NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

I.A. No. 2431 of 2021
in
Company Appeal (AT) (Insolvency) No. 877 of 2022

IN THE MATTER OF:

44 Noida Infratech (Two) Pvt. Ltd. ...Appellant

Versus

Enforcement Directorate Kolkata Zone Office & Ors. ...Respondents

Present:

For Appellant: Mr. Abhishek Seth, Advocate.

For Respondent: Mr. Vivek Gurnani and Mr. Zoheb Hossain, Advocates for R-1.

O R D E R

Ashok Bhushan, J:

1. An application (I.A. No. 2431 of 2021) has been filed for 'Condonation of Delay' in filing this Appeal. This Appeal has been filed against the Order dated 05th May, 2022 passed by National Company Law Tribunal, Cuttack Bench, Cuttack in I.A. (IB) No. 101/CB/2021 and M.A. (IB) No. 08/CB/2021 in T.P. No. 112/CTB/2019 (CP No. 300/KB/2017).

2. This Appeal has been filed in this Tribunal on 04th July, 2022. In Delay Condonation Application, following is pleaded:

> *"2. It is submitted that the impugned order dated 05.05.2022 has not been uploaded till date on the website of the National Company Law Tribunal https://nclt.gov.in/. In fact, a copy of the order dated 05.05.2022 has been supplied to the official liquidator through post and the same has been sent to the*

> *Applicant herein after a delay of 40 days on 13.06.2022.*
>
> *3. It is submitted that the period of limitation commenced from the date when the copy of order was provided to the Applicant, i.e. 13.06.2022. It is submitted that the summer vacation of the Hon'ble National Company Law Appellate Tribunal began from 06.06.2022 and ended on 03.07.2022. Accordingly, the Applicant filed the appeal on the first date of the re-opening of Hon'ble Tribunal i.e. 04.07.2022."*

3. Learned Counsel for the Appellant submits that the Appeal has been filed within 30 days from the date the Appellant received the copy of the Impugned Order which was sent to the Appellant by the Liquidator. He submits that the limitation should be computed from the date of knowledge of the Order by the Appellant i.e. with effect from 13th June, 2022 and from that date it is within time. Learned Counsel for the Appellant has taken another ground that this Appellate Tribunal was closed for summer vacation with effect from 06.06.2022 and opened on 04th July, 2022 hence the Appeal filed on 04.07.2022 is not barred by time.

4. Learned Counsel for the Respondent refuting the submissions of Learned Counsel for the Appellant contends that Appeal has been filed beyond 30 days and actually have been filed after about 60 days which is beyond the condonation limit of 15 days as permitted by Section 61 of the Insolvency and Bankruptcy Code, 2016.

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

6. In so far as the submission of Learned Counsel for the Appellant that the Tribunal was closed from 06.06.2022 and it reopened on 04th July, 2022 hence the Appeal is within time filed on the reopening day, suffice it to say that by notification dated 01st June, 2022 issued by this Tribunal for summer vacation, filing of the Appeal was permitted through both e-filing and physical filing, hence the Tribunal was not closed for filing to give any benefit of summer vacation to the Appellant for computation of limitation.

7. The next question to be answered is as to whether the computation of limitation for filing the Appeal has to be from the date of knowledge of the Appellant as claimed or limitation begins from the date of passing of the order by the Adjudicating Authority.

8. The question which has been raised in the present Appeal is no more *res integra.* Hon'ble Supreme Court in [(2022) 2 SCC 244] in the matter of **"V Nagarajan Vs. SKS Ispat and Power Limited & Ors"** while construing period of limitation under Section 61 of the IBC has held that the period of limitation of 30 days for filing the Appeal shall commence from the date when order was pronounced by the Adjudicating Authority and Applicant is entitled to exclude the time which is taken for obtaining certified copy of the Order. In paragraph 16.1, following question was framed by the Hon'ble Supreme Court:

> *"16.1. (i) When will the clock for calculating the limitation period run for appeals filed under IBC; and"*

9. Hon'ble Supreme Court considered the scheme of IBC and the provisions under Section 61 and laid down following in paragraph 24, 28, 32 and 33 in the above judgment:

> *"24. IBC is a complete code in itself and overrides any inconsistencies that may arise in the application of other laws. Section 61 of the IBC, 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 NCLAT along within the stipulated period of limitation. The notable difference between Section 421(3) of the Companies Act and Section 61(2) of the IBC 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 NCLT Rules for the purposes of reckoning limitation. This would ignore the context of the IBC's provisions and the purpose of the legislation.*
>
> *..................*
>
> *28. In this background, when timelines are placed even on legal proceedings, reading in the requirement of an "order being made available" under a general enactment (Companies Act) would do violence to the special provisions enacted under the IBC where timing is critical for the workability of the mechanism, health of the economy, recovery rate of lenders and valuation*

of the corporate debtor. IBC, as a prescriptive mechanism, affecting rights of stakeholders who are not necessarily parties to the proceedings, mandates diligence on the part of applicants who are aggrieved by the outcome of their litigation. An appeal, if considered necessary and expedient by an aggrieved party, is expected to be filed forthwith without awaiting a free copy which may be received at an indefinite stage. Hence, the omission of the words "from the date on which the order is made available" for the purposes of computation of limitation in Section 61(2) of the IBC, is a consistent signal of the intention of the legislature to nudge the parties to be proactive and facilitate timely resolution.

…………….

32. The appellant had argued that the order of the NCLAT notes that the NCLT registry had objected to the appeal in regard to limitation, to which the appellant had filed a reply stating that the limitation period would begin from the date of the uploading of the order, which was 12 March 2020. The appellant submitted that the suo motu order of this Court dated 23 March 2020, taking retrospective effect from 15 March 2020, made under Article 142 of the Constitution, extended the limitation until further orders, which renders the appeal filed on 8 June 2020 within limitation. However it is important to note that this Court had only extended the period of limitation applicable in the proceedings, only in cases where such period had not ended before 15 March 2020. In this case, owing to the specific language of Section 61(1) and 61(2), it is evident that *limitation commenced once the order was pronounced and the time taken by the Court to provide the appellant with a certified copy would have been excluded, as clarified in Section 12(2) of the Limitation Act, if the appellant had applied for a certified copy within the prescribed period of limitation under Section 61(2) of the IBC. The construction of the law does not import the absurdity the appellant alleges of an impossible act of filing an appeal against an order which was uploaded on 12 March 2020. However, the mandate of the law is to impose an obligation on the appellant to apply for a certified copy once the order was pronounced by the NCLT on 31 December 2019, by virtue of Section 61(2) of the IBC read with Rule 22(2) of the NCLAT Rules. In the event the appellant was correct in his assertion that a correct copy of the order was not available until 20 March 2020, the appellant would not have received a certified copy in spite of the application till such date and accordingly received the benefit of the suo motu order of this Court which came into effect on 15 March 2020. However, in the absence of an application for a certified copy, the appeal was barred by limitation much prior to the suo motu direction of this court, even after factoring in a permissible fifteen days of condonation under Section 61(2). The Court is not empowered to condone delays beyond statutory prescriptions in special statutes containing a provision for limitation.*

D. Conclusion

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."*

10. In paragraph 32, it has clearly been laid down by the Hon'ble Supreme Court that "limitation commenced once the order was pronounced and the time taken by the Court to provide the appellant with a certified copy would have been excluded".

11. Subsequently, in another Judgment of the Hon'ble Supreme Court in **"Safire Technologies Pvt. Ltd. Vs. Regional Provident Fund Commissioner & Anr."**, Civil Appeal No. 2212 of 2021 decided on 29.04.2022, the same issue was answered, where the submission that limitation would start from the date of knowledge has been specifically rejected. In the above case, the Order was passed by the NCLT on 22.10.2019, the Appeal was filed on 14.12.2020 in which Appeal, notices were issued by NCLAT which order was under challenge before the Hon'ble Supreme Court. Hon'ble Supreme Court took the view that Appeal filed before the NCLAT being barred by time, the order of issuing notice was not sustainable. In the above judgement, Hon'ble Supreme Court clearly laid down that Appeal against the Order of NCLT should have been preferred within a period of 30 days from the date of order passed by the NCLT. Following observations has been made by the Hon'ble Supreme Court:

> *"Learned counsel appearing for the respondent stated that period of limitation would start from the date of knowledge. Though, the claim was filed by Respondent No.1 before the Resolution Professional, it was not a party before the NCLT which passed the order approving the resolution plan. According to the learned counsel for 1st Respondent, he came to know about the*

order passed by the NCLT much later. Support was sought from a judgment of this Court in Raja Harish Chandra Raj Singh vs. Dy. Land Acquisition Officer [1962 (1) SCR 676] for submitting that provisions relating to limitation have to be given a liberal construction.

The judgment that is relied upon by the Respondent No. 1 relates to Section 18 of the Land Acquisition Act. However, we are concerned with the limitation prescribed by Section 61 of the IBC which fell for consideration of this Court in Kalpraj Dharamshi (supra). In the said judgment, it was categorically held by this Court that an appeal against the order of NCLT shall be preferred within a period of 30 days from the date on which the order was passed by the NCLT. The Appellate Tribunal has the power to extend the period of limitation by another 15 days.

In view of the aforesaid judgment, we are of the considered view that the Appellate Tribunal committed an error in issuing notice in an appeal that was filed by Respondent No.1 with delay of 388 days.

The appeal is, accordingly, allowed. Pending application(s), if any, shall stand disposed of."

12. Learned Counsel for the Appellant has placed reliance on Judgment of this Tribunal in Company Appeal (AT) Ins. 1277 of 2019 in the matter of **"M/s. S. Kumar Constructions Co. Vs. M/s. Bharti Airtel Ltd."** decided on 20.11.2019 where this Tribunal held that the Appeal having preferred within 30 days from the date of knowledge, Appeal shall not be barred by time. In view of the law laid down by the Hon'ble Supreme Court in "**V. Nagarajan**" (supra) as well as in "**Safire Technologies Pvt Ltd**" (supra) we are unable to follow the Judgment of this Tribunal in M/s. S. Kumar Construction Co. Vs. M/s. Bharti Airtel Ltd. We are bound by the declaration of the law by the Hon'ble Supreme Court in the above two cases.

13. In the present case, the Appeal could have been filed within limitation till 06th June, 2022 and this Tribunal could have condoned only 15 days delay. The Appeal having been filed on 04th July, 2022 and delay being beyond 15 days is not condonable. Hence the Delay Condonation Application (I.A. No. 2431 of 2021) is dismissed. The Memo of Appeal is rejected.

[Justice Ashok Bhushan]
Chairperson

[Justice M. Satyanarayana Murthy]
Member (Judicial)

[Mr. Barun Mitra]
Member (Technical)

New Delhi
26th August, 2022.
Basant