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

**Company Appeal (AT) (Ins.) No. 1371 of 2022**
**&**
**I.A. No. 4282 of 2022**

**IN THE MATTER OF:**
**Pushpa Builders Ltd. ...Appellant**

**Versus**

**Paramveer Distributor Pvt. Ltd. ...Respondent**

**Present:**
**For Applicant: Mr. Rajeev Lochan, Adv.**
**For Respondent: Mr. Abhishek Anand, Mr. Shankari Mishra, Ms. Niharika Tanwar, Mr. Karan Kholi, Advocates for RP**
**Mr. Ishaan Mukherjee, Mr. Rohit Saroj, Advocates for R1**

**O R D E R**

**Per: Justice Rakesh Kumar Jain:**

This appeal is filed by an ex-director of the Corporate Debtor against the order dated 20.09.2022, passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench, Court – III) by which an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') Read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 (in short 'Rules') bearing IB-306/ND/2022 filed by the Financial Creditor (M/s Paramveer Distributors Pvt. Ltd.) against the M/s Pushpa Builders Ltd. (Corporate Debtor) has been admitted.

2. The Appellant has filed this appeal alongwith an application bearing I.A. No. 4282 of 2022 invoking Rule 11 of the NCLAT Rules, 2016 (in short 'Rules, 2016) for condonation of delay of 12 days in filing of the appeal. In Para 3 of the Application, reasons have been assigned for condonation of delay alleging

that "this appeal petition delay is due to multi ailments of health issues of Appellant who is 70 years old senior citizen having under gone heart surgery, suffering from self-collapse of vertebral D10 & D11 causing difficulty in body movements, high level diabetic problem & blood pressure and also a post corona patient with law immunity to recurring fall prey to infections and viral ailments resulting in communication gap of the Appellant with his counsel in delay in filing the appeal petition. That the delay is neither intentional nor deliberate but due to some circumstances beyond the control of the Appellant."

3. Counsel for the Appellant has submitted that the ex-parte order has been passed on 20.09.2022 and because of the reasons mentioned in Para 3 of the application, delay of 12 days has been caused in filing of the appeal which may be condoned.

4. On the other hand, Counsel for Respondent has submitted that the impugned order was passed on 20.09.2022. The period of 30 days prescribed for filing of the appeal had expired on 21.10.2022. The additional period of 15 days also expired on 04.11.2022 whereas the application for condonation is verified on 07.11.2022 and filed on 09.11.2022 and is thus beyond the period of entire 45 days and as such the application for condonation of delay is not maintainable. In support of his submissions, he has relied upon two judgments of the Hon'ble Supreme Court in the case of ***V. Nagarajan Vs. SKS Ispat and Power Limited (2022) 2 SCC 244 and National Spot Exchange Limited Vs. Mr. Anil Kohli, RP for Dunar Foods Limited, Civil Appeal No. 6187 of 2019 decided on 14.09.2021.***

5. We have heard Counsel for the parties and examined the records with their able assistance.

6. Section 61 of the Code provides for appeals and appellate authority. It would be relevant to refer to the Section 61(1), (2) and its proviso which read as under: -

> "61. (1) Notwithstanding anything to the contrary contained under the Companies Act 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.
> (2) Every appeal under sub-section (1) shall be filed within thirty days1 before the National Company Law Appellate Tribunal:
> 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"

7. As per Section 61(1) any person aggrieved by the order of the Adjudicating Authority under this part may file an appeal to the Appellate Tribunal. As per Section 61(2) every appeal which is to be filed under Section 61(1) has to be filed within 30 days before the Appellate Tribunal. As per 61(2) proviso the Appellate Tribunal has the jurisdiction to extend the period of 15 days if it is satisfied that there is a sufficient cause for not filing the appeal within the prescribed time.

8. The present appeal has been filed beyond the period of 45 days i.e. a period of 30 days provided in Section 61(1) and 15 days provided in proviso to Section 61(2). In this regard, Hon'ble Supreme Court in the case of ***V. Nagarajan (Supra)*** has held that: -

> "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."

9. In the case of ***National Spot Exchange Limited (Supra)*** has held that:-

> "Thus, considering the statutory provisions which provide that delay beyond 15 days in preferring the appeal is uncondonable, the

> same cannot be condoned even in exercise of powers under Article 142 of the Constitution."

10. Thus, in view of the aforesaid facts and circumstances, even if, the Appellant has submitted that a fraud has been played, in so far as, the delay is concerned, it cannot be condoned by this Tribunal because of lack of jurisdiction. The application is thus dismissed and as a consequence of dismissal of the application for condonation of delay, the main appeal is also dismissed. However, without any order as to costs.

**[Justice Rakesh Kumar Jain]**
**Member (Judicial)**

**[Mr. Naresh Salecha]**
**Member (Technical)**

**New Delhi**

**28th March, 2023.**

*Sheetal*