

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 1585 of 2024
& I.A. No. 5760 of 2024**

IN THE MATTER OF:

Yerramaneni Ramakrishna & Ors.

....Appellants

Vs.

Suraksha Realty Ltd. & Ors.

...Respondents

For Appellants: Mr. Abhishek Naik, Ms. Gulafsha Kureshi, Mr. Mojahid Karim Khan and Ms. Tanya Raizada, Advocates.

For Respondents: Mr. Krishnendu Datta, Sr. Advocate with Mr. Pranaya Goyal, Mr. Chiranjivi Sharma, Ms. Rati Patni, Ms. Kathleen Lobo, Ms. Nehal Gupta, Ms. Alina Merin Mathew, Ms. Sanchi Jain, Mr. Chitranshul Sinha, Mr. Sagar Bansal and Mr. Dhruv Parwal, Advocates.

WITH

**Company Appeal (AT) (Insolvency) No. 1586 of 2024
& I.A. No. 5765 of 2024**

IN THE MATTER OF:

Yerramaneni Ramakrishna & Ors.

....Appellants

Vs.

Sheth Developers Pvt. Ltd. & Ors.

...Respondents

For Appellants: Mr. Abhishek Naik, Ms. Gulafsha Kureshi, Mr. Mojahid Karim Khan and Ms. Tanya Raizada, Advocates.

For Respondents: Mr. Krishnendu Datta, Sr. Advocate with Mr. Pranaya Goyal, Mr. Chiranjivi Sharma, Ms. Rati

Patni, Ms. Kathleen Lobo, Ms. Nehal Gupta, Ms. Sanchi Jain, Mr. Anup Deshmukh, Mr. Pranav Parikh and Mr. Yunus Vakhaira, Advocates.

J U D G M E N T
(30th August, 2024)

Ashok Bhushan, J.

IA No.5760 of 2024 and IA No.5765 of 2024 have been filed in these two Appeals praying for condonation of 15 days' delay in filing the Appeals. The impugned order passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Court-2 was pronounced on 13.05.2024. Both the Appeals have been e-filed on 28.06.2024. The office report indicates that 30 days' period expired on 12.06.2024 and the Appeal filed on 28.06.2024 i.e. 16th day after expiry of 30 days limitation.

2. Counsel for the Appellant submits that the limitation need to be computed from 14.05.2024 since the order dated 13.05.2024 was corrected by order dated 14.05.2024 by the Adjudicating Authority *suo moto* and the limitation need to be counted from the order dated 14.05.2024.

3. Counsel for the Respondent has filed the reply to the Delay Condonation Application consequent to notices issued by this Tribunal on 13.08.2024 on Delay Condonation Application. The Respondent in the reply submits that the Appeal has been filed beyond condonable delay of 15 days. It is pleaded that the order was pronounced on 13.05.2024 and there being

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typographical error in the date of pronouncement of the order which was wrongly mentioned as 13.06.2024 which was *suo moto* corrected by the Adjudicating Authority on 14.05.2024. Hence, 30 days limitation has to be counted from 14.05.2024 excluding the date 13.05.2024 when the order was pronounced and 30 days' period for filing the Appeal came to an end on 12.06.2024 and Appeal filed on 28.06.2024 i.e. 16th day which is beyond condonable period.

4. Counsel for the Appellant in support of the submissions submits that the delay is only 15 days' since the order having been corrected on 14.05.2024, limitation for filing the Appeal shall not commence from 13.05.2024 rather it shall commence on 14.05.2024. The order dated 13.05.2024 shall be treated to have been merged with order dated 14.05.2024 and the date for computation of limitation is 14.05.2024. Counsel for the Appellant has relied on judgment of this Tribunal in ***"Ashok Tiwari vs. Tattva & Mittal Lifespaces Pvt. Ltd.- Company Appeal (AT) (Insolvency) No. 729 of 2023"*** decided on 31.10.2023 to support the submission that when the order is corrected subsequently the earlier order shall merged in subsequent order and limitation can be computed from subsequent order.

5. Counsel for the Respondent submits that in view of the judgment of the Hon'ble Supreme Court in ***"V. Nagarajan vs. SKS Ispat and Power***

Limited and Ors.- (2022) 2 SCC 244”, the period for limitation shall commence after the order is pronounced. It is submitted that the present case is not a modification of the order dated 13.05.2024 in any manner rather there is typographical error in the date of pronouncement which was wrongly mentioned as 13.06.2024 which was corrected as 13.05.2024. It is submitted that there is no dispute regarding date of pronouncement in the present case which is 13.05.2024 on which date the case was listed for pronouncement.

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

7. In the present case, the case was listed for pronouncement on 13.05.2024 on which date order was pronounced in IA No. 357 of 2023 in CP(IB) No. 268(AHM)/2020. On the next date i.e. 14.05.2024, in exercise of powers conferred under Rule 154 of the NCLT Rules, 2016, the date of pronouncement which was mentioned due to typographical error as 13.06.2024 was corrected as 13.05.2024. The order dated 14.05.2024 of this Tribunal is as follows:-

“ORDER UNDER RULE 154 OF NCLT RULES, 2016

IA/357(AHM)2024

The instant matter is taken up Suo Moto for rectification of order dated 13.05.2024 under Rule 154 of the NCLT Rules, 2016. After perusal of the said order dated 13.05.2024, it is

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seen that there is typographical error in mentioning it of declaration of order as 13.06.2024 instead of 13.05.2024. Hence, we hereby correct the said order as under

"Order Pronounced on 13.05.2024."

Registry is directed to upload the corrected copy of order."

8. The law is well settled that limitation for filing the Appeal under Section 61 of the IBC commences after pronouncement of the order and in event, the certified copy is applied within 30 days, period which is consumed in preparation of certified copy of the order is excluded. Timelines under IBC are tightly circumscribed as has been held in **"V. Nagarajan"** (*supra*). In paragraphs 25, 33 and 35 of the judgment, the Hon'ble Supreme Court has laid down following:-

"25. The law on limitation with respect to the IBC is settled and emphatic in its denunciation of delays. The power to condone delay is tightly circumscribed and conditional upon showing sufficient cause, even within the period of delay which is capable of being condoned. The IBC is a watershed legislation which seeks to overhaul the previous bankruptcy regime which was afflicted by delays and indefinite legal proceedings. The IBC sought to structure and streamline the entire process of insolvency, right from the initiation of insolvency to liquidation, as a one-stop mechanism....."

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 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 the 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.

35. The appellant was present before the NCLT on 31 December 2019 when interim relief was denied and the miscellaneous application was dismissed. The appellant has demonstrated no effort on his part to secure a certified copy of the said order and has relied on the date of the uploading of the order (12 March 2020) on the website. The period of limitation for filing an appeal under Section 61(1) against the order of the NCLT dated 31 December 2019, expired on 30 January 2020 in view of the thirty-day period prescribed under Section 61(2). Any scope for a condonation of delay expired on 14 February 2020, in view of the outer limit of fifteen days prescribed under the proviso to Section 61(2). The lockdown from 23 March 2020 on account of the COVID-19 pandemic and the suo motu order of this Court has had no impact on the rights of the appellant to institute an appeal in this proceeding and the NCLAT has correctly dismissed the appeal on limitation. Accordingly, the present appeal under Section 62 of the IBC stands dismissed.”

9. The bone of contention between the parties is as to whether the Appeal is filed with delay of 15 days or with delay of 16 days. Appellant contends that the Appeal has been filed with the delay of only 15 days whereas Respondent contends that the Appeal has been filed with the delay of 16 days. The basis of submission of the Appellant is that the order dated

14.05.2024 on which date the typographical error in the date of pronouncement mentioned in the order dated 13.05.2024 was corrected.

10. Counsel for the Appellant in support of his case has relied on judgment of this Tribunal in **“Ashok Tiwari”** (*supra*). Ashok Tiwari was a case where an order was passed on 17.01.2023 dismissing the application filed by the Appellant as not maintainable. Appellant thereafter filed an application for rectification of the order on 15.02.2023 which was partly allowed by order dated 21.03.2023. Appeal was filed in this Tribunal on 12.05.2023. It was contended that the Appeal against the order dated 21.03.2023 was filed within time since copy was applied on 21.03.2023 and issued on 17.04.2023. In the above background, this Tribunal held that the order dated 17.01.2023 was merged with the order dated 21.03.2023 due to partial rectification. Paragraph 4 of the judgment is as follows:-

“4. We have considered the submissions made by both sides and we find that the Appellant herein had filed for rectification of Order dated 17.01.2023 on 15.02.2023 which is within 30 days of the said Order. The Order dated 17.01.2023 was partly rectified vide Order dated 21.03.2023 and, excluding the period taken for obtaining the certified copy, the Appeal has been filed within 30 days of the said Order. The Order dated 17.01.2023 has merged with the Order dated 21.03.2023 due to partial rectification.”

11. The judgment of this Tribunal in Ashok Tiwari has no application in the facts of the present case. Since present is not a case of modification of the order. The Application filed by the Appellant in the above case for rectification of the order was partly allowed and order was modified and earlier order dated 17.01.2023 was modified, hence, this Tribunal held that earlier order stood merged with the subsequent order dated 21.03.2023. Present is not a case of any modification of the judgment dated 13.05.2024. The order delivered on 13.05.2024 in no manner was modified or changed. What was corrected was only a typographical error in the date of pronouncement which was wrongly mentioned as 13.06.2024 in place of 13.05.2024. The Hon'ble Supreme Court in "**V. Nagarajan**" (*supra*) has categorically held that period of limitation in filing the Appeal commences from the date when order was pronounced. In "**V. Nagarajan**" (*supra*), the order was passed on 31.12.2019 by the NCLT and the Hon'ble Supreme Court held that 30 days period expired on 30.01.2020. The proposition laid down by the Hon'ble Supreme Court in "**V. Nagarajan**" (*supra*) is fully attracted in the present case. When the order was pronounced on 13.05.2024, 30 days period expired on 12.06.2024 and Appeal was filed on 28.06.2024 i.e. 16th day after expiry of limitation. Our jurisdiction to condone the delay is limited to 15 days only as per Section 61(2) proviso. We, thus, are unable to condone the delay of 16 days' in filing these two

Appeals. The Delay Condonation Applications are dismissed. Consequently, the memo of Appeals is rejected.

**[Justice Ashok Bhushan]
Chairperson**

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

**[Arun Baroka]
Member (Technical)**

New Delhi
Anjali

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