

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

Comp. App. (AT) (Ins.) No. 918 of 2021

[Arising out of Order dated 20.07.2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, in CP No. 1171/IBC/NCLT/MB/MAH/2017]

In the matter of:

M/s. Hasmukh N. Shah & Associates **....Appellant**

Vs.

M/s. Victoria Entertainment Pvt. Ltd. **...Respondent**

For Appellant: Mr. Shyam Babu, Advocate.

For Respondent: None.

Comp. App. (AT) (Ins.) No. 919 of 2021

[Arising out of Order dated 20.07.2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, in CP No. 1156/IBC/NCLT/MB/MAH/2017]

In the matter of:

M/s. Hasmukh N. Shah & Associates **....Appellant**

Vs.

M/s. Victoria Enterprises Ltd. **...Respondent**

For Appellant: Mr. Shyam Babu, Advocate.

For Respondent: None

Comp. App. (AT) (Ins.) No. 920 of 2021

[Arising out of Order dated 20.07.2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, in CP No. 1172/IBC/NCLT/MB/MAH/2017]

In the matter of:

M/s. Hasmukh N. Shah & Associates **....Appellant**

Vs.
M/s. Sanskar Info TV Pvt. Ltd. **...Respondent**
For Appellant: Mr. Shyam Babu, Advocate.
For Respondent: None

Comp. App. (AT) (Ins.) No. 921 of 2021

[Arising out of Order dated 20.07.2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, in CP No. 1173/IBC/NCLT/MB/MAH/2017]

In the matter of:

M/s. Hasmukh N. Shah & Associates **....Appellant**
Vs.
M/s. Eastern Ceramics Limited **...Respondent**
For Appellant: Mr. Shyam Babu, Advocate.
For Respondent: None

J U D G M E N T
(01st December, 2021)

Ashok Bhushan, J.

1. These Appeals have been filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) challenging the judgment and order dated 20.07.2018 passed in four different Section 9 Applications filed by the Appellant being C.P. No.117/IBC/NCLT/MB/MAH/2017, CP No. 1156/IBC/NCLT/MB/MAH/2017, CP No. 1172/IBC/NCLT/MB/MAH/2017 and CP No. 1173/IBC/NCLT/MB/MAH/2017. All the Appeals have been filed on 20.09.2021. The office has reported delay and has also noticed that no Application for condonation of delay has been filed. The Appeals were heard.

2. We have heard Shri Shyam Babu, Learned Counsel for the Appellant in all these Appeals on 17.11.2021.

3. In the course of hearing, at the very outset, the attention of the Learned Counsel for the Appellant was pointed out to the office note that there is delay in Appeals. Learned Counsel for the Appellant submitted that there is no delay in the Appeals and the Appeals are within time. On 17.11.2021, following order was passed by this Bench:-

“17.11.2021: *Heard Shri Shyam Babu, Learned Counsel for the Appellant. Order which has been impugned in this Appeal was passed on 20.07.2018. The Office has reported about the delay. Learned Counsel for the Appellant submits that the copy of the order was applied on 27.07.2021 and received on 29.07.2021 and the Appeal was filed within time from the said date. Learned Counsel advances his submission that the Appeal is within time and he is also relying on Rule 50 of the NCLT Rules, 2016.*

2. We have heard Learned Counsel for the Appellant on the question of limitation. order reserved.

3. Learned Counsel for the Appellant is permitted to submit a short brief note within three days only on the question of limitation of the Appeal along with the judgments on which reliance is being placed by the Appellant.”

4. Learned Counsel for the Appellant has also submitted Written Submissions on 23.11.2021 which has also been looked into.

5. The only question to be decided at present is as to whether the Appeals filed by the Appellant are within time or they are barred by limitation.

6. Shri Shyam Babu, Learned Counsel for the Appellant submitted that the Appellant came to know about the impugned order only in second week of December 2018. He submits that he has applied for the certified copy of the judgment on 27.07.2021 which copy was ready and delivered to him on 29.07.2021. Appeals having been filed on 20.09.2021, the same are within time. Learned Counsel for the Appellant has relied on order of the Hon'ble Supreme Court in *Suo Motu Writ Petition (Civil) No. 03/2020* passed on 23.09.2021. Learned Counsel for the Appellant submits that he was entitled for free copy of the judgment as per Rule 50 of the NCLT Rules, 2016 which has not yet been provided to the Appellant. He submits that free copy has not been provided, hence the limitation will not start running against the Appellant. Reliance has been placed on judgment of the Hon'ble Supreme Court dated 18.09.2020 in Civil Appeal Nos. 3007-3008 of 2020 ***“Sagufa Ahmed & Ors. vs. Upper Assam Plywood Products Pvt. Ltd. & Ors.”***.

7. We have considered the submissions of the Learned Counsel for the Appellant, gone through the Written Submissions filed by the Appellant as well as record.

8. For determining the question as to whether the Appeals filed by the Appellant are within time or barred by time, we will notice following few relevant dates:-

- (i) The NCLT delivered its judgment on 20.07.2018.
- (ii) Certified copy of the impugned judgment indicates that certified copy was applied on 27.07.2021 and was ready and issued on 29.07.2021.
- (iii) All the Appeals under Section 61 of the 'I&B Code' have been filed on 20.09.2021.

9. There was one more relevant aspect which needs to be noted. The Appellant in his written submissions have stated few more facts regarding knowledge of the impugned order and date when he first applied for first certified copy. These facts have been pleaded in paragraph 5 of the written submissions which is to the following effect:-

“5. That in the second week of December 2018, the applicant came to know that the impugned order was uploaded and gone through impugned order and thereafter applied for certified paid copy of impugned order on 21.01.2019.”

10. The Appellant claim to have applied for second time certified copy of the impugned order on 27.07.2021, which is specifically mentioned in paragraph 12:-

“12. That the appellant again applied for a certified copy of impugned order on 27.07.2021. It is submitted that the appellant has filed the instant appeal on 31.08.2021.”

11. In his written submissions, Appellant has also relied on the order of the Hon'ble Supreme Court dated 23.09.2021 passed in Miscellaneous

Application No. 665 of 2021 in SMW(C) No. 3 of 2020. On submission of Learned Counsel for the Appellant and written submissions on record, we formulate following two questions to be answered in these Appeals:-

- (i) Whether on the strength of judgment of the Hon'ble Supreme Court in SMW(C) No. 3 of 2020, the Appellant is entitled for benefit of the said judgment and filing of Appeals on 20.09.2021 can be treated within time?
- (ii) Whether the Appeals filed by the Appellant are within limitation as per Section 61 of the 'I&B Code'?

12. In the first question heavy reliance is placed on the order of the Hon'ble Supreme Court dated 23.09.2021 as noted above. The Hon'ble Supreme Court in the said order while disposing the Miscellaneous Application No. 665 of 2021 issued following directions:-

8. Therefore, we dispose of the M.A. No.665 of 2021 with the following directions: -

I. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2021, if any, shall become available with effect from 03.10.2021.

II. In cases where the limitation would have expired during the period between 15.03.2020 till 02.10.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from

03.10.2021. In the event the actual balance period of limitation remaining, with effect from 03.10.2021, is greater than 90 days, that longer period shall apply.

III. The period from 15.03.2020 till 02.10.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

IV. The Government of India shall amend the guidelines for containment zones, to state. "Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements."

13. The judgment of the Hon'ble Supreme Court, as noted above, indicates that in computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded. The present is a case where impugned order by Adjudicating Authority was passed on 20.07.2018 i.e. much before 15.03.2020. Even by exclusion of period from 15.03.2020 till 02.10.2021 Appellant has yet to explain the delay/ limitation from 20.07.2018 till 14.03.2020. Thus, the judgment of the

Hon'ble Supreme Court dated 23.09.2021 does not come to the aid of the Appellant in the present case.

14. Now coming to the Question No. (ii), we may first notice the relevant provisions of the 'I&B Code' governing the filing of the Appeal. Section 61 in Chapter VI of the 'I&B Code' provides for Appeals and Appellate Authority. Sub-section (1) and sub-section (2) of Section 61 which are relevant for the present case are as follows:-

“61. Appeals and Appellate Authority. - (1)

Notwithstanding anything to the contrary contained under the Companies Act 2013 (18 of 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.”

15. We also need to notice the provisions of the Companies Act, 2013 which earlier governed the filing of the Appeal to the Appellate Tribunal. Section 421 (1) to (3) which are relevant are as follows:-

“421. Appeal from orders of Tribunal.— (1) *Any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.*

(2) *No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.*

(3) *Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed:*

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.”

16. There is one noticeable change in statutory scheme of Section 61 of the ‘I&B Code’ to one under sub-section (3) of Section 421 of the Companies Act, 2013 under which an appeal was to be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved whereas now under Section 61, every Appeal under sub-section (1) of Section 61 is to be filed within thirty days before the National Company Law Appellate Tribunal. The period from 45 days has been reduced to 30 days and further, the expression ‘*from the date on which a copy of the order of the Tribunal is made available to the person aggrieved*’ has not been retained in sub-section (2) of Section 61.

17. The sheet anchor of the arguments of the Learned Counsel for the Appellant is Rule 50 of the NCLT Rules, 2016. Rule 50 is part of Part-IV ‘General Procedure’. Rule 50 is to the following effect:-

“50. Registry to send certified copy.- The Registry shall send a certified copy of final order passed to the parties concerned free of cost and the certified copies may be made available with cost as per Schedule of fees, in all other cases.”

18. One more Rule of Part-IV which needs to be noticed is Rule 58 which is to the following effect:-

“58. Effect of non-compliance.- Failure to comply with any requirement of these rules shall not invalidate any proceeding, merely by reason of such failure, unless the Tribunal is of the view that such failure has resulted in miscarriage of justice”.

19. Thus, Rule 50 is a procedural Rule which oblige the Registry to send a certified copy of final order passed to the parties concerned free of cost. The Rule enjoins the duty of the Registry to send a certified copy of final order passed to the parties concerned free of cost. The question which has been raised before us is that since free of cost copy as required by Rule 50 has not been received by the Appellant, the period of limitation shall not begin to run and the Appeals filed by the Appellant on 20.09.2021 are well within time. When we read Section 61 of the ‘I&B Code’ with Rule 50 of the NCLT Rules, it cannot be said that limitation in filing of an Appeal under Section 61 shall

not begin to run unless free of cost copy is sent by Registry and received by a party. Section 61 came for consideration before the Hon'ble Supreme Court in ***“Mobilox Innovations Private Limited vs. Kirusa Software Private Limited- (2018) 1 SCC 353”*** wherein in paragraph 35, the Hon'ble Supreme Court held:-

“.....An appeal can then be filed to the Appellate Tribunal under Section 61 of the Act within 30 days of the order of the Adjudicating Authority with an extension of 15 further days and no more.”

20. The limitation to file Appeal under Section 61 cannot be treated to be under suspension till free of cost copy is received by party as enjoined by Rule 50. Any such interpretation shall not dwell with the statutory scheme. The 'I&B Code' has been enacted to speed up Insolvency Resolution Process and there is a timeline fixed for different steps filing Appeal within 30 days to the Appellate Tribunal is also part of the same thread of timeline which run through different provisions of the 'I&B Code'. The Hon'ble Supreme Court in ***“Mobilox Innovations Private Limited”*** (Supra) has noted the importance of the timeline in paragraph 35 which is to the following effect:-

“35. Another thing of importance is the timelines within which the insolvency resolution process is to be triggered. The corporate debtor is given 10 days from the date of receipt of demand notice or copy of invoice to either point out that a dispute exists between the parties or that he has since repaid the unpaid operational debt. If neither exists, then an application once filed has to be disposed of by the

adjudicating authority within 14 days of its receipt, either by admitting it or rejecting it. An appeal can then be filed to the Appellate Tribunal under Section 61 of the Act within 30 days of the order of the adjudicating authority with an extension of 15 further days and no more.”

21. If we accept the submission of the Learned Counsel for the Appellant that limitation under Section 61 of the 'I&B Code' for filing Appeal within 30 days shall not commence till he receives free of cost copy sent by the Registry does not go with scheme of the 'I&B Code'. The facts of the present case itself clearly indicate that no such interpretation can be accepted. In the present case, impugned order of the NCLT was delivered on 20.07.2018 and according to the Appellant, he applied for certified copy on 27.07.2021 and has filed the Appeal thereafter. The Appellant, according to his own case, has applied certified copy after three years. If the submission is accepted then any party can wait for any period of time and say that time has not started running because I have not received free of cost copy. In this reference, we may notice one judgment of the Hon'ble Supreme Court with regard to delivery of the free of cost copy i.e. (2013) 3 SCC 594 **“State represented by Inspector of Police, Chennai vs. N.S. Ganeswaran”**. Sub-section (2) of Section 154 of the CrPC provides:-

“154. Information in cognizable cases.-(2)
A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.”

22. A proceeding filed before High Court for quashing the first information report on the ground that there is breach of sub-section (2) of Section 154 since the free copy has not been supplied to the Informant, the High Court held that requirement in sub-section (2) of Section 154 of CrPC for copy of information recorded was mandatory and High Court held that FIR has *non est* on the aforesaid ground. In an Appeal filed by the State, the Judgment of the High Court was reversed. In paragraph 22 the Hon'ble Supreme Court laid down following:-

“22. The law on this issue can be summarised that in order to declare a provision mandatory, the test to be applied is as to whether non-compliance with the provision could render entire proceedings invalid or not. Whether the provision is mandatory or directory, depends upon the intent of the legislature and not upon the language for which the intent is clothed. But the circumstance that the legislature has used the language of compulsive force is always of great relevance. If we apply this test to the provisions of Section 154 CrPC, we reach the inescapable conclusion that the provisions of Section 154(2) are merely directory and not mandatory as it prescribes only a duty to give the copy of the FIR.”

23. Rule 50 as noted above is contained in Chapter IV which deals with the procedure and Rule 50 is a part of procedural law which oblige the Registry to send free of cost copy. However, the scheme of limitation for filing Appeal as delineated by Section 61 does not give any scope to the submission that limitation to file an Appeal under Section 61 shall not begin

till free of cost copy under Rule 50 is received by a party. The provisions of the Limitation Act are applicable to the 'I&B Code' proceedings which is well settled and is no longer debatable after insertion of Section 238A in 'I&B Code'. Section 12 of the Limitation Act provides for period which can be excluded in period of limitation. Section 12 of the Limitation Act is as follows:-

“12. Exclusion of time in legal proceedings.—

(1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.

(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.

*(3) Where a decree or order is appealed from or sought to be revised or reviewed, or where an application is made for leave to appeal from a decree or order, the time requisite for obtaining a copy of the judgment 1 *** shall also be excluded.*

(4) In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded. Explanation.—In computing under this section the time requisite for obtaining a copy of a decree or an order, any time taken by the court to prepare the decree or order before an application for a copy thereof is made shall not be excluded.”

24. By virtue of sub-section (2) of Section 12, in computing the period of limitation for an appeal, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the order of Appeal, is to be excluded. Rule 50 of the NCLT Rules, 2016 cannot be read to be a Rule governing the limitation. In event, the argument of the Appellant is to be accepted that limitation to file an Appeal under Section 61 of the 'I&B Code' shall commence only after receipt of the free of cost copy, we have to read certain additional words in Section 61 (2) i.e. "Appeal shall be filed within 30 days from receipt of the free of cost copy by a party". It is well settled Rule of construction that statute has to be interpreted as it exists and addition of any word is not permissible.

25. There is one more aspect which needs to be noticed as noted above in written submissions. The Appellant has categorically stated that he came to know about the impugned order in second week of December 2018 and he applied for certified copy of the impugned order on 21.01.2019. According to his own case, he applied for certified copy of the impugned order on 21.01.2019. There is no explanation that after applying for certified copy on 21.01.2019 how he applied second time on 29.07.2021.

26. Now we come to the judgment of the Hon'ble Supreme Court in "**Sagufa Ahmed & Ors.**" (supra) on which reliance has been placed by the Learned Counsel for the Appellant. The Hon'ble Supreme Court in the above judgment has referred to Sections 420, 421 of the Companies Act, 2013 as well as Rule 50 of the NCLT Rules, 2016. In the said case, the judgment of

the NCLT was delivered on 25.10.2019 and the Appellant of that case has applied certified copy of the order on 21.11.2019 and he received the copy of the certified order on 19.12.2019. The Appeal was filed with Application for condonation of delay in the above case. NCLAT has dismissed the Application for condonation of delay. The Hon'ble Supreme Court read interpreted Section 421(3) r/w Rule 50 of the NCLT Rules, 2016 and laid down following paragraphs:-

“13. Therefore, it is true, as contended by the appellants, that the period of limitation of 45 days prescribed in Section 421(3) would start running only from the date on which a copy of the order of the Tribunal is made available to the person aggrieved. It is also true that under Section 420(3) of the Act read with Rule 50, the Appellants were entitle to be furnished with a certified copy of the order free of cost.

14. Therefore, if the appellants had chosen not to file a copy application, but to await the receipt of a free copy of the order in terms of Section 420(3) read with Rule 50, they would be perfectly justifies in falling back on Section 421(3), for fixing the date from which limitation would start running. But the appellants in this case, chose to apply for a certified copy after 27 days of the pronouncement of the order in their presence and they now fall back upon Section 421(3).

15. Despite the above factual position, we do not want to hold against the appellants, the fact that they waited from 25.10.2019 (the date of the order

of NCLT) upto 21.11.2019, to make a copy application. But atleast from 19.12.2019, the date on which a certified copy was admittedly received by the counsel for the appellants, the period of limitation cannot be stopped from running.”

27. The above judgment of the Hon’ble Supreme Court referred to Section 421(3) of the Companies Act r/w Rule 50, what has been held by the Hon’ble Supreme Court in above paragraphs interpreting Section 421(3) read with Rule 50 is a law of land and binding on all authorities under Article 141 of the Constitution of India. In the above case, certified copy was applied by the Appellant of that case within 27 days of pronouncement of the judgment.

28. The Hon’ble Supreme Court in a recent judgment delivered on 22.10.2021- Civil Appeal No. 3327 of 2020 **“V Nagarajan vs. SKS Ispat and Power Ltd. & Ors.”** had occasion to consider Section 61 of the ‘I&B Code’ as well as Rule 50 of the NCLT Rules, 2016. In the above case also, the Appeal of the Appellant was dismissed as barred by limitation. Submission was also pressed before the Hon’ble Supreme Court that in view of Rule 50, free copy of the order is to be provided to the party and the clock of limitation under Section 61 would run from the date free copy is issued to a party. It was submitted before the Hon’ble Supreme Court that *Sagufa Ahmed’s case (supra)* covers the situation. The Hon’ble Supreme Court considered the relevant provisions of the ‘I&B Code’ and the Rule 50 of the NCLT Rules, 2016 as well as the judgment of *Sagufa Ahmed* and has held that legislative scheme as delineated by Section 61 does not indicate that a party is to wait till free copy is delivered. The argument of the Appellant that

limitation shall not start running till a free certified copy is supplied has been considered and rejected. The judgment of *Sagufa Ahmed* was taken note by the Hon'ble Supreme Court in paragraph 14 which is to the following effect:-

*“14. In **Sagufa Ahmed** (supra) a three judge Bench of this Court dealt with the interpretation of Section 421(3) of the Companies Act and whether limitation would start running once a free certified copy is made available to the party, sans an application from the aggrieved party. It held, in the context of a winding up petition under the Companies Act, that the aggrieved party could wait till it received its free copy under Section 420(3) of the Companies Act 2013 read with Rule 50 of the NCLT Rules, and was not obligated to file an application for a certified copy for the purposes of the computation of limitation. Justice V Ramasubramanian held:*

“12. Therefore, it is true, as contended by the appellants, that the period of limitation of 45 days prescribed in Section 421(3) would start running only from the date on which a copy of the order of the Tribunal is made available to the person aggrieved. It is also true that under Section 420(3) of the Act read with Rule 50, the appellants were entitled to be furnished with a certified copy of the order free of cost.

13. Therefore if the appellants had chosen not to file a copy application, but to await the receipt of a free copy of the order in terms

of Section 420(3) read with Rule 50, they would be perfectly justified in falling back on Section 421(3), for fixing the date from which limitation would start running.....”

(emphasis supplied)

However, the Court clarified that this would no longer apply once an application for a certified copy is made and the order has been received. Irrespective of when the free certified copy is received, the limitation period would then be computed from the date of receipt of the certified copy.

“13..... But the appellants in this case, chose to apply for a certified copy after 27 days of the pronouncement of the order in their presence and they now fall back upon Section 421(3).

14. Despite the above factual position, we do not want to hold against the appellants, the fact that they waited from 25-10- 2019 (the date of the order [Sagufa Ahmed v. Upper Assam Plywood Products (P) Ltd., 2019 SCC OnLine NCLT 749] of NCLT) up to 21-11-2019, to make a copy application. But at least from 19-12-2019, the date on which a certified copy was admittedly received by the counsel for the appellants, the period of limitation cannot be stopped from running. From 19-12-2019, the date on which the counsel for the appellants received the copy of the order, the appellants had a period of 45 days to file an appeal. This period expired on 2-2-2020.”

*Therefore in a field which is not covered by a special law which invests the NCLT with jurisdiction, the general principle for the computation of limitation for filing an appeal against an order of the NCLT is governed by the statutory mandate of Section 420(3) of the Companies Act read with Rule 50 of the NCLT Rules, which enables a party to compute limitation from the date of receipt of the statutorily mandated free certified copy, without having to file its own application. However, the decision of this Court in **Sagufa Ahmed** (surpa) clarifies that the statutory mandate of a free copy is not to enable litigants to take two bites at the apple where they could compute limitation from either when the certified copy is received on the litigant's application or received as a free copy from the registry - whichever is later."*

29. In paragraph 17 of the judgment, the Hon'ble Supreme Court held that if an Appeal is necessary and expedient by an aggrieved party, it is expected to be filed forthwith Application for certified copy and not to wait for free copy. The omission of the words 'from the date on which the order is made available' in Section 61 which was earlier there in Section 421 was held to be of significance which indicate the legislative intention. In paragraph 17 of the judgment, following was laid down:-

"17. 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. The 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.”

30. The Hon’ble Supreme Court recorded its conclusion in paragraph 21 which is to the following effect:-

“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.”

31. In the present case, the case of the Appellant is that he applied certified copy of the order twice firstly on 21.01.2019 and secondly on 29.07.2021. Applying the ratio of the judgment of the **“Sagufa Ahmed”**, in the present case, at best Appellant can claim that period of limitation did not start running till he applied for certified copy of the order i.e. till 21.01.2019. The Appeals have been filed on the strength of certified copy of the judgment which was applied on 29.07.2021 which certified copy of the Application is

claimed by the Appellant after more than three years of the delivery of the judgment whereas in *Sagufa Ahmed's case* certified copy of the judgment was applied within 27 days from the delivery of judgment. We are of the view the Appellant is not entitled to rely on the judgment of *Sagufa Ahmed's case* in the facts of the present case. In any view of the matter, Appeals have been filed after expiry of limitation. The Appeals are barred by time and cannot be entertained. The three Judge Bench judgement of the Hon'ble Supreme Court in *V. Nagarajan* case (supra) fully covers the question which are up for consideration before us. In view of the law laid down by the Hon'ble Supreme Court in *V. Nagarajan's* case, the submissions raised by the Learned Counsel for the Appellant deserves to be rejected.

32. All the Appeals are dismissed accordingly as barred by time.

**[Justice Ashok Bhushan]
Chairperson**

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

**[Dr. Ashok Kumar Mishra]
Member (Technical)**

New Delhi
Anjali