

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

25.03.2026

Present: JUSTICE N. SESHASAYEE, MEMBER (JUDICIAL)
ARUN BAROKA, MEMBER (TECHNICAL)

Company Appeal (AT) (Ins) No.1194 of 2025

Mr. Mukesh Sumermal Sanghvi,
Sole Proprietor of Silicon Metal Industries

...Appellant

Vs

R. D. Engineer (India) Pvt. Ltd.

...Respondent

(Arising out of Order dated 21.04.2025 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) in Restoration Application No. 19 of 2025 in Company Petition (IB) No. 925 of 2020.)

For Appellant: Mr. Akash Chatterjee, Advocate

For Respondent: Mr. Abhishek Anand, Mr. Ashish Varma, Advocates

JUDGEMENT

Per Justice N. Seshasayee, Member (Judicial)

1. This Appeal is preferred challenging the Order of the Adjudicating Authority (NCLT, Mumbai Bench, Court-V) dated 21.04.2025 passed in Restoration Application No. 19 of 2025 in C.P. (IB) No. 925 of 2020, by which application filed by the appellant seeking restoration of the Company Petition came to be dismissed.

Facts

2. The broad facts necessary for deciding this Appeal are not in dispute. The appellant had earlier initiated proceedings under Section 9 of the IBC, 2016 against the Respondent, and it was admitted on 26.10.2020. Subsequently, pursuant to a Settlement Agreement between the parties, the Petition came to be withdrawn by an order dated 16.04.2021 with liberty to revive the proceedings in the event of default of settlement terms. Indeed, Clauses 18 and 19 of the Settlement Agreement expressly provided for revival of the proceedings upon default to make payment in terms of the settlement.

3. Alleging breach of the settlement and default in payment, the appellant filed Restoration Application No. 19 of 2025 seeking revival of C.P. (IB) No. 925 of 2020. The Adjudicating Authority, by Order dated 21.04.2025, dismissed the Restoration Application, without even issuing notice to the respondent, primarily on the ground that it was filed nearly two years after the last instalment date under the settlement schedule. The appellant, however, disputes the said computation of delay and asserts that the cause of action continued in view of subsequent payments and acknowledgments.

4. The impugned Order records that it was “*Delivered on 21.04.2025*” and notes the appearance of counsel for both parties. The Order was hosted on the official website of the Adjudicating Authority on 29.04.2025. The present Appeal has been filed on 10.06.2025. The immediate issue is whether the appeal has been instituted within the time prescribed under Section 61(2) of the Code?

Appellant's Submissions

5. The learned counsel for the appellant contended that:

- a) On the issue of delay of filing the appeal, though the impugned Order bears the date 21.04.2025, it was uploaded on the official website only on 29.04.2025, and therefore, limitation ought to be computed from that date. It is submitted that the appeal having been filed within 45 days from 29.04.2025, the delay, if any, is within the condonable limit. It was further urged that the appellant could not have acted upon the impugned order until it was made available on the official website. An Additional Affidavit has been filed on behalf of the appellant placing on record the date of uploading of the Order as 29.04.2025.
- b) The liberty granted by the Adjudicating Authority vide its order dated 16.04.2021 for reviving the company petition contingent upon the failure of settlement was unconditional and that it was not subject to any rigid time frame. At any rate, the application for restoration was filed in time. The last payment was made on 22.02.2023. This has to be read with the email of the respondent dated 27.06.2023 and the appellant's response dated 09.08.2023 constitute uncontroverted documentary evidence evidencing repeated acknowledgments of liability and requests for time under the settlement Agreement. And it extended the limitation under Section 18 of the Limitation Act. Indeed, appellant had issued multiple reminders and legal notices calling upon the respondent to honour its obligations and approached the Tribunal only upon denial of liability. This apart, the impugned order contains clerical inaccuracies, including incorrect recording of appearance on behalf of the respondent and

misdescription of counsel, in respect of which an application for correction of record has also been filed.

Respondent's Submissions

6. Per contra, the learned counsel for the Respondent, supported by an Additional Affidavit filed by the Managing Director of the Respondent Company, argued:

- a) the limitation under Section 61(2) of the Code commences from the date of pronouncement of the order, where Orders are pronounced in the open court and not from the date of uploading. Indeed in terms of Rule 89 of the NCLT Rules, 2016, Orders are required to be pronounced in open court and there is no concept of pronouncement in chambers. The impugned order was pronounced in open court on 21.04.2025 in the presence of counsel for the appellant, and the appellant has not specifically denied this fact. Reliance was placed on the dictum of the Hon'ble Supreme Court in **A. Rajendra Vs Gonugunta Madhusudan Rao**, [2025 INSC 447] and **Tata Steel Ltd. v. Raj Kumar Banerjee** [(2025) 9 SCC 483] wherein it is held that where a judgment is pronounced in open court, limitation begins from that date itself.
- b) Even if the period taken for obtaining certified copies is excluded, the appeal is beyond the maximum condonable period.

Discussion & Decision

7. There are two issues: (a) a preliminary issue requiring an investigation if the appeal is within limitation; and (b) the issue on the merit of the appeal. Unless

the preliminary issue is decided in favour of the appellant, there will be no room for considering the appeal on merit.

- a) Is the appeal filed within time, or within the condonable period of limitation? Section 61(2) of the Code prescribes a period of 30 days for filing an appeal, with a further condonable period not exceeding fifteen days. The statutory scheme leaves no room for condonation beyond the stipulated 15 days. The limitation is peremptory and jurisdictional.
- b) The law on commencement of limitation under Section 61(2) is settled. Reliance is placed upon the Hon'ble Supreme Court's judgement in **V. Nagarajan v. SKS Ispat & Power Ltd.** (2022) 2 SCC 244 wherein it was held that limitation begins from the date of pronouncement of the order and not from the date of receipt of a certified copy or the date of uploading. The principle that emerges is plain: once a judicial order is pronounced in open court, the law imputes knowledge to the parties and sets the clock of limitation in motion. This position has been reaffirmed in **A. Rajendra Vs Gonugunta Madhusudan Rao**, [2025 INSC 447] wherein it has been clarified that where the order is pronounced in open court, limitation commences from that very date. To hold otherwise would be to make limitation contingent upon administrative timelines, a position the statute does not countenance. Limitation, in this context, is not merely procedural but jurisdictional, for once the statutory window closes, the Tribunal is not merely restrained, it is rendered powerless.
- c) In the present case, the impugned Order expressly records that it was "*Delivered on 21.04.2025*" and also records the appearance of counsel for the Petitioner and the Respondent. There is no material placed before us

to show that the Order was not pronounced in open court on that date. The additional affidavit filed by the appellant confines itself to the date of uploading and does not assert that the order was not pronounced on 21.04.2025 or that counsel was unaware of its delivery, nor is there any specific denial of pronouncement. On the other hand, the respondent asserted that the order was pronounced in open court, and the said assertion remains undisputed as it has not been denied by the Appellant. Uploading of an order is an administrative act; pronouncement of a judgement/order is a judicial act. The statute attaches consequence to the latter, and not to the former. To hold that limitation commences only upon uploading would amount to postponing the operation of Section 61(2) until completion of administrative formalities, which the statute does not contemplate. Can limitation then be made to depend on the uncertainties of the administrative process? The answer must necessarily be in the negative.

8. In the instant case, if limitation is computed from 21.04.2025, the period of 30 days expired on 20.05.2025 and the outer limit of 45 days expired on 04.06.2025. Even after granting exclusion for the period spent in obtaining the certified copy, the appeal filed on 10.06.2025 remains beyond the maximum condonable period. Once the appeal crosses the statutorily prescribed 30 + 15 days, this tribunal cannot even take cognizance of the appeal.

9. On merit, after declaration of law by the Hon'ble supreme Court in ***Glas Trust Company LLP Vs Byju Raveendran and others*** [(2025) 3 SCC 625] legality of the very Order of the Adjudicating Authority dated 21.04.2025, permitting inter

party settlement post admission of the CoC itself comes into focus, but it may have to be stated to the credit of the Adjudicating Authority that its Order was passed prior to the judgement in Glas Trust Case. Now, how the restoration petition based on an order which was passed prior to Glas Trust ratio but considered after the said dictum, poses an interesting issue. However, in view of the bar of limitation, we are refrained from entering an enquiry into the same.

10. To conclude, we hold that the appeal having been filed beyond the period prescribed under Section 61(2) of the Code is not maintainable. Consequently, the present Appeal is dismissed. The appellant however, is entitled to resort to other legal means for realisation of its dues, in terms of applicable laws. No costs.

[Justice N. Seshasayee]
Member (Judicial)

[Arun Baroka]
Member (Technical)

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