

Plea Says NCLAT Considers Only Physical Filing For Computing Limitation, Delhi High Court Asks Tribunal To Consider Prevalent Position On E-Filing

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IN THE HIGH COURT OF DELHI AT NEW DELHI

PRATHIBA M. SINGH; J.

W.P.(C) 16676/2022 & CM APPLs. 52547/2022, 52548/2022; 5 December, 2022

POWER INFRASTRUCTURE INDIA *versus* UNION OF INDIA & ORS.

Petitioner through Fereshte D. Sethna, Shivangi Sanghvi, Mohit Tiwari and Ashish Mishra, Advocates. Respondents through Shiva Lakshmi, CGSC with Srishti Rawat, Advocate for R-1 & 2. Deepak Khurana and Ms. Nishtha Wadhwa, Advocates for R-3. Ashish Verma, Advocate with M. Theepa, GP for R-4.

1. This hearing has been done through hybrid mode.
2. The Petitioner has preferred this petition seeking quashing of the impugned order bearing order No. F.No.10/37/2018-NCLAT, dated 21st October, 2022 issued by the National Company Law Appellate Tribunal (NCLAT). According to Id. Counsel for Petitioner, the said order requires physical filing of documents before the NCLAT, for the purpose of computation of limitation.
3. Pursuant to a reference under Section 419(5) of the Companies Act, 2013, due to disagreement between two members, order dated 27th September, 2022 of the National Company Law Tribunal (NCLT) was pronounced by a third member. The said section reads as:
“(5) If the Members of a Bench differ in opinion on any point or points, it shall be decided according to the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President for hearing on such point or points by one or more of the other Members of the Tribunal and such point or points shall be decided according to the opinion of the majority of Members who have heard the case, including those who first heard it.”
4. An appeal was filed before the NCLAT challenging the said order. As per Section 61 of the Insolvency and Bankruptcy Code, 2016, (*hereinafter ‘IBC’*) an appeal against an order passed under Section 419(5) of the Companies Act, 2013 can be filed before the NCLAT within a period of thirty days. However, the said thirty-day period can be extended by another 15 days, if there is sufficient cause. The relevant portion of Section 61 of the IBC is extracted as under:

“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.”

The Petitioner has filed the appeal and the same is stated to be listed before the NCLAT on 9th December, 2022.

5. According to Id. Counsel for the Petitioner, the maximum limitation period of 45 days expired on 12th November, 2022 which was a Saturday. The case of the

Petitioner is that the e-filing of the appeal was done on 11th November, 2022, which was a Friday and the physical filing was done on Monday i.e., on 14th November, 2022. The issue being raised by the Id. Counsel is that, since the 45 days limitation period expired on 12th November, 2022, which is a Saturday, the delay in filing the appeal would be liable to be condoned.

6. The Court has considered the matter. It has been observed that the computation of time period under the National Company Law Appellate Tribunal Rules, 2016 is set out in Rule 3. The said rule reads as:

*“3. **Computation of time period.**- Where a period is prescribed by the Act and these rules or under any other law or is fixed by the Appellate Tribunal for doing any act, in computing the time, the day from which the said period is to be reckoned shall be excluded, and if the last day expires on a day when the office of the Appellate Tribunal is closed, that day and any succeeding day on which the Appellate Tribunal remains closed shall also be excluded”*

7. Further, it has been observed that Rule 103 of the National Company Law Appellate Tribunal Rules, 2016 specifically permits electronic filing. The said rule reads as:

*“103. **Filing through electronic media.**- The Appellate Tribunal may allow filing of appeal or proceedings through electronic mode such as online filing and provide for rectification of defects by e-mail or internet and in such filing, these rules shall be adopted as nearly as possible on and from a date to be notified separately and the Central Government may issue instructions in this behalf from time to time.”*

8. However, the Id. Counsel for the Petitioner submits that an order bearing order No. F.No.10/37/2018-NCLAT has been issued by the NCLAT on 21st October, 2022 that the date of physical filing alone shall be considered as the date of filing. The said order reads:

“F.No.10/37/2018-NCLAT

Dated: 21st October, 2022

ORDER

National Company Law Appellate Tribunal Rules, 2016 (NCLAT Rules, 2016), Rule 22 provides for "Presentation of appeal", which is to be made at the filing counter of the Appellate Tribunal.

As per Rule 103 of the NCLAT Rules, 2016, Appellate Tribunal has also permitted filing of the Appeal or proceedings through electronic mode (e-filing). SOPs have also been issued with regard to e-filing. SOP dated 3rd January, 2021 further provides: -

"It may be noted that it is mandatory that Ld. Advocates/Authorised Representatives/ Parties-in-Person shall file the Appeal/ Interlocutory Application/ Reply/ Rejoinder etc. in hard copy also as per the procedure prescribed in NCLAT Rules, 2016 along with the e-filing receipt. The online filing & hard copies must match with proper pagination. The Court Fee shall be paid through Bharat Kosh (<https://bharatkosh.gov.in>) and the payment receipt should be attached."

The SOPs and directions issued by the Appellate Tribunal do not contain any direction with regard to computation of limitation as to whether limitation is to be computed from the date of e-filing of the Appeals or from the date when Appeals are presented before the Appellate Tribunal as per Rule 22 of the NCLAT Rules, 2016. The Competent Authority has, therefore, decided to issue directions in exercise of power conferred by Rule 104 of the NCLAT Rules, 2016 with regard to computation of limitation for the purposes of filing an Appeal in the Appellate Tribunal.

Hence, with regard to computation of limitation in Appeals, following directions are hereby issued by the Competent Authority: -

- (1) The period of limitation shall be computed from the date of presentation of Appeal as per Rule 22 of the NCLAT Rules, 2016.
- (2) The requirement of filing Appeals by electronic mode shall continue along with mandatory filing of the Appeals as per Rule 22 of the NCLAT Rules, 2016.
- (3) This order will be effective with effect from 1st November, 2022.

All concerned shall ensure that Appeals are presented as per Rule 22 of the NCLAT Rules, 2016 within the period of limitation at the filing counter.

By Order of the Hon 'ble Chairperson Sd/-
(Peeush Pandey)
Registrar”

9. Rule 22 of the NCLAT Rules, 2016 reads as:

“22. Presentation of appeal.- (1) Every appeal shall be presented in Form NCLAT-1 in triplicate by the appellant or petitioner or applicant or respondent, as the case may be, in person or by his duly authorised representative duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same.

(2) Every appeal shall be accompanied by a certified copy of the impugned order.

(3) All documents filed in the Appellate Tribunal shall be accompanied by an index in triplicate containing their details and the amount of fee paid thereon. (4) Sufficient number of copies of the appeal or petition or application shall also be filed for service on the opposite party as prescribed.

(5) In the pending matters, all other applications shall be presented after serving copies thereof in advance on the opposite side or his advocate or authorised representative.

(6) The processing fee prescribed by the rules, with required number of envelopes of sufficient size and notice forms as prescribed shall be filled along with memorandum of appeal.”

10. The apprehension expressed by the Petitioner is that in view of the above order dated 21st October, 2022 and given that the e-filing was done within limitation, but the physical filing was done on the following Monday, the Appeal may be dismissed.

11. Heard. Since the matter is pending adjudication before the NCLAT, which is a duly constituted Tribunal under Section 410 of the Companies Act, 2013, this Court does not wish to give any opinion on the factual issue i.e., whether the appeal was within limitation period or not. Suffice it to observe that the prevalent position with regards to e-filing of documents across Courts and Tribunals in the country, encouraging e-filing, which may become the norm in the future, would duly be taken into consideration by the Tribunal.

12. With these observations, the petition, and all pending applications, is disposed of leaving the Petitioner’s remedies open, in accordance with law, upon the decision being taken by the NCLAT.