NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

I.A. No. 1622 & 1623 of 2024 in
Company Appeal (AT) (Insolvency) No.115 of 2024

IN THE MATTER OF:

Innovators Cleantech Pvt. Ltd. … Appellant

Versus

Pasari Multi Projects Pvt. Ltd. … Respondents

Present:

For Appellant	**:**	**Mr. Anuj Bhandari, Mr. Gaurav Jain, Advocates.**
For Respondent	**:**	**Mr. Sanjeev Sen, Mr. Ashok Kumar Jain, Mr. Amit Kasera, Ms. Anjali, Singh and Mr. Pragyan Mishra, Advocates.**

J U D G M E N T

ASHOK BHUSHAN, J.

Interlocutory Application Nos. 1622 & 1623 of 2024

These Interlocutory Applications (**IAs**) have been filed by Respondent for recalling order dated 25.01.2024 and 06.02.2024 passed in Company Appeal (AT) (Insolvency) No.115 of 2024. The Applicant/Respondent has also prayed that Appeal be dismissed with costs.

2. Orders dated 25.01.2024 and 06.02.2024 are as follows:

> "**25.01.2024:** I.A. No. 294 of 2024:- This is an application praying for condonation of 86 days delay in re-filing of the appeal. The grounds taken in the application is that the local counsel in Kolkata has sent

the copy of the order to the appellant, who is based at Mumbai. The documents are misplaced and some time was taken in searching it. Further, the counsel for the appellant who is situated in Delhi took some further time for verifying the facts and relevant documents were received by post which took considerable time. Certain additional documents were called for by the counsel for the appellant, hence, the re-filing was delayed. Cause shown sufficient. Re-filing delay is condoned.

List this appeal on **06.02.2024.**"

x x x

"**06.02.2024** Learned Counsel for the Appellant submits that the demand notice was issued on 12.02.2019 and after that the second notice was issued on 25.04.2019 reducing the amount which was already received from the Corporate Debtor and the suit filed by the Corporate Debtor on 06.04.2019 cannot be said to be raising a dispute. The Adjudicating Authority committed error in rejecting the application.

Issue notice. Requisites along with process fee be filed within three days. Let Reply be filed by the Respondent within three weeks. Appellant may file Rejoinder within two weeks, thereafter.

List this Appeal on 18th March, 2024."

3. The brief background facts giving rise to the Appeal as well as IA Nos.1622 and 1623 of 2024 need to be first noticed:

(i) The Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "**IBC**") was filed by the Appellant seeking initiation of Corporate Insolvency Resolution Process ("**CIRP**") against Respondent No.1, alleging

operational debt of Rs.4,75,70,047/- as on 05.01.2018. The Adjudicating Authority issued notice in the Application. The Respondent – Corporate Debtor appeared before the Adjudicating Authority and opposed the Application. The Adjudicating Authority after hearing both the parties by the impugned order dated 28.08.2023 dismissed Section 9 Application. Aggrieved by order dated 28.08.2023, the Appellant has e-filed this Appeal on 25.09.2023.

(ii) The case of the Applicant/ Respondent is that the Respondent filed a Caveat in respect of the impugned order dated 28.08.2023 on 13.09.2023. The Registry communicated the defects in the Appeal on 04.10.2023. The Appellant on 15.12.2023 refiled the Appeal, curing certain defects. The Appeal being still defective, certain defects were again communicated to the Appellant by the Registry on 03.01.2024.

(iii) On 03.01.2024, copy of the Appeal was served on one of the Director of the Respondent, which was a defective Appeal. Copy of the defect free Appeal was not served on the Respondent, despite filing of Caveat.

(iv) On 08.01.2024, the Appellant again refiled the Appeal after removing certain defects. The Appeal was listed on 25.01.2024,

when Application for condonation of refiling delay of 86 days was placed for consideration. On 25.01.2024, name of three Advocates were mentioned in the order sheet on behalf of the Respondent, but they were not appointed by Respondent. On 06.02.2024, notices were issued in the Appeal.

(v) Respondent's case is that on 10.02.2024, they came to know about the orders, after obtaining copy of the Appeal from Counsel of the Appellant, the Application has been filed on 26.02.2024.

4. We have heard Shri Sanjeev Sen, learned Senior Counsel and Shri Ashok Kumar Jain, learned Counsel appearing for the Applicant/ Respondent and Shri Anuj Bhandari, learned Counsel appearing for the Appellant.

5. Shri Sanjeev Sen, learned Senior Counsel in support of the IAs contends that although the Appeal is claimed to be e-filed on 25.09.2023, but filing on 25.09.2023 cannot be accepted, since neither the impugned order nor the Vakalatnama was filed; no notarised affidavit was accompanied with the Appeal; the Appeal was not in the prescribed format. It is submitted that 30 days' time for filing of the Appeal expired on 27.09.2023 and defects were communicated on 04.10.2023, were substantial defects. It is submitted that extended period of 15 days also expired on 12.10.2023. Affidavit in support of the Appeal and the Applications affirmed for the first time and Vakalatnama was signed and executed on 15.12.2023. The Appeal being still

defective, defects were point out by the Registry on 03.01.2024. The refiling of the Appeal was made on 16.01.2024, which should be treated as the date of filing of the Appeal, for the purpose of limitation and earlier filing of the Appeal, without proper materials, it was *non est* filing. It is submitted that refiling date 16.01.2024 is to be treated as the date of filing of the Appeal, which filing being much beyond the period of 45 days of the impugned order, the Appeal deserves to be dismissed as barred by time. It is further submitted that the Appellant did not apply for certified copy of the order, nor any certified copy of the order has been filed in the Appeal. Applying certified copy of the order is mandatory as per Rule 22 (2) of NCLAT Rules, 2016 (" **NCLAT Rules**"), hence, the Appeal also deserve to be dismissed, since it has been filed without applying certified copy of the order. The learned Counsel for the Applicant/Respondent submits that in view of the above, orders passed by this Tribunal condoning the refiling delay of 86 days and issuing notice in the Appeal, deserve to be recalled.

6. The learned Counsel for the Appellant submits that the Appeal having been e-filed on 25.09.2023, which was within 30 days from the impugned order dated 28.08.2023, was filed within limitation period and there is no delay in filing of the Appeal and submission of the Applicant/ Respondent that Appeal was filed with delay, needs to be rejected. It is submitted that as per the NCLAT Rules and orders issued by this Tribunal dated 24.12.2022, the date on which the Appeal is e-filed, has to be computed as date of filing of the

Appeal for the purposes of limitation. It is submitted that submission of the Applicant/ Respondent that refiling date should be treated as fresh filing and limitation be computed from the said date, cannot be accepted. The learned Counsel for the Appellant submits that the issue has already been considered and decided by this Tribunal by a larger bench in ***IA No.2095 of 2022 in Company Appeal (AT) (Insolvency) No.780 of 2022 – V.R. Ashok Rao and Ors. vs. TDT Copper Ltd.*** decided on 30.08.2022. It is submitted that applying for certified copy of the order is not mandatory and it is always open for the Appellant to file an Appeal with uploaded copy of order and seek exemption from filing certified copy of the order. It is submitted that defects having been pointed out in the Appeal, they were cleared from time to time and the day when Appeal was refiled, after clearing the defects, cannot be treated for afresh date for filing of the Appeal for the purposes of computation of limitation. It is submitted that reliance on the judgment relied by the learned Counsel for the Applicant/ Respondent in ***Delhi Development Authority vs. Durga Construction Co. – 2013 SCC OnLine Del 4451***, which was delivered in reference to the specific rules and which was applicable to the filing in the Delhi High Court, is not applicable with regard to filing in the NCLAT.

7. We have heard learned Counsel for the parties and perused the record.

8. The case of the Applicant/ Respondent being that Caveat was filed on 13.09.2023, but copy of the Appeal was not served to the Counsel for the

Applicant/ Respondent and it was served on one of the Directors of the Corporate Debtor, only on 03.01.2024. The Applicant/ Respondent in support of the filing of the Caveat has filed relevant materials along with the Application. However, in the Report of the Registry, which is on record, no Caveat has been noticed.

9. The Applicant/ Respondent has in paragraph 8 of the Application has stated on 03.01.2024, one of the Director of Respondent Shri Akshay Pasari, by email, received a copy of the Appeal, which was also a defective Appeal. Looking to the above facts, we have permitted the Counsel for the Respondent to address submissions on all points, including the point of Appeal being barred by time and the filing of Appeal on 25.09.2023 was *non est* and not confining only to the ground of recall as recognized. We, thus, proceed to examine the submissions advanced by the learned Counsel for the Applicant/ Respondent on merits on all aspects regarding filing of the Appeal and condonation of refiling delay.

10. The submission, which has been much pressed by the learned Counsel for the Applicant/ Respondent is that e-filing on 25.09.2023 of the Appeal by the Appellant was *non est* filing, since the filing date 25.09.2023 was not - with the copy of the impugned order; notarised affidavit and according to the Appellant on 15.12.2023 for the first time, notarised affidavit was filed and relevant Applications as well as uncertified copy of the order was annexed. It is submitted that filing on 25.09.2023 was only filing of bunch of papers,

which cannot be treated as filing of Appeal for the purpose of computation of limitation. The Appeal having been refiled after removing the defects on 16.01.2024, that should be treated as fresh filing and limitation be computed from the said date and computing the limitation from 16.01.2024, the Appeal having been filed beyond the 45 days, deserves to be dismissed as barred by time.

11. We may first notice the relevant Rules regarding the filing of the Appeal. National Company Law Appellate Tribunal Rules, 2016, Rule 22 provides for "Presentation of appeal", which is as follows:

> "**22. Presentation of appeal.-** (1) Every appeal shall be presented in Form NCLAT-1 in triplicate by the appellant or petitioner or applicant or respondent, as the case may be, in person or by his duly authorised representative duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same.
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> (2) Every appeal shall be accompanied by a certified copy of the impugned order.
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> (3) All documents filed in the Appellate Tribunal shall be accompanied by an index in triplicate containing their details and the amount of fee paid thereon.
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> (4) Sufficient number of copies of the appeal or petition or application shall also be filed for service on the opposite party as prescribed.

(5) In the pending matters, all other applications shall be presented after serving copies thereof in advance on the opposite side or his advocate or authorised representative.

(6) The processing fee prescribed by the rules, with required number of envelopes of sufficient size and notice forms as prescribed shall be filled along with memorandum of appeal."

12. Rule 26 provides for "endorsement and scrutiny of petition or appeal or document", which is as follows:

"**26. Endorsement and scrutiny of petition or appeal or document.-**(1) The person in charge of the filing-counter shall immediately on receipt of appeal or document affix the date and stamp of the Appellate Tribunal thereon and also on the additional copies of the index and return the acknowledgement to the party and he shall also affix his initials on the stamp affixed on the first page of the copies and enter the particulars of all such documents in the register after daily filing and assign a diary number which shall be entered below the date stamp and thereafter cause it to be sent for scrutiny.

(2) If, on scrutiny, the appeal or document is found to be defective, such document shall, after notice to the party, be returned for compliance and if there is a failure to comply within seven days from the date of return, the same shall be placed before the Registrar who may pass appropriate orders.

(3) The Registrar may for sufficient cause return the said document for rectification or amendment to the party filing the same, and for this purpose may allow to the party concerned such reasonable time as he may consider necessary or extend the time for compliance.

(4) Where the party fails to take any step for the removal of the defect within the time fixed for the same, the Registrar may, for reasons to be recorded in writing, decline to register the appeal or pleading or document."

13. Rule 103 of the Rules, contemplate that the Appellate Tribunal may allow filing of appeal or proceedings through electronic mode. Necessary orders have been issued by the Appellate Tribunal, permitting e-filing. The relevant orders regarding e-filing has already been passed by this Tribunal in this regard. As far as point of date of computation of limitation, the same has been considered by the Hon'ble Supreme Court in ***Sanket Kumar Agarwal and Anr. vs. APG Logistics Pvt. Ltd. – (2024) 2 SCC 545***. After noticing Rule 22 and Rule 103 of the NCLAT Rules, 2016, the Hon'ble Supreme Court in paragraph 17 to 22, laid down following:

"**17.** On 3-1-2021, NCLAT notified a revised SOP for the hearing of cases through the virtual mode, using its e-filing portal. The SOP notices that an e-filing facility was available for filing of appeals and related documents, and exhorts "all concerned" to "avail the same through NCLAT e-filing portal". The circular provides as follows:

"It may be noted that it is mandatory that learned Advocates/Authorised Representatives/Parties-in-Person shall file the appeal/interlocutory application/reply/rejoinder, etc. in hard copy also as per the procedure prescribed in NCLAT Rules, 2016 along with the e-filing receipt. The online filing and hard copies must match with proper pagination. The court fee shall be paid through

Bharat Kosh (https://bharatkosh. gov.in) and the payment receipt should be attached."

18. Subsequently, on 21-10-2022, the Registrar of NCLAT issued another order [NCLAT, F. No. 10/37/2018-NCLAT, dated 21-10-2022.] with regard to computing limitation for the purpose of filing an appeal before the Appellate Tribunal. The order notices that while Rule 22 of the NCLAT Rules, 2016 provides for the presentation of an appeal at the filing counter of NCLAT, Rule 103 permits the filing of appeals or proceedings through the electronic mode. After adverting to the SOP dated 3-1-2021, the order indicates as follows:

> "The SOPs and directions issued by the Appellate Tribunal do not contain any direction with regard to computation of limitation as to whether limitation is to be computed from the date of e-filing of the appeals or from the date when appeals are presented before the Appellate Tribunal as per Rule 22 of the NCLAT Rules, 2016. The Competent Authority has, therefore, decided to issue directions in exercise of power conferred by Rule 104 of the NCLAT Rules, 2016 with regard to computation of limitation for the purposes of filing an appeal in the Appellate Tribunal.
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> Hence, with regard to computation of limitation in appeals, following directions are hereby issued by the Competent Authority:
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> (*1*) The period of limitation shall be computed from the date of presentation of appeal as per Rule 22 of the NCLAT Rules, 2016.
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> (*2*) The requirement of filing appeals by electronic mode shall continue along with mandatory filing of the appeals as per Rule 22 of the NCLAT Rules, 2016.

(*3*) This order will be effective with effect from 1-11-2022.

All concerned shall ensure that appeals are presented as per Rule 22 of the NCLAT Rules, 2016 within the period of limitation at the filing counter."

19. The above order dated 21-10-2022 indicates that the SOPs and directions which were issued by NCLAT did not contain any provision for the computation of limitation, more specifically on whether limitation has to be computed with reference to the date of e-filing or from the date on which the appeal is presented before NCLAT, in terms of Rule 22. Hence, in exercise of the power conferred by Rule 104, it was notified that the period of limitation would be computed with reference to the date of the presentation of the appeal in terms of Rule 22. Moreover, the requirement of filing appeals by the electronic mode was directed to continue together with the mandatory filing of appeals under Rule 22. The order dated 21-10-2022 was to be effective from 1-11-2022.

20. Eventually, on 24-12-2022, another order was issued by the Registrar of NCLAT in the following terms:

"It is seen that appeals are e-filed from different parts of the country where the appellant in some cases is located in far away places and time is taken to file physical copy. It is further seen that physical copy is filed within seven days of e-filing.

Hence, with regard to computation of limitation in appeals, following directions are hereby issued by the Competent Authority:

(1) The order F.No.10/37/2018-Nclat dated 21-10-2022 is hereby withdrawn and superseded by this order.

(2) Limitation shall be computed from the date of e-filing. The hard copy has to be filed within 7 days of e-filing. However,

the competent authority is at liberty to notify to extend the period of filing hard copy in case of any unforeseen exigency. In a case where hard copy is filed after 7 days, the appeal will be placed before the Tribunal for appropriate order.

(3) The requirement of filing appeals by electronic mode shall continue along with mandatory filing of the appeals as per Rule 22 of the NCLAT Rules, 2016.

(4) This order will be effective with immediate effect.

All concerned shall ensure that appeals are presented as per Rule 22 of the NCLAT Rules, 2016 within the period of limitation at the filing counter."

21. Hence, by the order dated 24-12-2022, it was clarified that limitation shall be computed with reference to the date of e-filing while the physical copy would have to be filed within seven days of e-filing. The order clarifies that the requirement of filing appeals by the electronic mode shall continue together with the mandatory filing of appeals in terms of Rule 22 of the NCLAT Rules, 2016.

22. Having regard to the above sequence of Rules and administrative orders, it is evident that on the one hand, Rule 22 of the NCLAT Rules, 2016 requires the presentation of an appeal at the filing counter in the prescribed mode, but on the other, NCLAT also envisages e-filing of appeals. This is made evident in the SOP dated 3-1-2021 which mandates the filing of a physical copy of an appeal as per the procedure prescribed in NCLAT Rules, 2016, while referring to the procedure for the hearing of cases through the virtual mode, using the e-filing portal. The subsequent order dated 21-10-2022 acknowledges that there was an absence of clarity in regard to the period with reference to which limitation would commence. Hence, the order purported to state that the period of limitation shall be computed from the date of the presentation of an appeal under Rule 22. Significantly, the

> above order was to be effective from 1-11-2022. In the present case, admittedly, the appeal was e-filed on 10-10-2022 and even a physical copy was lodged on 31-10-2022 prior to the date on which the order of the Registrar dated 21-10-2022 was to come into effect. The order dated 21-10-2022 was subsequently withdrawn on 24-12-2022. The order dated 24-12-2022 now clarifies that limitation would be computed with effect from the date of e-filing but a physical copy would have to be filed within seven days of e-filing".

14. The Hon'ble Supreme Court noticed the orders issued by this Tribunal on 24.12.2022, according to which the limitation shall be computed with reference to the date of e-filing. It is relevant to notice that after the order/ circular dated 24.12.2022, by another order, this Tribunal has dispensed with the mandatory requirement of physical filing.

15. The learned Counsel for the Applicant/ Respondent has relied on the judgment of the Delhi High Court in ***Delhi Development Authority vs. Durga Construction Co. – 2013 SCC OnLine Del 4451***; ***Indira Gandhi National Open University vs. M/s Sharat Das & Associates Pvt. Ltd. [OMP (COMM) No.26/2019]*** and ***IRCON International Ltd. vs. Reacon Engineers 9India) (P) Ltd. – (2022) 4 HCC (Del) 507***. The Delhi High Court in ***Delhi Development Authority vs. Durga Constructions***, in paragraph 17 has laid down following:

> "**17.** The cases of delay in re-filing are different from cases of delay in filing inasmuch as, in such cases the party has already evinced its intention to take recourse to the remedies available in courts and has

also taken steps in this regard. It cannot be, thus, assumed that the party has given up his rights to avail legal remedies. However, in certain cases where the petitions or applications filed by a party are so hopelessly inadequate and insufficient or contain defects which are fundamental to the institution of the proceedings, then in such cases the filing done by the party would be considered *non est* and of no consequence. In such cases, the party cannot be given the benefit of the initial filing and the date on which the defects are cured, would have to be considered as the date of the initial filing. A similar view in the context of Rules 1 & 2 of Chapter IV of the Delhi High Court (Original Side) Rules, 1967 was expressed in *Ashok Kumar Parmar* v. *D.C. Sankhla*, 1995 RLR 85, whereby a Single Judge of this Court held as under:

> "Looking to the language of the Rules framed by Delhi High Court, it appears that the emphasis is on the nature of defects found in the plaint. If the defects are of such character as would render a plaint, a non-plaint in the eye of law, then the date of presentation would be the date of re-filing after removal of defects. If the defects are formal or ancillary in nature not effecting the validity of the plaint, the date of presentation would be the date of original presentation for the purpose of calculating the limitation for filing the suit."

A Division Bench of this Court upheld the aforesaid view in *D.C. Sankhla* v. *Ashok Kumar Parmar*, 1995 (1) AD (Delhi) 753 and while dismissing the appeal preferred against decision of the Single Judge observed as under:

> "5……. In fact, that is so elementary to admit of any doubt. Rules 1 and 2 of (O.S.) Rules, 1967, extracted above, do not even remotely suggest that the re-filing of the plaint after removal of the defects as the effective date of the filing of the plaint for purposes of limitation. The date on which the plaint is presented,

even with defects, would, therefore, have to be the date for the purpose of the limitation act.""

16. Further, in ***Indira Gandhi National Open University vs. M/s Sharat Das & Associates Pvt. Ltd.*** in paragraph 31, the Court laid down the following:

> "31. The petition sought to impugn the Arbitral Award and the Additional Award without even annexing the same. Clearly what was filed was merely a 'bunch of papers' to somehow stop the period of limitation from running. The petitioner thereafter made no endeavour to refile the petition with expedition once the same had been returned back under objection on 15.01.2019. The petitioner took another two months to refile the petition only on 26.03.2019, albeit, still under defects. This filing was beyond a period of 30 days from three months of receipt of the Additional Award by the petitioner."

17. In ***IRCON International Ltd. vs. Reacon Engineers (India) (P) Ltd.*** in paragraphs 13, 14 and 15, the Hon'ble Court laid down following:

> "13. As noted above, the initial filing was only seventy-three pages. The petition was not accompanied by a copy of the award or any other document. It was also not accompanied by a statement of truth which is mandatorily required.
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> 14. As noted above, the petition as subsequently filed on 24-10-2019 spanned over 1325 (one thousand three hundred and twenty-five) pages including documents. It is, thus, apparent that the entire framework of the petition was changed.

> 15. There is merit in the respondent's contention that the petition as filed on 24-10-2019 cannot be considered as the same petition that was filed on 13-09-2019. It is also material to note that the petition as filed on 13-09-2019 was not accompanied by the impugned award or the vakalatnama. The decision of the Coordinate Bench of this Court in Union of India v. Bharat Biotech International Ltd., 2020 SCC OnLine Del 482 is squarely applicable in the facts of this case and, therefore, the filing as on 13-09-2019 cannot be considered as a valid filing. In the circumstances, 24-10-2019 is required to be considered as the first date of filing of the present petition. The delay in filing the petitions is, thus, beyond the period that can be condoned by this Court."

18. The Delhi High Court in the above judgment has laid down that initial filing, which can be termed only 'bunch of papers', cannot be treated as valid filing and the first date of filing has to be treated when the Appeal is refiled after clearing the defects.

19. It is relevant to notice that judgment of the Delhi High Court relied by the Appellant were delivered in context of specific rule applicable in the Delhi High Court namely – Rule 5 of Delhi High Court Rules effective from w.e.f 01.12.2018.

20. This Tribunal has occasion to consider this very controversy in larger Bench judgment in ***V.R. Ashok Rao and Ors. vs. TDT Cooper Ltd.***, where three Member Bench referred two questions for consideration. The two questions referred before the larger bench have been noticed in paragraph 1 of the judgment, which is as follows:

"(a) Whether the law laid down by this Tribunal in "Mr. Jitendra Virmani Vs. MRO-TEK Realty Ltd. & Ors" and three Member Bench Judgement in "Arul Muthu Kumaara Samy Vs. Registrar of Companies" that when the defect in appeal is cured and the Appeal is refiled before the Appellate Tribunal beyond seven days, the date of re-presentation of the Appeal shall be treated as a fresh Appeal, lays down correct law?

(b) Whether the limitation prescribed for filing an Appeal before this Appellate Tribunal under Section 61 of Insolvency and Bankruptcy Code, 2016 or Section 421 of the Companies Act, 2013 shall also govern the period under which a defect in the Appeal is to be cured and this Appellate Tribunal shall have no jurisdiction to condone the delay in refiling/re-presentation if it is beyond the limitation prescribed in Section 61 of the IBC or Section 421 of the Companies Act, 2013."

21. Earlier judgments of this Tribunal in ***Jitendra Virman v. MRO-TEK*** and ***Arul Muthu Kumaara Samy vs. Registrar of Companies*** have also taken the view that when the Appeal is refiled as defect free, the Appeal should be treated as fresh Appeal. The correctness of the above judgment was referred before the larger Bench and larger Bench, after considering the relevant NCLAT Rules as well as judgments of Delhi High Court, which have been relied before us also took the view that the computation of limitation in reference to this Appellate Tribunal has to be from the date of e-filing of the Appeal. Judgment of Delhi High Court in ***Delhi Development Authority vs. Durga Construction***, which is relied before us, was also noticed in the said

judgment. It is useful to refer to paragraph 21, 22 and 23 of the judgment of this Tribunal, which is as follows:

> "**21.** In the above case Hon'ble Supreme Court clearly laid down that limitation for filing of the objection as contained in Section 34(3) does not govern the limitation for re-filing. The submission before the Hon'ble Supreme Court relying on Rule 5(3) of Delhi High Court Rules (Original Side Rules 1967) that any re-filing beyond 7 days would be a fresh institution was expressly rejected. In para 4 of the judgment following has been observed:
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> > *"4. We find that said section has no application in re-filing the petition but only applies to the initial filing of the objections under Section 34 of the Act. It was submitted on behalf of the respondent that Rule 5(3) of the Delhi High Court Rules states that if the memorandum of appeal is filed and particular time is granted by the Deputy Registrar, it shall be considered as fresh institution. If this Rule is strictly applied in this case, it would mean that any re-filing beyond 7 days would be a fresh institution. However, it is a matter of record that 5 extensions were given beyond 7 days. Undoubtedly, at the end of the extensions, it would amount to re-filing."*
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> **22.** At this stage, we may notice the Rule 5(3) of Delhi High Court Rules as referred to in Para 4 of the judgment. Rule 5 (1), (2) & (3) inserted in Delhi High Court Rules w.e.f. 01.12.1988 is as follows:
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> > "***Rule 5(1)*** *The Deputy Registrar/Assistant Registrar, In-charge of the Filing Counter, may specify the objections (a copy of which will be kept for the Court Record) and return for amendment and re-filing within a time not exceeding 7 days at a time and 30 days in the aggregate to be fixed by him, any*

memorandum of appeal, for the reason specified in Order XLI, Rule 3, Civil Procedure Code.

Rule 5(2) *If the memorandum of appeal is not taken back, for amendment within the time allowed by the Deputy Registrar/Assistant Registrar, in charge of the Filing Counter under sub-rule (1), it shall be registered and listed before the Court for its dismissal for non-prosecution.*

Rule (3) *If the memorandum of appeal is filed beyond the time allowed by the Deputy Registrar/Assistant Registrar, in charge of the Filing Counter, under sub-rule (1) it shall be considered as fresh institution."*

Note - The provisions contained in Rule 5 (1), 5(2) and 5(3) shall mutatis mutandis apply to all matters, whether Civil or Criminal."

23. It is relevant to notice that Rule 5(3) of Delhi High Court Rules contemplated that if the memo of appeal is filed beyond time allowed by the Deputy Registrar, it shall be treated as fresh institution but Hon'ble Supreme Court held in the judgment that extension of time granted for refiling will amount to refiling. In any view of the matter, in Rule 26 of NCLAT Rules, 2016, as noticed above, there is no indication of concept of fresh filing, if defects are not cured in 7 days as has been expressly provided in Delhi High Court Rules. We, thus, are of the view that in reference of Rule 26, re-presentation beyond 7 days in no manner said to be fresh filing. The judgment of this Tribunal in ***'Jitendra Virmani' (supra)*** cannot be held to lay down a correct law."

22. The above judgment of this Tribunal was delivered on 30.08.2022, whereas, as noted above, this Tribunal has issued order under Rule 103 dated 24.12.2022, where the question of computation of limitation has been clearly

explained. It is relevant to relevant to extract the entire order dated 24.12.2022, which is issued by this Tribunal, is as follows:

"**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**

F.No. 23/4/2022-Estt./NCLAT Dated: 24th December, 2022

ORDER

National Company Law Appellate Tribunal Rules, 2016 (NCLAT Rules, 2016), Rule 22 provides for "Presentation of appeal", which is to be made at the filing counter of the Appellate Tribunal. As per Rule 103 of the NCLAT Rules, 2016, Appellate Tribunal has also permitted filing of the Appeal or proceedings through electronic mode (e-filing). SOPs have also been issued with regard to e-filing. SOP dated 3rd January, 2021 further provides: -

> *"It may be noted that it is mandatory that Ld. Advocates/ Authorised Representatives / Parties-in- Person shall file the Appeal/ Interlocutory Application/ Reply/ Rejoinder etc. in hard copy also as per the procedure prescribed in NCLAT Rules, 2016 along with the e-filing receipt. The online filing & hard copies must match with proper pagination. The Court Fee shall be paid through Bharat Kosh (https://bharatkosh.gov.in) and the payment receipt should be attached."*

The SOPs and directions issued by the Appellate Tribunal do not contain any direction with regard to computation of limitation as to whether limitation is to be computed from the date of e-filing of the Appeals or from the date when Appeals are presented before the Appellate Tribunal as per Rule 22 of the NCLAT Rules, 2016. The Competent Authority decided to issue directions in exercise of power conferred by Rule 104 of the NCLAT Rules, 2016 with regard

to computation of limitation for the purposes of filing an Appeal in the Appellate Tribunal on 21.10.2022.

It is seen that appeals are e-filed from different parts of the country where the appellant in some cases is located in far away places and time is taken to file physical copy. It is further seen that physical copy is filed within seven days of e-filing.

Hence, with regard to computation of limitation in Appeals, following directions are hereby issued by the Competent Authority:-

(1) The order F.No.10/37/2018-NCLAT dated 21.10.2022 is hereby withdrawn and superseded by this order.

(2) Limitation shall be computed from the date of e-filing. The hard copy has to be filed within 7 days of e-filing. However, the competent authority is at liberty to notify to extend the period of filing hard copy in case of any unforeseen exigency. In a case where hard copy is filed after 7 days, the appeal will be placed before the Tribunal for appropriate order.

(3) The requirement of filing Appeals by electronic mode shall continue along with mandatory filing of the Appeals as per Rule 22 of the NCLAT Rules, 2016.

(4) This order will be effective with immediate effect.

All concerned shall ensure that Appeals are presented as per Rule 22 of the NCLAT Rules, 2016 within the period of limitation at the filing counter."

23. The above Order dated 24.12.2022 issued by this Tribunal and as noticed by the Hon'ble Supreme Court in ***Sanket Kumar Agarwal and Anr.*** leaves no doubt that computation of limitations has to be done from the date

of e-filing of the Appeal and any other interpretation of the Rules and the Orders issued by this Tribunal is not permissible. In any view of the matter, we are clearly bound by the larger Bench judgment of this Tribunal, where it has been held that refiling after curing the defects, cannot be treated as fresh filing and shall only be refiling/re-presentation.

24. The NCLAT Rules 2016 itself contemplates communication of defects and the removal of the defects in the Appeal. Rule 26, sub-rule (4) further empowers the Registrar in appropriate case, to decline to register the Appeal or filing of any documents. Thus, power is vested with the Registrar to decline to register Appeal when defects are not cured. The procedure for clearing the defects, empowers the Registrar to grant further time for clearing the defects, itself contemplate that defective Appeal filed by the Appellant is permitted to be cured and in event the defects are not cured, the Appeal can be refused to be registered. But when defects are cured and the Appeal is registered, the date of refiling of the Appeal after curing the defects, cannot be treated to be the fresh date of filing of the Appeal for computation of limitation. In the present case, the Appeal having been e-filed on 25.09.2023, i.e. within 30 days from passing of the impugned order dated 28.08.2023, the Appeal cannot be held to be barred by time and the submission advanced by Shri Sanjeev Sen, the Appeal when it was refiled after curing the defects, i.e., 16.01.2024, may be treated as date of filing, cannot be accepted. The date of refiling and date of filing are two different concepts, which are clear from statutory scheme.

25. Now we come to the next submission of the learned Counsel for the Applicant/ Respondent that the Appeal having not been filed after applying for certified copy of the order, the Appeal cannot be entertained and deserves to be dismissed on this ground alone. The learned Counsel for the Applicant/ Respondent has referred to Rule 22, sub-rule (2), which provides "*Every Appeal shall be accompanied by a certified copy of the impugned order*". Shri Sanjeev Sen submits that Hon'ble Supreme Court in ***V. Nagarajan vs. SKS Ispat and Power Ltd. and Ors. – (2022) 2 SCC 244*** has clearly held that applying for a certified copy of the order is not just a technical requirement and the Applicant is obliged to apply for certified copy of the order before filing an Appeal. We need to notice the judgment of the Hon'ble Supreme Court in ***V. Nagarajan***. In the above case, judgment of NCLT was delivered on 31.12.2019. The order of NCLT was uploaded on the website of the NCLT on 12.03.2020. The Appellant awaited the issue of a free copy of the order and obtained free of cost copy of order on 23.03.2020 and thereafter filed an Appeal on 08-06-2020. The NCLAT dismissed the Appeal as barred by time, which order was challenged before the Hon'ble Supreme Court. In the above context, Hon'ble Supreme Court had occasion to consider the provisions of Section 61 of the IBC; Rule 22 of the NCLAT Rules, 2016; and Section 12 of the Limitation Act. The Hon'ble Supreme Court in paragraph 31 laid down following:

"**31.** The import of Section 12 of the Limitation Act and its Explanation is to assign the responsibility of applying for a certified copy of the order on a party. A person wishing to file an appeal is expected to file an application for a certified copy before the expiry of the limitation period, upon which the "time requisite" for obtaining a copy is to be excluded. However, the time taken by the court to prepare the decree or order before an application for a copy is made cannot be excluded. If no application for a certified copy has been made, no exclusion can ensue. In fact, the Explanation to the provision is a clear indicator of the legal position that the time which is taken by the court to prepare the decree or order cannot be excluded before the application to obtain a copy is made. It cannot be said that the right to receive a free copy under Section 420(3) of the Companies Act obviated the obligation on the appellant to seek a certified copy through an application. The appellant has urged that Rule 14 ["**14. *Power to exempt***.—The Appellate Tribunal may on sufficient cause being shown, exempt the parties from compliance with any requirement of these rules and may give such directions in matters of practice and procedure, as it may consider just and expedient on the application moved in this behalf to render substantial justice."] of the NCLAT Rules empowers NCLAT to exempt parties from compliance with the requirement of any of the rules in the interests of substantial justice, which has been typically exercised in favour of allowing a downloaded copy in lieu of a certified copy. While it may well be true that waivers on filing an appeal with a certified copy are often granted for the purposes of judicial determination, they do not confer an automatic right on an applicant to dispense with compliance and render Rule 22(2) of the NCLAT Rules nugatory. The act of filing an application for a certified copy is not just a technical requirement for computation of limitation but also an indication of the diligence of the aggrieved party in pursuing the

> litigation in a timely fashion. In a similar factual scenario, NCLAT had dismissed an appeal [*Prowess International (P) Ltd.* v. *Action Ispat & Power (P) Ltd.*, 2018 SCC OnLine NCLAT 644] as time-barred under Section 61(2) IBC since the appellant therein was present in court, and yet chose to file for a certified copy after five months of the pronouncement of the order."

26. The Hon'ble Supreme Court has held that by virtue of Section 12 of the Limitation Act there is responsibility assigned on Applicant for applying for certified copy and Application for certified copy has to be applied before expiry of limitation and in the event, it is applied before expiry of limitation, the period taken in obtaining a copy is required to be excluded. The Hon'ble Supreme Court in the said case in paragraph 31 has further held that "*if no Application for a certified copy is made, no exclusion can ensue*". The Hon'ble Supreme Court has further noticed that there are cases where waivers on filing an Appeal with a certified copy was granted by the Court, which observations are to the following effect:

> "While it may well be true that waivers on filing an appeal with a certified copy are often granted for the purposes of judicial determination, they do not confer an automatic right on an applicant to dispense with compliance and render Rule 22(2) of the NCLAT Rules nugatory."

27. It was further held that act of filing an application for a certified copy is not just a technical requirement for computation of limitation but also an indication of the diligence of the aggrieved party in pursuing the litigation in

a timely fashion. Now the question to be answered is as to whether without applying a certified copy of the order, whether an Appeal can be filed under Section 61 or not? Rule 22, sub-rule (2) as extracted above clearly contemplate that every Appeal shall be accompanied by a certified copy of the order, whether the said requirement is 'mandatory' or can be held to be 'directory'.

28. We may consider Rule 14 and 15 of the NCLAT Rules in the above reference. Rule 14 and 15 of the NCLAT Rules, 2016 are as follows:

> "**14. Power to exempt.-** The Appellate Tribunal may on sufficient cause being shown, exempt the parties from compliance with any requirement of these rules and may give such directions in matters of practice and procedure, as it may consider just and expedient on the application moved in this behalf to render substantial justice.
>
> **15. Power to extend time.-** The Appellate Tribunal may extend the time appointed by these rules or fixed by any order, for doing any act or taking any proceeding, upon such terms, if any, as the justice of the case may require, and any enlargement may be ordered, although the application therefore is not made until after the expiration of the time appointed or allowed."

29. It is to be noted that non-compliance of Rule 22, sub-rule (2) has not been provided, nor any consequence has been provided in the Rules in the event Appeal is filed without accompanied by a certified copy of the order. When the power has been given to Court to extend the time or waive compliance of any rule, we have no doubt that the Appeal can be filed without

applying a certified copy of the orders, in the facts and situation of a particular case. At present, all orders are uploaded on website of the Adjudicating Authority and this Tribunal and litigants often file the Appeal by relying on uploaded copy on the website. We, thus, are of the view that Appeal filed without applying for a certified copy of the order, cannot be dismissed on this ground that Appellant has not applied for certified copy of the order. When an Applicant does not apply for a certified copy of the order within the limitation prescribed, he is not entitled to seek any exclusion under Section 12 of the Limitation Act and it is the Applicant, who has to comply the limitation prescribed for filing an Appeal, but the mere fact that he has not applied for certified copy of the order, cannot be a ground for rejecting the Appeal.

30. In view of the above discussions, we are satisfied that the Appeal e-filed by the Appellant was within the period of limitation and the Appellant has given sufficient cause for condoning the delay of 86 days in refiling of the Appeal. We, thus, are satisfied that order dated 25.01.2024 passed by this Tribunal, condoning the delay of 86 days in refiling of the Appeal, does not warrant any interference. Further, 06.02.2024 was the date, on which notices were issued. The present is a case where only notices were issued on 06.02.2024. The Applicant/ Respondent himself in the Application has submitted that copy of the Appeal on 03.01.2024 was served on one of the

Directors. In view of the above, both the IA Nos.1622 & 1623 of 2024 are dismissed.

31. We having issued notices in the Appeal, ends of justice will be served in hearing the Appeal on merits. The Respondents have also filed a detailed reply of the Appeal on 11.03.2024. We direct the Appeal to be listed for hearing, after notice matters, on **22nd August, 2024**.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical

NEW DELHI

24th July, 2024

Ashwani