

[2022 LiveLaw \(SC\) 472](#)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

L. NAGESWARA RAO; PAMIDIGHANTAM SRI NARASIMHA, JJ.

CIVIL APPEAL NO.2212 OF 2021; 29th April, 2022

SAFIRE TECHNOLOGIES PVT. LTD *Versus* REGIONAL PROVIDENT FUND COMMISSIONER & ANR.

Insolvency and Bankruptcy Code, 2016; Section 61 - An appeal against the order of NCLT shall be preferred within a period of 30 days from the date on which the order was passed by the NCLT. The Appellate Tribunal has the power to extend the period of limitation by another 15 days. [Referred to *Kalpraj Dharamshi & Anr. vs. Kotak Investment Advisors Ltd;* (2021) 10 SCC 401]

For Appellant(s) Dr. U. K. Chaudhary, Sr. Adv. Mr. Ankur Yadav, AOR Mr. Sandeep Singh, Adv. Mr. Rahul Sharma, Adv.

For Respondent(s) Mr. Rony Oommen John, AOR R-1 Mr. Piyush Swami, Adv. Mr. Arshdeep Singh, Adv. Mr. Himanshu Tyagi, AOR

ORDER

Corporate Insolvency Resolution Process ('CIRP') of Maruti Koatsu Cylinders Limited was initiated before National Company Law Tribunal ('NCLT') Ahmedabad on 26.04.2018. The resolution plan was approved by the Committee of Creditors ('CoC') on 04.04.2019 and was also approved by the NCLT on 22.10.2019. Thereafter, the Respondent No.1, Regional Provident Fund Commissioner filed a claim before the Resolution Professional on 09.10.2019 regarding the provident fund dues which was not considered. An appeal before the National Company Law Appellate Tribunal ('NCLAT') was filed on 14.12.2020 by Respondent No. 1 against the order dated 22.10.2019 approving the resolution plan. By an Order dated 19.01.2021, notice was issued by the NCLAT in this appeal. The appellant is aggrieved by the issuance of notice by NCLAT in the appeal filed by Respondent No.1, being contrary to Section 61(2) of the Insolvency and Bankruptcy Code ('IBC'), and, therefore, this appeal. Section 61(2) of the IBC reads as under:

"61. Appeals and Appellate Authority.

(1)

(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 appellant contends that an appeal against an order passed by the NCLT has to be filed within 45 days from the date of passing of the order. In support of the said contention, the appellant relied upon the judgment of this Court in Civil Appeal Nos.2943-2944 of 2020 etc. dated 10.03.2021 titled ***Kalpraj Dharamshi & Anr. vs. Kotak Investment Advisors Ltd. & Anr.***

Learned counsel appearing for the respondent stated that period of limitation would start from the date of knowledge. Though, the claim was filed by Respondent No.1 before the Resolution Professional, it was not a party before the NCLT which passed the order approving the resolution plan. According to the learned counsel for 1st Respondent, he came to know about the order passed by the NCLT much later. Support was sought from a judgment of this Court in ***Raja Harish Chandra Raj Singh vs. Dy. Land Acquisition Officer [1962 (1) SCR 676]*** for submitting that provisions relating to limitation have to be given a liberal construction.

The judgment that is relied upon by the Respondent No. 1 relates to Section 18 of the Land Acquisition Act. However, we are concerned with the limitation prescribed by Section 61 of the IBC which fell for consideration of this Court in ***Kalpraj Dharamshi*** (supra). In the said judgment, it was categorically held by this Court that an appeal against the order of NCLT shall be preferred within a period of 30 days from the date on which the order was passed by the NCLT. The Appellate Tribunal has the power to extend the period of limitation by another 15 days.

In view of the aforesaid judgment, we are of the considered view that the Appellate Tribunal committed an error in issuing notice in an appeal that was filed by Respondent No.1 with delay of 388 days.

The appeal is, accordingly, allowed. Pending application(s), if any, shall stand disposed of.

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