NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 753 of 2021

&

I.A. No. 304 of 2022

IN THE MATTER OF:

THE STATE TRADING CORPORATION OF INDIA
(A Govt. of India Enterprise), Registered
Office at Jawahar Vyapar Bhawan, Tolstoy
Marg, New Delhi - 110001 **.... Appellant**

Vs.

M/S GANESH BENZOPLAST LIMITED
Dina Building, 1st Floor, M.K. Road,
Marine Lines (East), Mumbai – 400 002

And Also At:
A-1/A-2, Gurudatta CHSL, New Janakalyan
Bank, J.B. Nagar, Andheri (East), Mumbai –
400 059 **.... Respondent**

Present:

For Appellant:-	Mr. Uday Gupta, Ms. Shivani Lal, Ms. Sanam Singh, Mr. Hiren Dasan, Mr. M.K. Tripathi, Ms. Pratiksha Sharma, Mr. Dushayant Tiwari, Advocates.
For Respondent:-	Mr. Vimal Kirti Singh, Mr. Zareewala, Mr. Siddhartha, Ms. Ami Jain, Ms. Nandita Seth, Advocates.

J U D G M E N T

Per: Justice Rakesh Kumar Jain:

The Appellant is aggrieved against the order dated 13.02.2020, passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) by which, while disposing of its application filed under Section 9 of the Code for resolution of an amount of Rs. 24,26,44,490/- the Corporate Debtor has been directed to make the payment of Rs. 2,18,88,421 within a period of 30 days from the date of receipt of the order and the application was not admitted.

2. The Appeal has been filed alongwith an application bearing I.A. No. 304 of 2022 seeking condonation of delay if any, considering to have been within the extended period of limitation in terms of orders passed by the Hon'ble Apex Court on 23.03.2020, 08.03.2021 and 27.04.2021.

3. On 17.11.2022, this Court passed the following order:-

> "17.11.2022: Ms. Pratiksha Sharma, Advocate appears on behalf of the Appellant. Mr. Vimal Kirti Singh, Advocate assisted by Mr. Siddharth Singh, Advocate appears on behalf of the Respondent.
>
> I.A. No. 304 of 2022 has been filed in the instant appeal seeking condonation of delay in filing the appeal. In which Application, it is stated that in terms of the Rule 50 of the NCLT, 2016 free certified copy of the impugned order was supplied to the Appellant only on 12.03.2020, thereafter, the Appellant filed the instant Appeal on 23.08.2021. The Ld. Counsel for the Appellant submits that in view of the orders and directions dated 23.03.2020 passed by the Hon'ble Supreme Court in Suo Moto Petition (Civil) No. 3 of 2020, the case of the Appellant is covered by the aforesaid orders, therefore, delay, if any, may be condoned.
>
> The Ld. Counsel for the Respondent have appeared and filed reply to the I.A. No. 304 of 2022 and submits that the Appeal was filed beyond the period of 45 days. Further, in para 8 of the reply, it is stated that the impugned order dated 13.02.2020 was passed in presence of the Appellant, therefore, limitation has to begin from the date of knowledge i.e. 13.02.2020 and not 12.03.2020 and further relying on the judgment passed by the Hon'ble Supreme Court in the case of "V. Nagarajan Vs. SKS Ispat and Power Limited & Others reported in (2022)2 SCC 244" whereby paragraphs 7, 23, 24 & 25, submits that in this case the period of limitation of 30 days lapsed on 14.03.2020 and this Appeal was filed before this Tribunal on 23.08.2021,

therefore, the instant Appeal is barred by time being filed beyond 45 days.

The Ld. Counsel for the Appellant to reply on the issue of limitation advanced by the Ld. Counsel for the Respondent and liberty to file additional affidavit in support of this case before the next date of hearing.

List the Appeal 'For Order' on 25th January, 2023."

4. Pursuant thereto, the Appellant filed the additional affidavit and in this regard an order was passed on 13.03.2023 which read as under:-

"13.03.2023: In terms of the order dated 23.02.2023, the Ld. Counsel for the Appellant has filed the Additional Affidavit brought on record the orders of the Hon'ble Supreme Court passed in Suo Motu W.P.(C) No. 3 of 2020 'Re: Cognizance for extension of limitation' dated 23.03.2020 and Misc. Application No. 21 in Suo Motu Writ Petition (C) No. 3 of 2020 dated 10.01.2022. In which Affidavit at para 4 it has been stated that the impugned order was passed by the NCLT, Mumbai on 13.02.2020 and further the Appellant received the free certified copy of the same on 12.03.2020 and in between due to Covid-19 situation the Hon'ble Supreme Court passed the aforesaid general directions in Suo Motu W.P.(C) No. 3 of 2020, therefore, this Appeal in not hit by limitation. The delay, if any, be condoned and the matter be heard on merit.

The Ld. Counsel for the Respondent submits that he has filed the Reply to the Additional Affidavit filed by the Appellant through e-filing on 09.03.2023. He may be permitted to file the same in hard copy in course of the day. Prayer accorded. He is directed to file the same in hard copy in course of the day. Registry is directed to accept the same.

List the Appeal 'For Order' on 18th April, 2023."

5. Counsel for the Appellant has submitted that the impugned order was passed on 13.02.2020. The period of limitation of 30 days prescribed under Section 61(2) expired on 14.03.2020. The Appeal has though been filed on

25.08.2021 but in view of an order passed by the Hon'ble Supreme Court on 23.03.2020 the period of limitation stand extended w.e.f 15.03.2020 till further orders is passed. It is further submitted that the second order was passed by the Hon'ble Supreme Court on 08.03.2021 and the period of limitation is extended from 15.03.2021 onwards and has also referred to an order dated 10.01.2022 of the Hon'ble Supreme Court.

6. The sum and substance of the argument of Counsel for the Appellant is that the period of 15 days which is there in the proviso of Section 61(2) of the Code has also been extended and thus there is no delay when the appeal was filed.

7. On the other hand, Counsel for the Respondent has submitted that Section 61(2) prescribes a period of 30 days for an appeal to be filed before the Appellate Tribunal which is counted from the date of the order dated 13.02.2020 which had expired on 14.03.2020 as stated whereas the first order of the Hon'ble Supreme Court came to be passed on 23.03.2020 in which it was held that the limitation shall stand extended w.e.f. 15.03.2020. It is submitted that extension of limitation was meant for the cases in which the period of limitation prescribed under the statute has not yet expired and it does not relate to the period which is granted for the purpose of seeking condonation of delay by assigning sufficient cause. It is further submitted that the Appellant is flogging a dead horse as the substantive right to file the appeal had expired after the lapse of 30 days on

14.03.2020 whereas the Appeal has been filed on 25.08.2021 much after almost 17 months.

8. We have heard Counsel for the parties and perused the record.

9. Section 61 of the Code deals with the appeals and appellate authority. Section 61 of the Code is reproduced as under:-

> "Section 61: Appeals and Appellate Authority.
>
> (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.
>
> (3) An appeal against an order approving a resolution plan under section 31 may be filed on the following grounds, namely:—
>
> (i) the approved resolution plan is in contravention of the provisions of any law for the time being in force;
>
> (ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;
>
> (iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;
>
> (iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or
>
> (v) the resolution plan does not comply with any other criteria specified by the Board.

2[(4) An appeal against a liquidation order passed under section 33, or sub-section (4) of section 54L, or sub-section (4) of section 54N, may be filed on grounds of material irregularity or fraud committed in relation to such a liquidation order.

(5) An appeal against an order for initiation of corporate insolvency resolution process passed under sub-section (2) of section 54-O may be filed on grounds of material irregularity or fraud committed in relation to such an order.]"

10. As per Section 61(1) any person aggrieved against the order of the Adjudicating Authority can prefer an appeal before this Appellate Tribunal but as per Section 61(2) of the Code, the Appeal in terms of Section 61(1) has to be filed within 30 days. However, proviso to Section 61(2) allows the filing of the appeal even after expiry of 30 days if the Applicant/Appellant satisfies the Appellate Authority about the presence of a sufficient cause for not filing the appeal within that time but in no case the period of 15 days can be extended.

11. The Appellant has tried to take advantage of three orders passed by the Hon'ble Apex Court. The first order dated 23.03.2020 is reproduced as under:-

"This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/ appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).

To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f.

> 15th March 2020 till further order/s to be passed by this Court in present proceedings.
>
> We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.
>
> This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction.
>
> Issue notice to all the Registrars General of the High Courts, returnable in four weeks."

12. In the aforesaid order it is provided that the limitation shall extend w.e.f 15.03.2020. Meaning thereby if the limitation prescribed under the statute had already expired on 14.03.2020 then the aforesaid order would not apply to such a case.

13. The order dated 08.03.2021 passed by the Hon'ble Supreme Court is also reproduced as under:-

> "1. Due to the onset of COVID-19 pandemic, this Court took suo motu cognizance of the situation arising from difficulties that might be faced by the litigants across the country in filing petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central or State). By an order dated 23.03.2020 this Court extended the period of limitation prescribed under the general law or special laws whether compoundable or not with effect from 15.03.2020 till further orders. The order dated 23.03.2020 was extended from time to time. Though, we have not seen the end of the pandemic, there is considerable improvement. The lockdown has been lifted and the country is returning to normalcy. Almost all the Courts and Tribunals are functioning either physically or by virtual mode. We are of the opinion that the order dated 23.03.2020 has served its purpose and in view of the changing

scenario relating to the pandemic, the extension of limitation should come to an end.

2. We have considered the suggestions of the learned Attorney General for India regarding the future course of action. We deem it appropriate to issue the following directions: -

1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.

2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.

3. The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

4. The Government of India shall amend the guidelines for containment zones, to state.

"Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements."

3. The Suo Motu Writ Petition is disposed of accordingly."

14. In this order, it has been categorically directed that for the purpose of computation the period of limitation in filing of the appeal the period from

15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.

15. The order dated 10.01.2022 passed by the Hon'ble Supreme Court is reproduced as under:-

> "1. In March, 2020, this Court took Suo Motu cognizance of the difficulties that might be faced by the litigants in filing petitions/ applications / suits/appeals / all other quasi proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central and/or State) due to the outbreak of the COVID-19 pandemic.
>
> 2. On 23.03.2020, this Court directed extension of the period of limitation in all proceedings before Courts/Tribunals including this Court w.e.f. 15.03.2020 till further orders. On 08.03.2021, the order dated 23.03.2020 was brought to an end, permitting the relaxation of period of limitation between 15.03.2020 and 14.03.2021. While doing so, it was made clear that the period of limitation would start from 15.03.2021.
>
> 3. Thereafter, due to a second surge in COVID-19 cases, the Supreme Court Advocates on Record Association (SCAORA) intervened in the Suo Motu proceedings by filing Miscellaneous Application No. 665 of 2021 seeking restoration of the order dated 23.03.2020 relaxing limitation. The aforesaid Miscellaneous Application No.665 of 2021 was disposed of by this Court vide Order dated 23.09.2021, wherein this Court extended the period of limitation in all proceedings before the Courts/Tribunals including this Court w.e.f 15.03.2020 till 02.10.2021.
>
> 4. The present Miscellaneous Application has been filed by the Supreme Court Advocates-on-Record Association in the context of the spread of the new variant of the COVID-19and the drastic surge in the number of COVID cases across the country. Considering the prevailing conditions, the applicants are seeking the following:

i. allow the present application by restoring the order dated 23.03.2020 passed by this Hon'ble Court in Suo Motu Writ Petition (C)NO.3 of 2020 ; and

ii. allow the present application by restoring the order dated 27.04.2021 passed by this Hon'ble Court in M.A. no. 665 of 2021 in Suo Motu Writ Petition (C)NO.3 of 2020; and

iii. pass such other order or orders as this Hon'ble Court may deem fit and proper.

5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

1. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12Aof the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

> 6. As prayed for by learned Senior Counsel, M.A. No. 29 of 2022 is dismissed as withdrawn."

16. In this order also it has been directed that the balance period of limitation remaining as on 03.10.2021, if any, shall become available w.e.f. 01.03.2022.

17. Thus, the Hon'ble Supreme Court extended the period prescribed under the statute for filing the appeal but the period which is provided further within which the application for condonation of delay can be filed has not been ordered to be extended. In the case of National Spot Exchange Limited Vs. Mr. Anil Kohli, RP for Dunar Foods Limited, (2022) 11 SCC 761. The Hon'ble Supreme Court 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".

18. It would have been an altogether different situation had an application been filed by the Appellant during the period of 15 days which is provided in the proviso to Section 61(2) then the said application could have been considered for condoning the delay only of 15 days or whatever days the delay was caused but beyond the period of 15 days this Tribunal does not have any jurisdiction to condone the delay.

19. Thus, looking from any angle, we do not find it to be a fit case for condonation of delay for filing of the appeal and hence, the application bearing I.A. No. 304 of 2022 is hereby dismissed. As a consequence of dismissal of the

application, the appeal is not found to be duly constituted and the same is also dismissed though without any order as to costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Dr. Alok Srivastava]
Member (Technical)

New Delhi

20th April, 2023

Sheetal