

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

Company Appeal (AT) (Insolvency) No. 139-141 of 2020

IN THE MATTER OF:

Registrar of Companies, West Bengal

...Appellant

Versus

**Kalyanpur Cements Ltd.
Now Known as Dalmia DSP Ltd.**

...Respondent

Present:

For Appellant: Mr. Vijay Joshi, Advocate

**For Respondent: Mr. Mahesh Agarwal, Mr. Shivam Shukla, Ms.
Shipra Choudhry, Ms. Geetika Sharma, Ms. Mansi
Taneja, Mr. Sandeep Khairwal, Advocates**

**O R D E R
(Virtual Mode)**

14.07.2022: This appeal is directed against the order dated 17.07.2019 passed by the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench, Kolkata by which CP (IB) No. 168/KB/2017 in CA (IB) No. 492/KB/2019 in Misc. A. No. 1193/KB/2018 were disposed of.

Admittedly, the present appeal has been filed on 20.12.2019 whereas the limitation to file the appeal in terms of the Section 61(2) of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') is 30 days which can be extended, in terms of the proviso to Section 61(2) of the Code for another 15 days if the Tribunal is satisfied that there exist a sufficient cause for not filing the appeal within the prescribed period of 30 days.

Counsel for Appellant has argued that the certified copy was applied on 06.09.2019 which was made available to him on 13.12.2019. According

to him the limitation is to be counted from the date of delivery of certified copy and not from the date of passing of the impugned order.

On the other hand, Counsel for Respondent has submitted that the Appeal is hopelessly time barred because the application for obtaining certified copy was itself applied much after the expiry of 45 days.

We have heard Counsel for the parties and perused the record with their able assistance.

Section 61 of the Code provides the limitation to file the appeal to the Appellate Authority against the order of the Adjudicating Authority. Section 61(2) provides that the appeal has to be filed within 30 days before the Appellate Authority and in case the appeal is not filed within the period of 30 days, the limitation would be extended for another period of 15 days if the Appellate Authority is satisfied that there exist a sufficient cause for not approaching the Appellate Authority within the prescribed period of 30 days. There is no provision cited before us that beyond the period of 45 days the Appellate Authority can condone the delay.

Be that as it may, the facts of the present case are altogether different because even the period of 45 days had expired on 02.09.2019 if it is to be counted from the date of passing of the impugned order 17.07.2019 whereas the Appellant had applied for certified copy on 06.09.2019. The Appellant was totally remiss in its act and conduct even in obtaining certified copy despite the fact that the Appellant is the Registrar of Companies, West Bengal, which is a statutory body. It is tried to be urged on behalf of the Appellant that the permission to file the Appeal by the

Appellant was received on 31.08.2019 from the Regional Director of Companies, Kolkata.

It is apparent that there is a gross negligence on the part of the Regional Director of Companies, Kolkata and Registrar of Companies, West Bengal in not pursuing the present appeal in accordance with law and as such a valuable remedy has been lost and the impugned order, which according to the Appellant is illegal, has to be sustained as the appeal is not duly constituted.

Thus, in view of the aforesaid facts and circumstances, the present appeal is dismissed as time barred. No costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Dr. Alok Srivastava]
Member (Technical)

[Mr. Naresh Salecha]
Member (Technical)