

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,****Principal Bench, New Delhi****Comp. App. (AT) (Ins) No. 573 of 2023 &  
I.A No. 1874 of 2023****IN THE MATTER OF:****Cloud9 Apartment Owners Association****...Appellant****Vs.****Mohit Goyal****....Respondents****Resolution Professional for****Aadi Best Consortium Pvt. Ltd. & Anr.****Present:****For Appellants : Mr. Abhinav Sharma, Mr. Shreesh Pathak, Advs.****For Respondent : Mr. G.P.Madaan, Mr. Aditya Madaan, Ms. Aishwarya Adlakha, Ms. Natasha, for R1.****Mr. Adhish Srivastava, Mr. Avdhesh Bairwa,  
Advocate for R2.****O R D E R****Per : Justice Rakesh Kumar Jain (Oral)**

**12.05.2023:** The Operational Creditor - Yogesh Gupta filed an appeal under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as to 'The Code') R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate Corporate Insolvency Resolution Process (hereinafter referred as to 'CIRP') against M/s. Aadi Best Consortium Private Limited (Corporate Debtor). The said application was admitted by order dated 31.03.2022. The said impugned order is amenable to appeal in terms of Section 61 of the Code for which a period of 30 days is prescribed and in case there is a delay then it is provided to be condoned only upto 15 days and not thereafter.

2. The present appeal has been filed by 'Cloud9 Apartment Owner Association' who did not file the appeal within the statutory period of 30 days plus 15 days and rather filed WP(C) No. 12668 of 2022 before the Hon'ble High Court of Delhi which was disposed of on 24.03.2022 with the following orders:

*"1. This hearing has been done through hybrid mode.*

*2. The Petitioner-, a registered association of flat buyers in the project titled 'Cloud9', has challenged the order dated 31st March, 2022 passed by the NCLT. Vide the impugned order, a Resolution Professional has been appointed and moratorium has been declared under section 14 of the Insolvency & Bankruptcy Code, 2016 ('IBC') by the NCLT.*

*3. The case of the Petitioner is that the project is 80-90% complete and for a debt of around Rs.1.5 crore, the NCLT has directed the moratorium without considering the interest of the apartment owners.*

*4. The ld. Counsel for the Petitioner submits that the appeal against the impugned order of the NCLT could not be filed within the limitation period of 45 days period, in view of the fact that the Petitioner is a registered Apartment Owners Association and it took time in putting the association together. Moreover, as recorded in the order dated 22nd February 2023, 80% - 90% of the project is completed, which in the opinion of this Court is an important fact that ought to*

*be considered before the Resolution Process under the provisions of IBC commences and is given effect to.*

*5. Accordingly, in the unique facts and circumstances of this case, the Petitioner-Cloud9 Apartment Owners Association is permitted to approach the NCLAT challenging the order dated 31st March, 2022. The appeal shall not be dismissed on the ground of limitation, if the Petitioner approaches the NCLAT within 15 days.*

*6. None has appeared for the Respondents.*

*7. This Court has not considered the legal questions raised in this petition. 8. Petition is disposed of in these terms. All pending applications are disposed of.”*

3. The present appeal is then filed on 04.04.2023 along with an application bearing IA No. 1874 of 2023 for condonation of delay. Counsel for Appellant has submitted that since the appeal has been filed within the time provided by the Hon'ble High Court of Delhi, therefore, there is no delay in filing of the appeal.

4. We have heard counsel for the Appellant and perused the record with their able assistance.

5. The remedy of appeal is a creation of statute. Section 61 of the Code deals with the appeal and the Appellate Authority. Section 61(1) & (2) and its proviso are relevant for this case, therefore, the same is reproduced as under:

*“Section 61: Appeals and Appellate Authority.*

*61. (1) Notwithstanding anything to the contrary contained under the Companies Act 2013, any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.*

*(2) Every appeal under sub-section (1) shall be filed within thirty 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.”*

6. It is provided in Section 61(1) of the Code that if any person is aggrieved by the order of the Adjudicating Authority, he may prefer an appeal to this Tribunal. Section 61(2) of the Code provides that every such appeal provided under Section 61(1) shall be filed within thirty days before this Tribunal and proviso to Section 61(2) says that the period of 30 days allowed to file the appeal can further be extended to 15 days and not thereafter. Meaning thereby, the limitation to file an appeal before this Tribunal is only upto 45 days out of which the period of fifteen days can be used by the Appellant for the purpose of

extension of period of limitation on assigning sufficient cause to the satisfaction of the Appellate Authority for condonation of delay.

7. In the present case, admittedly within the period of 30 days and even the extended period of 15 days i.e. 45 days no appeal was filed rather the Writ Petition was filed before the Hon'ble High Court in which the aforesaid order has been passed.

8 In the case of '*National Spot Exchange Limited Vs. Anil Kohli Resolution Professional for Dunar foods Limited*' rendered in '*Civil Appeal No 6187 of 2019*' decided on 14.09.2022, there was a delay of 44 days beyond the period of 45 days which was sought to be condoned and one of the argument raised by the Counsel for the Appellant was that the said delay may be condoned by exercising the jurisdiction under Article 142 of the Constitution of India. The Hon'ble Supreme Court, however, dismissed the said appeal on the ground of limitation, observing thus:

*"The Act is a special legislation within the meaning of Section 29 (2) of the Limitation Act and, therefore, the prescription with regard to the limitation has to be the binding effect and the same has to be followed regard being had to its mandatory nature. To put it in a different way, the prescription of limitation in a case of present nature, when the statute commands that this Court may condone the further delay not beyond 60 days, it would come within the ambit and sweep of the provisions and policy of legislation. It is equivalent to Section 3 of the Limitation Act. Therefore, it is uncondonable and it cannot be condoned taking recourse to Article 142 of the Constitution."* 11.2 In the case of Teri

*Oat Estates (P) Ltd. v. U.T. Chandigarh, reported in (2004) 2 SCC 130, in paragraphs 36 & 37, it is observed as under:*

*“36. We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right. It is further trite that despite an extraordinary constitutional jurisdiction contained in Article 142 of the Constitution of India, this Court ordinarily would not pass an order which would be in contravention of a statutory provision.*

*As early as in 1911, Farwell, L.J. In Latham v. Richard Johnson & Nephew Ltd. (1911-12) All ER Rep 117 observed: (All ER p. 123E) “We must be very careful not to allow our sympathy with the infant plaintiff to affect our judgment. Sentiment is a dangerous will o’ the wisp to take as a guide in the search for legal principles” 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.*

*12. 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.”*

9. With due respect to the order passed by the Hon'ble High Court of Delhi, it is pertinent to mention that this Tribunal does not have jurisdiction to condone the delay after a period of 45 days in view of the decision rendered by the Hon'ble Supreme Court in National Spot Exchange Limited (supra).

10. Hence, we do not find any merit in the application for condonation of delay and accordingly, this application as well as the appeal is hereby dismissed.

**[Justice Rakesh Kumar Jain]**  
**Member (Judicial)**

**[Naresh Salecha]**  
**Member (Technical)**

*Raushan/Ravi*