

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

**Company Appeal (AT) (Insolvency) No. 286 of 2020**

[Arising out of Impugned Order dated 22 October 2019 passed by the Adjudicating Authority/National Company Law Tribunal, Ahmedabad Bench, Ahmedabad in Company Petition (IB) No.118/NCLT/AHM/2018]

**IN THE MATTER OF:**

**Asset Reconstruction Company India Limited  
(ARCIL)  
10<sup>th</sup> Floor, The Ruby, 29  
Senapati Bapat Marg, Dadar (West)  
Mumbai, Maharashtra – 400028**

**One of its Branch at:  
Second Floor, Sethi Chambers  
Plot-2, DDA Shopping Complex  
MOR Land, New Rajinder Nagar  
New Delhi – 110060**

**Appellant**

**Versus**

**1. Mangesh Vitthal Kekre  
(Resolution Professional) for  
Maruti Koatsu Cylinders Limited  
607, Chetak Center  
RNT Marg, Near Hotel Shreemaya  
Indore, MP – 452001**

**Respondent No.1**

**2. Mr Pankaj Nanalal Sanghrajka  
(Resolution Applicant)  
Director, Safire Technologies Pvt. Ltd.  
32, Suvarnapuri Society, 4<sup>th</sup> Floor  
8, Bhumitanand Flats, Chikuwadi  
Raceou RSE Vadodara – 390007**

**Respondent No.2**

**Present:**

**For Appellant : Mr PBA Srinivasan, Ms P.S. Chandralekha and  
Mr Parth Tandon, Advocates.**

**For Respondent : Mr Rajat Lihia, Advocate for R-1  
Mr Gursath Singh, Advocate for R-2**

**CORAM:**

**Hon'ble Mr Justice M. Venugopal, Acting Chairperson  
Hon'ble Mr V. P. Singh, Member (T)  
Hon'ble Dr Ashok Kumar Mishra, Member (T)**

**J U D G M E N T**  
**(Virtual Mode)**

**[Per; V. P. Singh, Member (T)]**

1. This Appeal emanates from the Impugned Order dated 22 October 2019 passed by the Adjudicating Authority/National Company Law Tribunal, Ahmedabad Bench, Ahmedabad in Company Petition (IB) No. 118/NCLT/AHM/2018, whereby the Adjudicating Authority has approved the Resolution Plan of Corporate Debtor Maruti Koatsu Cylinders Limited under Section 31 of the Insolvency and Bankruptcy Code, 2016 (in short '**I&B Code**'). The Parties are represented by their original status in the Company Petition for the sake of convenience.

2. This Appeal was filed on 29 January 2020 against the impugned order dated 22 October 2019 along with the Application for condonation of delay of 52 days in filing the Appeal under Section 5 of the Limitation Act, 1963, supported by an affidavit.

3. The Appellant contends that the Impugned Order was passed on 22.10.2019. By way of a Letter dated 26.11.2019 filed before the Registrar of the Hon'ble National Company Law Tribunal, bearing the subject line "*Speaking to the minutes of the order dated 22.10.2019 and 16.08.2019*", has disputed the finding of the Hon'ble Tribunal in paragraphs 3.3 and 3.4 of the impugned order, wherein the Hon'ble Tribunal erroneously recorded that;

*"3.3 This Adjudicating Authority would like to refer its order dated 16.08.2019. During the hearing on 16.08.2019, during the hearing on 16.8.2019, the ld. Lawyer appearing on behalf of the ARCIL fairly submitted that though he has filed an IA bearing No. IA. No. 402 of 2019 having certain reservations over*

*the Resolution Plan so filed by the RP, and since RP has clarified their position, they have no further reservations, if the Resolution Plan will be approved by this Adjudicating Authority so filed by the CoC".*

*And*

*3.4 Accordingly, in view of the statement of the Ld. lawyer appearing on behalf of the Secured Financial Creditor viz. ARCIL, the IA. No. 402 of 2019 stands disposed of".*

4. The Appellant further contends that owing to the Objections raised by the Appellant as mentioned hereinabove, the Hon'ble Tribunal reconsidered its contentions, and the matter was again heard 05.12.2019, 12.12.2019 and 19.12.2019. After that, it was finally reserved for orders on 19.12.2019. This keeps the cause of action alive. Based on this, the Appellant claims that the present Appeal is within the Limitation of 30 days with a condonable grace period not exceeding fifteen days.

5. However, the Appellant has filed an Application IA 75/2020 for condonation of delay of 52 days in filing the Appeal. It is further contended that no prejudice would be caused to anyone if the present Application is allowed. However, grave prejudice would be caused to the Appellant in case the same is not permitted.

6. **Appellant submissions**

6.1 The Appellant contends that the learned Adjudicating Authority passed the impugned order on 22 October 2019. However, the certified copy of the impugned order was only provided to the Appellant on 19 November 2019.

Thereafter, the Appellant immediately moved the letter dated 26 November 2019 before the Registrar of the NCLT, with the subject line "speaking to the minutes of the order dated 22 October 2019 and 16 August 2019" (page 312 of the appeal paper book).

6.2 The learned Adjudicating Authority reconsidered the contentions raised by the Appellant, and the matter was heard on 5 December 2019, 12 December 2019, and was reserved for orders and on 19 December 2019, the learned Adjudicating Authority passed an order stating that;

*"....., In order dated 16 August 2019 and 22 October 2019, we found no clerical or arithmetical mistake which occurred due to accidental slip so that it warrants any rectification and/or modification of the order dated 16 August 2019 and 22 October 2019".*

6.3 It is submitted that the certified copy of the order dated 19 December 2019 was provided to the Appellant on 29 January 2020, and the Appeal was also filed by the Appellant on 29 January 2020. The cause of action of the Appeal accrued on 19 December 2019, when the order was passed by the learned Adjudicating Authority, dismissing the letter dated 26 November 2019 filed by the Appellant.

6.4 Although the Application, IA 75 of 2020, is filed under section 5 of the Limitation Act 1963 to condone the delay of 52 days in filing the Appeal along with the affidavit. But, in the additional written submission, the Appellant has stated that the present Appeal is filed on 29 January 2020, i.e. within 41 days of the passing of the order dated 19 December 2019. Thus, the present

Appeal is filed within the period of Limitation as per Section 61 (2) of the IBC 2016.

6.5 It is further submitted that in the Application for the condonation of delay, I.A. 75 of 2020, the delay of 52 days was inadvertently mentioned. Thus, it may be considered as 41 days from 19 December 2019 to 29 January 2020. Further, the time period from passing the impugned order dated 22 October 2019 to the order dated 19 December 2019 should be considered a continuous cause of action. Therefore, the Appeal filed by the Appellant on 29 January 2020 is well within the period of Limitation.

6.6 The Appellant contends that he was waiting for the order dated 19 December 2019 to be pronounced by the learned Adjudicating Authority. However, the Appellant also mentioned the same in its Application for condonation of delay. Hence, the cause of action was still alive till 19 December 2019. Therefore, the Appeal is filed within the condonable period of Limitation. Accordingly, this Hon'ble Appellate Tribunal can condone the delay in filing the present Appeal and allow the IA 75 of 2020 by the Appellant, seeking the condonation condoning of delay of 41 days in filing the present Appeal.

## **7. Submissions of Respondent No 2**

7.1 The Respondent No.2 is the Successful Resolution Applicant of the Corporate Debtor 'Maruti Koatsu Cylinders Limited'. The Resolution Plan of the Applicant subsequent to the approval of the Committee of Creditors by a vote of 90% was presented before the learned Adjudicating Authority under

Section 30 (6) of the Insolvency and Bankruptcy Code, 2016 vide IA No.224 of 2019. The said Application was allowed, and the Resolution Plan was approved by the Hon'ble Adjudicating Authority vide the impugned order dated 22 October 2019.

7.2 Subsequent to the same, the Resolution Plan has been fully implemented. All payments of the Financial Creditors, under the Plan including the Appellant, have been made. That apart, the composition of the Board of Directors and the shareholding pattern has also been recasted as per the approved Resolution Plan. The Successful Resolution Applicant during/after implementation has also invested a sum of ₹ three crores towards the revival of the Corporate Debtor's business.

7.3 The present Appeal is filed against the impugned order dated 22 October 2019 while being sworn on 28 January 2020. Thus, at the least, the present Appeal has been filed 98 days after passing the impugned order, i.e. with the delay of 68 days beyond 30 days time period prescribed under Section 61 (2) of the IBC.

7.4 It is settled law that the Appellate Tribunal cannot condone the delay in filing the Appeal beyond 15 days (after the prescribed 30 days) under the proviso to Section 61 (2) of IBC. Thus, the present Appeal is liable to be dismissed at the threshold because it is filed beyond the prescribed Limitation period and beyond the prescribed period, which this Appellate Tribunal can condone.

7.5 The Respondent has placed reliance on the following judgements of the Hon'ble Supreme Court;

- a) Judgement passed in Civil Appeal No.1821 of 2021 dated 30 June 2021 Maharashtra State Electricity Distribution Company Limited versus Wardha Power Generation Limited and Another.
- b) Civil Appeal No.6187 of 2019 dated 14 September 2021 National Spot Exchange Ltd Versus Anil Kohli dated 14 September 2021.
- c) Civil Appeal No. 2943-2044 dated 10 March 2021 Kalpraj Dharmshi versus Kotak Investment Advisors.

## 8. **ANALYSIS**

8.1 We have heard the argument of the learned Counsel for the parties about condonation of delay 52 in filing the Appeal and perused the record.

8.2 Admittedly this Appeal has been filed against the impugned order dated 22 October 2019, and the Appeal was filed on 29 January 2020 with an Application for condonation of delay of 52 days.

Therefore, the present Appeal has been filed 98 days after passing the impugned order, i.e., a delay of 68 days, beyond 30 days, prescribed under Section 61 (2) of the IBC.

8.3 In the case of National Spot Exchange Limited v Anil Kohli, Resolution Professional For Dunar Foods Limited 2021 SCC OnLine SC 716 Hon'ble Supreme Court has held;

**"20.** *At the outset, it is required to be noted that the Appellant herein has challenged the order passed by the adjudicating authority dated 6.3.2019 affirming the decision of the resolution professional of rejection of the claim of the Appellant before the NCLAT. The Appeal preferred before the NCLAT was under Section 61(2) of the IB Code. As per Section 61(2) of the IB Code, the Appeal was required to be preferred within a period of thirty days. Therefore, the limitation period prescribed to prefer an appeal was 30 days. However, as per the proviso to Section 61(2) of the Code, the Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of 30 days if it is satisfied that there was sufficient cause for not filing the Appeal, **but such period shall not exceed 15 days.** Therefore, the Appellate Tribunal has no jurisdiction at all to condone the delay exceeding 15 days from the period of 30 days, as contemplated under Section 61(2) of the IB Code. Section 61(2) of the IB Code reads as under:*

*"Section 61(2) - Every Appeal under sub-section (1) shall be filed within thirty days 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."*

**21.** *In the present case, even the Appellant applied for the certified copy of the order passed by the adjudicating authority on 8.4.2019, i.e., after a delay of 34 days. Therefore, even the certified copy of the order passed by the adjudicating authority was applied beyond the prescribed period of Limitation, i.e., beyond 30 days. The certified copy of the order was received*



by the Appellant on 11.04.2019 and the Appeal before the NCLAT was preferred on 24.06.2019, i.e., after a delay of 44 days. As the Appellate Tribunal can condone the delay up to a period of 15 days only, the Appellate Tribunal refused to condone the delay which was beyond 15 days from completion of 30 days, i.e., in the present case delay of 44 days and consequently dismissed the Appeal. Therefore, as such, it cannot be said that the learned Appellate Tribunal committed any error in not condoning the delay of 44 days, which was beyond the delay of 15 days which cannot be condoned as per Section 61(2) of the IB Code.

**22.** An identical question came to be considered by this Court in the case of *Popular Construction Co. (supra)*. While considering Section 34 of the Arbitration and Conciliation Act, 1996 which provided that an application for setting aside of the award cannot be made after three months and it further provided that if the court is satisfied that the applicant was prevented by sufficient cause from making an application within the said period of three months, it may entertain the Application within a further period of thirty days, **but not thereafter**, after considering Section 29(2) of the Limitation Act and after observing that "Arbitration & Conciliation Act, 1996 is a special law" and that Section 34 of the Arbitration & Conciliation Act, 1996 provides for a period of Limitation different from that prescribed under the Limitation Act, ultimately this Court held that Section 5 of the Limitation Act shall not be applicable as the legislature has prescribed a special limitation for the purpose of the Appeal as provided under Section 34 of the Arbitration & Conciliation Act, 1996. In paragraphs 11 & 12, it is observed and held as under:

"11. Thus, where the legislature prescribed a special limitation for the purpose of the Appeal and the period of

*Limitation of 60 days was to be computed after taking the aid of Sections 4, 5 and 12 of the Limitation Act, the specific inclusion of these sections meant that to that extent only the provisions of the Limitation Act stood extended and the applicability of the other provisions, by necessary implication stood excluded.*

*12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the Application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result."*

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**32. 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.**

**33. In view of the afore-stated settled proposition of law and even considering the fact that even the certified copy of the order passed by the adjudicating authority was applied beyond the period of 30 days and as observed hereinabove there was a delay of 44 days in preferring the Appeal which was beyond the period of 15 days which maximum could have been condoned and in view of specific statutory provision contained in Section**

**61(2) of the IB Code, it cannot be said that the NCLAT has committed any error in dismissing the Appeal on the ground of Limitation by observing that it has no jurisdiction and/or power to condone the delay exceeding 15 days."**

*(verbatim copy with emphasis supplied)*

8.4 Further, Hon'ble Supreme Court in case of V Nagarajan V SKS Ispat Powers Limited in Civil Appeal No.3327 of 2020 dated 22 October 2021 has held that;

*"21. 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.*

*22. On the second question, Rule 22(2) of the NCLAT Rules mandates the certified copy being annexed to an appeal, which continues to bind litigants under the IBC. While it is true that the tribunals, and even this Court, may choose to exempt parties from compliance with this procedural requirement in the interest of substantial justice, as re-iterated in Rule 14 of the NCLAT Rules, the discretionary waiver does not act as an automatic exception where litigants make no efforts to pursue a timely resolution of their grievance. The Appellant having failed to apply for a certified copy, rendered the Appeal filed before the NCLAT as clearly barred by Limitation.*

*23. The Appellant was present before the NCLT on 31 December 2019 when interim relief was denied and the miscellaneous Application was dismissed. The Appellant has demonstrated no effort on his part to secure a certified copy of the said order and has relied on the date of the uploading of the order (12 March 2020) on the website. The period of Limitation for filing an appeal under Section 61(1) against the order of the NCLT dated 31 December 2019, expired on 30 January 2020 in view of the thirty-day period prescribed under Section 61(2). Any scope for a condonation of delay expired on 14 February 2020, in view of the outer limit of fifteen days prescribed under the proviso to Section 61(2). The lockdown from 23 March 2020 on account of the COVID-19 pandemic and the suo motu order of this Court has had no impact on the rights of the Appellant to institute an appeal in this proceeding and*

*the NCLAT has correctly dismissed the Appeal on Limitation. Accordingly, the present Appeal under Section 62 of the IBC stands dismissed."*

8.5 That in fact, it is an admitted case of the Appellant that the present Appeal has been filed with the delay of 52 days (page 323, volume 2 of appeal paper book) and thus, the Appellant itself has duly admitted that the Appeal is beyond the condonable period of Limitation under Section 61 (2) of the I&B Code.

8.6 Further, while admitting to delays in filing the Appeal which is not condonable, the Appellant has made entirely preposterous contentions about the cause of action claiming to be alive even after 22 October 2019 based on certain representation given by the Appellant to the Registrar of the NCLT regarding wrong/inadvertent recording of the submissions of the Counsel of the Appellant and that the order on the same was reserved on 19 December 2019. The Appellant has failed to disclose as to on what Application/Petition orders were reserved on 19 December 2019, and be that as it may, it is not the case of the Appellant that it filed an Application for clarifications/modification of the impugned order which was subsequently allowed and thereafter the present Appeal has been filed.

8.7 Admittedly the present Appeal has been filed against the impugned order dated 22 October 2019. Thus, the preposterous averments of the Appellant seeking to justify the delay in filing the Appeal do not render the present Appeal to be within Limitation. Accordingly, the present Appeals

suffers from delay beyond the condonable period of 15 days under the proviso of Section 61 (2) of the IB code, hence liable to be dismissed at the threshold.

8.8 Based on the settled position law as laid down by Hon'ble Supreme Court further in the case of V Nagarajan (supra), it is clear that Section 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 2013. Owing to the special nature of IBC, the aggrieved party is expected to exercise due diligence and apply for a certified copy after the pronouncement of the order it seeks to assail. It is not open to a person aggrieved by an order under the IBC to await the receipt of the free certified copy under Section 421 (3) of the Companies Act 2013 read with Rule 50 of the NCLT and prevent Limitation from running. The litigant has to file its Appeal within 30 days, which can be extended up to a period of 15 days, and no more, upon showing sufficient cause. A sleight of interpretation of procedural rules cannot be used to defeat the substantive objective of the legislation that has an impact on the economic health of a nation.

8.9 Given the settled proposition of law as laid down by Hon'ble Supreme Court in the case of National Spot Exchange Ltd (supra), this Appellate Tribunal has no power to condone the delay for filing Appeal under section 61(2) of the Code beyond the period of 15 days from the date of completion of 30 days as provided under the Code.

8.10 Hon'ble Supreme Court has further observed that, considering the statutory provisions which provide that delay beyond 15 days in preferring the Appeal is uncondonable, the same cannot be condoned even in the exercise of powers under Article 142 of the Constitution. By making such observation, Hon'ble Supreme Court has made it clear that under no circumstance Appellate Tribunal has the power to condone the delay beyond the prescribed period of Limitation under proviso to Sec 61(2) of the Code.

## 9. **Conclusion**

9.1 The instant Appeal has been filed against the impugned order dated 22 October 2019, presented on 29 January 2020. Therefore, at the least, this Appeal is filed 98 days after passing of the impugned order, i.e. with a delay of 68 is beyond 30 days prescribed under Section 61 (2) of the IBC Code. Considering the statutory provision of Section 61 (2) of the IBC, this Appellate Tribunal has no power to condone the delay beyond 15 days after the prescribed 30 days provided for filing an Appeal. Therefore, the contention of the Appellant that the period from passing of the impugned order dated 22 October 2019 to the order dated 19 December 2019 should be considered a continuous cause of action is without any basis and not sustainable.

9.2 Based on the above discussion, we are of the considered opinion that IA No 75 of 2020 for condonation of delay under Section 5 of the Limitation Act deserves to be rejected. Consequently, the Appeal, filed beyond the period of limitation prescribed under Section 61 (2) of the Insolvency and Bankruptcy Code, 2016; not maintainable as barred by Limitation hence is liable to be dismissed.

**ORDER**

IA 75 of 2020 filed U/S 5 of Limitation Act for condonation of delay is rejected. Consequently, Company Appeal (AT) (insolvency) No. 286 of 2020 is also dismissed as time-barred. No order as to costs.

[Justice M. Venugopal]  
Acting Chairperson

[V. P. Singh]  
Member (Technical)

[Dr. Ashok Kumar Mishra]  
Member (Technical)

**NEW DELHI**  
**26<sup>th</sup> October, 2021**

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