which would be marginally distinguishable in the instant Company Appeal (AT) (CH) (INS) No. 367 / 2025 is that, the Appellant has filed an application being IA No. 1098 / 2025 for seeking a dispensation from filing the Certified copy of the impugned order. Admittedly, as stated and till the date of filing of the Company Appeal or even in the Application itself, it has not been indicated as to when the Appellants had applied for the Certified copy, which would mean that, till date as to when the Appellants had applied for the Certified copy, which would mean that till date Certified copy has not been applied for by the Appellant.

17. In that eventuality, in either of the circumstances if we determine the limitation either from the date of the order i.e. 26.03.2025 or even from the date of the uploading i.e. 27.03.2025, the instant Company Appeal (AT) (CH) (INS) No. 367 / 2025, would be barred by limitation, because of the fact, that the limitation period expired well before the commencement of vacation and only the 15 day condonable which cannot be executed by applying provisions of Section 4 of Limitation Act, 1963, as already observed by the Hon’ble Apex Court in Para 10.2 and Para 11.1 in the matter of Tata Steel V. Raj Kumar Banerjee (supra). Therefore, the condonable period as prescribed under the proviso to sub-section (2) of Section 61 of I & B Code, 2016, will have to expire on 10.05.2025, and hence, the instant

Company Appeal (AT) (CH) (INS) No. 367 / 2025 would be barred by limitation. The same is accordingly dismissed. All pending Interlocutory Applications would stand closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

24/03/2026

SR/MS/AK