

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

**I.A. No. 3349 of 2022**

**in**

**Company Appeal (AT) (Insolvency) No. 1124 of 2022**

**IN THE MATTER OF:**

**1. Isolux Corsan India Engineering & Constructions Pvt. Ltd. through its Liquidator, CA Rajeev Bansal,**

Reg. No. :IBBI/IPA-001/IP-P00226/2017-18/10425,

2163A, Shri Nagar Colony, Jagadhri, Yamuna Nagar, Haryana – 135001

Mob: +91 – 9315373372

Email: [liquidator.isoluxcorsanindia@gmail.com](mailto:liquidator.isoluxcorsanindia@gmail.com)

**...Appellant**

**Versus**

**1. Shailesh Verma, Erstwhile Resolution Professional of South East U.P. Power Transmission Company Ltd.**

Reg. No.:IBBI/IPA-002/IP-N00070/2017-18/10148,

E1004, Vijaya Apartments, Mall Road, Ahinsa Khand 2, Near Shanti Gopal Hospital, Indirapuram, Ghaziaad, Uttar Pradesh – 201014

Email: [shailesh3108@gmail.com](mailto:shailesh3108@gmail.com);

[inseupip@deloitte.co](mailto:inseupip@deloitte.co)

Phone No.: +91 8451848800

**...Respondent No. 1**

**2. The Committee of Creditors of South East U.P. Power Transmission Company Limited/Corporate Debtor through Resolution Professional, Mr. Shailesh Verma,**

E1004, Vijaya Apartments, Mall Road, Ahinsa Khand 2, Near Shanti Gopal Hospital, Indirapuram, Ghaziaad, Uttar Pradesh – 201014

Email: [shailesh3108@gmail.com](mailto:shailesh3108@gmail.com);

[inseupip@deloitte.co](mailto:inseupip@deloitte.co)

**...Respondent No. 2**

**3. Resurgent Power Ventures Pte. Limited, Resolution Applicant of South East U.P. Power**

**Transmission Company Limited,**

UEN:201605156K

Business Address: 9 Raffles Place, #26-01,

Republic Plaza,

Singapore 048619

Also at:

Bombay House, 24 Homi Mody Street,

Mumbai – 400001

Email:

[Randolph.dsouza@resurgentpowerventures.com](mailto:Randolph.dsouza@resurgentpowerventures.com)

**...Respondent No. 3**

**For Appellant:** Mr. Jayant Mehta, Sr. Advocate with Ms. Nivedita Chauhan, Ms. Jagriti Dori, Ms. Komal Singh, Mr. Abhinav Mishra, Mr. Amrit Singh, Advocates

**For Respondent:** Mr. Manmeet Singh, Ms. Natassia Khurana, Mr. Manav Sharma, Advocates for R-1.

Mr. Arvind Nayar, Sr. Advocate, Ms. Vanita Bhargava, Ms. Wamika Trehan, Ms. Mathili Moondra, Mr. Akshay Goohi, Advocates for R-3

**J U D G E M E N T**

**Ashok Bhushan, J:**

1. I.A. No. 3349 of 2022 has been filed by the Appellant praying for condonation of delay in filing the Appeal. This Appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “The Code”) has been filed by the Appellant on 01<sup>st</sup> August, 2022 challenging the Order dated 15<sup>th</sup> June, 2022 passed by the National Company Law Tribunal, Allahabad Bench, Prayagraj (hereinafter referred to as “The Adjudicating Authority”) in IA(IB) No. 79/ALD/2022 in CP(IB) No. 107/ALD/2019. By the Impugned Order, the Adjudicating Authority has allowed the I.A. No. 79/ALD/2022 filed by the Resolution Professional for approval of the

Resolution Plan. There being delay in filing the Appeal, I.A. No. 3349 of 2022 has been filed by the Appellant seeking condonation of delay.

**2.** The Application I.A. No. 3349 of 2022 states that the present Appeal has been filed on 47<sup>th</sup> Day from the date of the Impugned Order. For condonation of delay, two principal submissions have been made by the Learned Counsel for the Appellant.

**3.** Learned Sr. Counsel-Mr. Jayant Mehta appearing for the Appellant submits that prescribed period for filing an Appeal is 30 days, extendable to 15 days, expired on 30<sup>th</sup> July, 2022. On 30<sup>th</sup> July, 2022 and 31<sup>st</sup> July, 2022, the Tribunal was closed hence the captioned Appeal has been filed on 01<sup>st</sup> August, 2022 at 12:08 AM being the next working day. It is submitted by virtue of Section 4 of the Limitation Act, 1963 the filing of the Appeal on 47<sup>th</sup> day was within the period of limitation as 30<sup>th</sup> and 31<sup>st</sup> July, 2022 being closed hence the Appeal is not barred by limitation.

**4.** Learned Sr. Counsel for the Appellant further submits that Appellant/Applicant is entitled for the benefit of Section 14 of the Limitation Act, 1963. The Appellant had been pursuing I.A. No. 145 of 2022 before the Adjudicating Authority where the Resolution Plan was challenged on the ground that Resolution Plan does not provide for the debts of the Operational Creditors. The proceedings initiated by the Applicant/Appellant by I.A. No. 145 of 2022 as Civil Proceeding which was prosecuted with due diligence and good faith. The I.A. No. 145 of 2022 was filed on 11<sup>th</sup> May, 2022 after filing of I.A. No. 79/2022 by the Resolution Professional seeking

approval of the Resolution Plan. I.A. No. 145 of 2022 was heard on 24<sup>th</sup> May, 2022 and was adjourned to 18<sup>th</sup> July, 2022 before which date, the Impugned Order dated 15<sup>th</sup> June, 2022 was passed approving the Resolution Plan. On 18<sup>th</sup> July, 2022, the Appellant withdrew his I.A. No. 145 of 2022 and thereafter the present Appeal has been filed on 01<sup>st</sup> August, 2022.

**5.** Learned Sr. Counsel for the Appellant submits that by giving benefit of Section 14 of the Limitation Act, the present Appeal filed by the Appellant is well within time.

**6.** Learned Sr. Counsel-Mr. Arvind Nayar appearing for the Successful Resolution Applicant refuting the submissions of Learned Sr. Counsel for the Appellant, contends that the Appeal having been filed on 47<sup>th</sup> Day i.e. beyond 45 days, Application for condonation of delay needs to be dismissed. It is further submitted that on 29<sup>th</sup> March, 2022 when I.A. No. 79 of 2022 and I.A. No. 80 of 2022 (filed under Section 66 against various parties including the Appellant) were heard, the Appellant was also present. The Plan Approval Application was again heard on 12<sup>th</sup> April, 2022 and 13<sup>th</sup> April, 2022 when the Appellant was also present and the Application was heard and order was reserved on 13<sup>th</sup> April, 2022. After one month of reserving the Order on Plan approval Application, I.A. No. 145 of 2022 was filed. It is further contended that benefit of Section 14 of the Limitation Act cannot be claimed by the Appellant.

**7.** We have considered the submissions of Learned Counsel for the parties and have perused the record.

**8.** It is an admitted case of the parties that Appeal has been filed by the Appellant against the Order dated 15<sup>th</sup> June, 2022 on 01<sup>st</sup> August, 2022 i.e. 47<sup>th</sup> Day. The first submission of the Appellant is that 30<sup>th</sup> and 31<sup>st</sup> day being holiday and Court reopened on 1<sup>st</sup> August, 2022 only, hence filing the Appeal on 01<sup>st</sup> August, 2022 is within time. Reliance has been placed on Section 4 of the Limitation Act, 1963. Section 4 is as follows:

*“4. Expiry of prescribed period when Court is closed. – Where the prescribed period for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal, or application may be instituted, preferred or made on the date when the Court re-opens.*

*Explanation.- A Court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day.”*

**9.** Section 61 of the IBC, 2016 which provides for limitation of filing an Appeal. Section 61(2) is as follows:

*“(2) Every appeal under sub-section (1) shall be filed within thirty days before the National Company Law Appellate Tribunal:”*

**10.** The Limitation as prescribed by Section 61(2) is 30 days. Under proviso, the Appellate Tribunal may allow an Appeal to be filed after said period of 30 days if it is satisfied that there is sufficient cause for not filing the Appeal but such period shall not exceed 15 days. When we look into Section 4 of the Limitation Act, 1963, the prescribed period for filing an

Appeal when expires on a day when the Court is closed, the Appeal can be instituted when the Court reopens. Thirty-Days period for filing the present Appeal against the Order dated 15<sup>th</sup> June, 2022 expired on 15<sup>th</sup> July, 2022. It is not the case that Court was closed on 15<sup>th</sup> July, 2022. According to the Appellant 46<sup>th</sup> and 47<sup>th</sup> Day i.e. 30<sup>th</sup> and 31<sup>st</sup> July were holidays. For purposes of extending the benefit of Section 4 of the Limitation Act, the Limitation has to be expired on the date when Court is closed, present is not a case where the Limitation expired on a date when the Court was closed since limitation is of 30 days and not 45 days. The power to condone the delay of 15 days is exercised by this Tribunal under proviso to Section 61(2) of the Code but it cannot be said that period for limitation is 45 days. Thus the present is not a case where benefit of Section 4 can be extended.

**11.** Now we come to the submissions of Learned Counsel for the Appellant claiming benefit of Section 14 of the Limitation Act, 1963. Section 14 of the Limitation Act provides as follows:

*“14 Exclusion of time of proceeding bona fide in court without jurisdiction. —*

*(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.*

*(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.*

*(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.*

*Explanation.— For the purposes of this section,—*

*(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;*

*(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;*

*(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.”*

**12.** Section 14 of the Limitation Act in strict terms does not apply to the Appeal which is clear from the plain reading of Section 14 of the Limitation

Act. The limitation act uses the expression “Application”, “Suit” and ‘Appeal” differently and the provisions in the schedule providing for limitation of Application, Suit and Appeal are all different. When we look into Section 4 and Section 12 of Limitation Act, both the sections use three expressions “Suit, Appeal and Application” whereas Section 14 does not use all the three expressions rather sub-Section 1 of Section 14 uses the expression “any suit” and sub-Section 2 of Section 14 uses the expression “any application”. Hon’ble Supreme Court in three Judges Bench in **[(2021) 10 SCC 401]** **“Kalpraj Dharamshi and Another Vs. Kotak Investment Advisors Limited and Anr.”** had occasion to consider applicability of Section 14 in reference to Section 61 of the IBC, 2016. In the above case, Order of the Adjudicating Authority was passed on 28<sup>th</sup> November, 2019 and the Appeal was filed on 28<sup>th</sup> February, 2020 and further 15 days came to an end on 12<sup>th</sup> March, 2020. However, immediately after the Order was passed on 28<sup>th</sup> November, 2019, a writ petition was filed before the Bombay High Court on 11.12.2019 which came to be dismissed on 28<sup>th</sup> January, 2020 on the ground of having an alternate remedy under Section 61. In the above context, the Hon’ble Supreme Court noticed section 14 and held that the Section 14 of Limitation Act is not strictly applicable, the principle underlying Section 14 would be applicable. In paragraph 65 of the above Judgment, following has been laid down:

*65. In Consolidated Engineering Enterprises (supra), it has been observed, that while considering the provisions of Section 14 of the Limitation Act, proper approach will have to be adopted and the*

*provisions will have to be interpreted, so as to advance the cause of justice, rather than abort the proceedings. It has been observed, that an element of mistake is inherent in the invocation of Section 14. The section, in fact, is intended to provide a relief against the bar of limitation in cases of mistaken remedy or selection of a wrong forum. It has been observed, that the legislature has enacted Section 14 to exempt a certain period covered by a bona fide litigious activity. It has been held, that the equity underlying Section 14 should be applied to its fullest extent and time taken diligently pursuing a remedy, in a wrong court, should be excluded. It could thus be seen, that this Court has in unequivocal terms held, that when a litigant bona fide under a mistake litigates before a wrong forum, he would be entitled for exclusion of the period, during which he was bona fide prosecuting such a wrong remedy. Though strictly, the provisions of Section 14 of the Limitation Act would not be applicable to the proceedings before a quasi-judicial Tribunal, however, the principles underlying the same would be applicable i.e. the proper approach will have to be of advancing the cause of justice, rather than to abort the proceedings”*

**13.** Hon’ble Supreme Court in the facts of the above case held that in the Appeal filed before the Appellate Tribunal, the provisions of principle under Section 14 could have been invoked. In paragraph 78 of the above Judgement, following has been laid down:

*“78. In the present case, perusal of the writ petition would reveal, that it was the specific case of KIAL,*

*that its application, objecting to the application of RP for approval of the resolution plan was heard by a Member (Judicial), whereas, the final orders were passed by a Bench consisting of Member (Judicial) and Member (Technical). It has specifically averred, that though an alternate remedy was available to it, it was invoking the jurisdiction of the High Court since the question involved was also with regard to the manner in which the jurisdiction was exercised by NCLT. It could thus be seen, that KIAL was bona fide prosecuting the proceedings before the High Court in good faith. Perusal of the dates referred to herein above would also reveal, that KIAL was prosecuting the proceedings before the High Court with due diligence. Even before the availability of the certified copy, it had knocked the doors of the High Court. The matter before the High Court was hotly contested and ultimately, the petition was dismissed by an elaborate judgment relegating KIAL to the alternate remedy available to it in law. As such, the conditions which enable a party to invoke the provisions of [Section 14](#) of the Limitation Act are very much available to KIAL. If the period during which KIAL was bona fide prosecuting the writ petition before the High Court and that too with due diligence, is excluded applying the principles underlying [Section 14](#) of the Limitation Act, the appeals filed before NCLAT would be very much within the limitation. We find, that KIAL would be entitled to exclusion of the period during which it was bona fide prosecuting the remedy before the High Court with due diligence.”*

**14.** The law is thus well settled that even in cases where Section 14 is not strictly applicable, the principle underlying Section 14 can be invoked.

**15.** We thus need to consider as to whether the principle underlying Section 14 can be invoked in the facts of the present case.

**16.** In **“Kalpraj Dharamshi and Anr.”** (supra) itself the Hon’ble Supreme Court has quoted with approval earlier Judgement of the Hon’ble Supreme Court in **“Consolidated Engineering Enterprises Vs. The Principal Secretary (Irrigation Department) & Ors.”** [(2008) 7 SCC 169] which Judgement has spelt out the condition required to be fulfilled for invoking Section 14. Paragraph 59 of the Judgement in **“Kalpraj Dharamshi and Anr.”** is as follows:

*“59. The conditions that are required to be fulfilled for invoking the provisions of Section 14 of the Limitation Act have been succinctly spelt out in various judgments of this Court including the one in Consolidated Engineering Enterprises vs. Principal Secretary, Irrigation Department and others, which read thus:*

*“21. Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:*

*(1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;*

*(2) The prior proceeding had been prosecuted with due diligence and in good faith;*

*(3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;*

*(4) The earlier proceeding and the latter proceeding must relate to the same matter in issue; and*

*(5) Both the proceedings are in a court.””*

**17.** From the facts of the present case, it is clear that Appellant is claiming benefit of Section 14 on the basis of I.A. No. 145 of 2022 filed in the same proceeding i.e. C.P. IB No. 107/ALD/2019. In which proceeding, by Impugned Order, I.A. No. 79 of 2022 has been allowed. I.A. No. 145 of 2022 was filed by the Appellant. Subsequent to filing of I.A. No. 145 of 2022, this Application was ultimately withdrawn on 18<sup>th</sup> July, 2022 by the Learned Counsel appearing for the Applicant/Appellant. Following Order was passed on 18<sup>th</sup> July, 2022 in I.A. No. 318 of 2021 and I.A. No. 145 of 2022:

**“IA No. 318/2021 & I.A. No. 145/2022**

*Ms. Jagriti Dosi, Advocate for the applicant. It is stated by Ld. Counsel for the applicant that since the Resolution Plan has already been approved by this Bench, both these applications are rendered*

*infructuous and she wants to withdraw both these applications.*

*Keeping in view the statement made by the Ld. Counsel for the applicant IA No. 318/2021 & IA No. 145/2022 are dismissed as withdrawn.”*

**18.** Present is not a case where it is even contended that IA No. 145 of 2022 was not entertained due to any defect of the jurisdiction or other cause of like nature. The Adjudicating Authority before whom the Application was filed, was fully competent to entertain the Application. We however are of the view that the principle under Section 14 are attracted when a claimant is prosecuting “another civil proceeding” the use of expression “another civil proceeding” as occurring in Section 14(1) and 14(2) is for definite purpose and object.

**19.** We have already noticed above the Judgement of the Hon’ble Supreme Court in “Kalpraj Dharamshi” (supra) where it has been held that authority underlying Section 14 should be applied to its fullest extent and time taken diligently pursuing a remedy in a wrong Court should be excluded. Present is not a case where Applicant can claim that he had filed I.A. No. 145/2022 in a wrong Court. The IA was filed before the same Adjudicating Authority in the same proceeding being CP (IB) No. 107/ALD/2019 in which Impugned Order was passed. The applicability of principle of *res judicata* may be invoked on different stages of the same proceedings but we have not come across any authority/precedent where it has been held that in same proceeding with regard to the Orders passed in different I.As, principles of Section 14 of Limitation Act can be invoked.

**20.** We thus are of the view that Judgement of “Kalpraj Dharamshi” (supra) quoted above, the benefit of Section 14 was extended on account of writ petition in the Hon’ble High Court, the said Judgment was on its own fact and the said Judgment does not help the Appellant in the present case.

**21.** We thus are satisfied that the Applicant is not entitled to claim benefit of Section 14 of the Limitation Act, 1963 on account of having filed an I.A. No. 145 of 2022 in the same proceeding i.e. CP(IB) No. 107/ALD/2019 which was dismissed as withdrawn on the request made by the Appellant.

**22.** The jurisdiction of this Tribunal to condone the delay is of only 15 days in addition to period of limitation of 30 days. The delay in filing the Appeal is beyond 15 days after expiring of the limitation, we are unable to condone the delay in filing the Appeal. In result, I.A. No. 3349 of 2022 is dismissed. Consequently, the Memo of Appeal stands rejected.

**[Justice Ashok Bhushan]  
Chairperson**

**[Dr. Alok Srivastava]  
Member (Technical)**

**[Mr. Barun Mitra]  
Member (Technical)**

**NEW DELHI  
04<sup>th</sup> November, 2022  
Basant**