

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Company Appeal (AT) (Insolvency) No. 1071 of 2023
& I.A. No.3694 of 2023**

[Arising out of Order dated 08.05.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench-II, Kolkata in IA (IB) No.1054/KB/2020 in TP(IBC)/1/(KB)/2023 (C.P. (IB) No. 771/(KB)/2023]

In the matter of:

Raiyan Hotels and Resorts Pvt. Ltd. ...Appellant

Vs.

Unrivalled Projects Private Limited ...Respondent

For Appellant: Mr. Dhruba Mukherjee, Sr. Advocate with Mr. Abhijeet Sinha, Mr. Kumar Anurag Singh, Mr. Anando Mukherjee, Mr. Shyama Prasad, Mr. Saikat Sarkar Chatopadhyay, Mr. Zain A. Khan and Mr. Morigana Shikhar, Advocates.

For Respondent: Mr. Shaunak Mitra, Mr. Kunal Mimani, Mr. Debayan Sen, Mr. Kartikey Bhatt, Mr. Gaurav Khatri, Advocates.

**Company Appeal (AT) (Insolvency) No. 588 of 2023
& I.A. No.1956 of 2023**

[Arising out of Order dated 12.01.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-IV in IA 740/MB/-IV/2021 in CP (IB) No.543/MB-IV/2018]

In the matter of:

Aryan Mining & Trading Corpn Pvt. Ltd. ...Appellant

Vs.

Kail Limited and Anr. ...Respondents

For Appellant: Mr. Abhijeet Sinha, Mr. Gaurav Sethi, Mr. Abhinav Tyagi, Mr. Deeptanshu, Advocates.

For Respondents: Mr. J. Rajesh, Mr. Dhruvad Vaghani, Ms. Nandita Bajpai, Mr. Ajiz M.K., Mr. Tushar Goel, Advocates for RP.

J U D G M E N T
(11th October, 2023)

Ashok Bhushan, J.

1. These are two Applications praying for Condonation of Delay in the Appeals filed under Section 61 of the IBC challenging the order passed by the Adjudicating Authority. We now proceed to notice the facts of each case and the grounds taken in the Applications for Condonation of Delay.

Company Appeal (AT) (Insolvency) No. 1071 of 2023

2. This Appeal has been filed against the order dated 08.05.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench-II, Kolkata in IA (IB) No.1054/KB/2020 in TP(IBC)/1/(KB)/2023 (C.P. (IB) No. 771/(KB)/2023, whereby Learned Member Technical (3rd Member) delivered his opinion on difference of opinion in two Members forming the Division Bench.

3. The Appeal has been e-filed on 04.07.2023. In the Application praying for Condonation of Delay, it is stated that the order was pronounced by the Adjudicating Authority on 08.05.2023 but copy of the order was neither provided to the Appellant nor uploaded on the website. The Appellant claim to have addressed an e-mail on 15.05.2023 for providing a copy of the order.

It is stated that the copy of the order was e-mailed to the Appellant on 02.06.2023. Thereafter, the Appeal was e-filed on 04.07.2023. It is pleaded in the Application that it is a trite law that a period of limitation is to be computed from the date of knowledge of the order. It is the case of the Appellant that the limitation would start running from the date of knowledge of the same i.e. 02.06.2023, hence, there is delay of only one day, however, according to the Registry, the delay is 27 days. It is further pleaded in the Application that the Appellate Tribunal was closed for summer vacations from 02.06.2023 till 03.07.2023, hence, the said period is to be excluded from computing the period of limitation.

4. A reply to Section 5 Application has been filed on behalf of the Respondent. In the Reply, it is stated that the Appellant has not applied for certified copy of the order. The communication sent to the Registry on 15.05.2023 was not to obtain certified copy of the order. The period of limitation for preferring the Appeal shall commence from 08.05.2023 on the date when the order was pronounced. It is submitted that as per the notice dated 30.05.2023 issued by the Registrar, NCLAT even during the period of annual summer vacation of this Tribunal from 05.06.2023 to 02.07.2023, the Registry of this Tribunal continued to function and e-filing was operational. Registry has correctly mentioned that there is a delay of 27 days. Appellant having not applied for certified copy of the order, he is not entitled for any exclusion. Appeal being barred by time, deserves to be rejected.

Company Appeal (AT) (Insolvency) No. 588 of 2023

5. This Appeal has been filed against the order dated 12.01.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-IV in IA 740/MB/-IV/2021 in CP (IB) No.543/MB-IV/2018 by which order the Adjudicating Authority has allowed the IA filed by the Resolution Professional and approved the Resolution Plan. The Resolution Plan was submitted by 'Aryan Mining & Trading Corporation Private Limited', Appellant herein. The Appeal has been e-filed on 11.03.2023. In the Delay Condonation Application being IA No.1956 of 2023, ground taken in the application is that the impugned order was passed on 12.01.2023 and the Appellant applied certified copy of the order on 06.02.2023 and a certified (free of cost) copy was received by the Appellant on 08.02.2023. It is stated in the Application that sometime was taken to review of the impugned order and discussing and deliberating upon filing of an Appeal before this Tribunal to the extent that the NCLT did not allow the various concessions, reliefs and dispensations sought by the Appellant at Annexure VI to its Resolution Plan. The Appellant could provide instructions to prepare for filing the accompanying appeal on or around 20.02.2023. Thereafter, the Appellant's legal counsel commenced drafting of the Appeal and the first draft was circulated on 01.03.2023. Certified copy of the order was dispatched to the Appellant's Counsel which was received on 27.02.2023. The draft appeal was thereafter internally reviewed by the Appellant and approved on 10.03.2023. Thereafter, the Appeal was filed on 11.03.2023. The Appellant's case is that the date of

limitation shall start from when Appellant received the copy of the order, hence, there is a delay of only one day in filing the Appeal.

6. We have heard Shri Dhruba Mukherjee, Sr. Advocate and Shri Abhijeet Sinha, Learned Counsel for the Appellant and Shri Shaunak Mitra, Learned Counsel for the Respondent in Company Appeal (AT) (Ins.) No. 1071 of 2023. In Company Appeal (AT) (Ins.) No.588 of 2023, we have heard Shri Abhijeet Sinha, Learned Counsel for the Appellant and Shri J. Rajesh, Learned Counsel for the Respondents.

7. Learned Counsel for the Appellant in support of Delay Condonation Application in Company Appeal (AT) (Ins.) No.1071 of 2023 has submitted that the Appellant was not aware of the contents of the order till the same was received by the Appellant on 02.06.2023. It is submitted that the Appeal can be filed by aggrieved person only when he is aware of contents of the order. By the impugned order, Adjudicating Authority directed that the order shall be placed before the President, NCLT for further course of action. It is submitted that the Appellant has sent an e-mail on 15.05.2023 to the Registrar, NCLT for providing a copy of the order and thereafter, sent an email to the Secretary, Ministry of Corporate Affairs on 01.06.2023. It was thereafter on 02.06.2023 free of cost copy was emailed to the Appellant. It is submitted that there is a delay of only one day and not 27 days as per the Registry of the Court.

8. Learned Counsel for the Respondent refuted the submissions of the Appellant contends that the period for limitation of filing an Appeal commenced on the date when order was pronounced. It is submitted that the impugned order was pronounced on 08.05.2023 by the Adjudicating Authority in the presence of Counsel for the Appellant as well as Counsel for the Respondent. When the order was pronounced in presence of the Counsel, it is not open for the Appellant to take the plea that he was not aware of the contents of the order. Appellant has not applied certified copy of the order nor any material has been enclosed along with the Delay Condonation Application to indicate that the Appellant even applied for certified copy of the order. Limitation shall commence from 08.05.2023 and the Appeal filed on 04.07.2023 is beyond 15 days after expiry of the limitation.

9. Shri Abhijeet Sinha, Learned Counsel for the Appellant in support of the Delay Condonation Application in Company Appeal (AT) (Ins.) No.588 of 2023 submits that the Adjudicating Authority by impugned order dated 12.01.2023 approved the Resolution Plan which was submitted by the Appellant. The plan being approved on that date Appellant has no cause of action to challenge the order or file an Appeal. Appellant when received the copy of the order on 08.02.2023, it came to know that various concessions, reliefs and dispensations sought by the Appellant have not been granted. It is submitted that the right of Appeal arises only when contents of the order are known to the Appellant. When the contents of the order were not known to the Appellant, there was no occasion to apply for certified copy of the order

and file an Appeal and cause of action for filing an Appeal only arose when Appellant received the copy of the order and the Appeal having been filed on 11.03.2023, there is a delay of only one day.

10. Learned Counsel for the Respondents refuting the submissions contends that the order was pronounced on 12.01.2023 in the presence of the Counsel for the Appellant, hence, the Appellant cannot take plea that he was not aware of the contents of the order. The order being pronounced in presence of the Counsel for the Appellant, period of limitation shall commence from the date when order was pronounced. It is submitted that plea of the Appellant that limitation shall commence from 08.02.2023 when he received copy of the order cannot be accepted. It is submitted that according to the own case of the Appellant, he applied certified copy of the order i.e. on 06.02.2023 which was received on 08.02.2023 which was only a free of cost copy. Appeal being filed beyond 15 days after expiry of the limitation, deserves to be dismissed as barred by time.

11. We have considered the submissions of the Counsel for the parties and perused the record.

12. From the submissions of the Counsel for the parties in both the Appeals, following questions arise for consideration:

- (i) Whether limitation for filing an Appeal under Section 61 of the IBC shall commence from the date of the order or from the date when

contents of the order are known to the aggrieved party i.e. the date when copy of the order is received by an aggrieved party?

(ii) Whether in the Delay Condonation Application being IA No.3694 of 2023 sufficient grounds have been made out to condone the delay in filing the Appeal?

(iii) Whether in Delay Condonation Application being IA No.1956 of 2023 sufficient grounds have been made out to condone the delay in filing the Appeal?

13. Counsel for the both the parties have relied on various judgments of the Hon'ble Supreme Court in support of the submissions which we shall notice hereinafter while considering the submissions of the parties in detail.

Question No.(i)

14. Learned Counsel for the Appellant submitted that the right of Appeal can be exercised by an aggrieved person only when he is aware of the contents of the order. Unless contents of the order are known to the Appellant, no Appeal can be filed under Section 61. Thus, the knowledge of the contents of the order by an aggrieved person is an essential fact for computation of limitation for filing an Appeal. We have noted the submission of the Counsel for the Appellant in Company Appeal (AT) (Ins.) No.1071 of 2023 that the Adjudicating Authority pronounced the order on 08.05.2023 which was opinion by 3rd Member due to difference in two Members Bench. 3rd Member while agreeing with the view of Technical Member has answered the reference

in paragraph 29 of the impugned order. Further, the third Member has directed that the matter shall be placed before the President, NCLT for further course of action. It is contended that the Appellant came to know only when he received the copy of the order by e-mail dated 02.06.2023, thus, the limitation shall be commenced from 02.06.2023.

15. Similarly, in support of the Delay Condonation Application in Company Appeal (AT) (Ins.) No.588 of 2023, it is submitted by Shri Abhijeet Sinha that on 12.01.2023 order was pronounced by the Adjudicating Authority that Resolution Plan has approved but Appellant was not aware as to what reliefs and concessions of the Appellant have not granted and the order was communicated to the Appellant only on 08.02.2023 and then Appellant came to know that he has cause of action for filing an Appeal. Thus, the limitation for filing the Appeal shall be commenced from 08.02.2023.

16. Learned Counsel for the Appellant in support of the above submissions has placed reliance on three Judgments of the Hon'ble Supreme Court. First Judgment is relied by Counsel for the Appellant is "**Harish Chandra Raj Singh vs. The Deputy Land Acquisition Officer and Ors.- AIR 1961 SC 1500**". In the above case, the question which arose for consideration was limitation for filing a reference under Section 18 of the Land Acquisition Act 1894. Proviso to Section 18 prescribed a period of limitation for filing a reference under Section 18. Section 18 with its proviso is as follows:-

"18. Reference to Court. - (1) Any person interested who has not accepted the award may, by

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written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made-

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire."

17. In the above case, the Hon'ble Supreme Court has held that the knowledge of the party affected by decision of a Collector either actual or constructive, is an essential element which must be satisfied before the decision can be brought into force. It has been held that writing the award or filing the award before the Collector is not sufficient, it must involve the communication of the award to the party concerned either actually or constructively. The Hon'ble Supreme Court in the above context held that the date of the award used in the proviso must mean the date when the award is

either communicated to the party or is known by him either actually or constructively. In paragraph 6 of the judgment, following has been laid down:-

“6. There is yet another point which leads to the same conclusion. If the award is treated as an administrative decision taken by the Collector in the matter of the valuation of the property sought to be acquired it is clear that the said decision ultimately affects the rights of the owner of the property and in that sense, like all decisions which affect persons, it is essentially fair and just that the said decision should be communicated to the said party. The knowledge of the party affected by such a decision, either actual or constructive, is an essential element which must be satisfied before the decision can be brought into force. Thus considered the making of the award cannot consist merely in the physical act of writing the award or signing it or even filing it in the office of the Collector; it must involve the communication of the said award to the party concerned either actually or constructively. If the award is pronounced in the presence of the party whose rights are affected by it it can be said to be made when pronounced. If the date for the pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced the award is said to be communicated to the said party even if the said party is not actually present on the date of its pronouncement. Similarly if without notice of the date of its pronouncement an award is pronounced and a party is not present the award can be said to be made when it is communicated to the party later. The knowledge of the party affected by the

award, either actual or constructive, being an essential requirement of fair play and natural justice the expression

"the date of the award" used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively.

In our opinion, therefore, it would be unreasonable to construe the words "from the date of the Collector's award" used in the proviso to 18 in a literal or mechanical way."

18. The Hon'ble Supreme Court in the above case was construing the provision of Section 18 of the Land Acquisition Act. The Hon'ble Supreme Court itself has noted in the said judgment the proviso of the Land Acquisition Act which provided that provision of Section 12(2) makes it obligatory on the Collector to give immediate notice of the award to the persons interested as are not present personally or by their representatives when the award is made.

19. In facts of the above case, no notice was given by Collector to the Appellant. What was held by the Hon'ble Supreme Court in the above case was in light of the statutory provision of the Land Acquisition Act and does not support to the Appellant submission in the present case.

20. Second case relied by the Appellant is **"State of Punjab vs. Qaisar Jehan Begum and Anr- (1964) 1 SCR 971"**. The above case was again a case pertaining to Section 18 of the Land Acquisition Act. The Hon'ble

Supreme Court in the above case relying on “**Raja Harish Chandra Raj Singh vs. The Deputy Land Acquisition Officer- (1962) 1 SCR 676**” case and held that the period of six months provided in proviso to Section 18 commenced from the date of knowledge of the order. In paragraph 4 of the judgment, following was held:-

“4. As to the second part of clause (b) of the proviso, the true scope and effect thereof was considered by this court in Raja Harish Chandra's case. It was there observed that a literal and mechanical construction of the words "six months from the date of the Collector's award" occurring in the second part of clause (b) of the proviso would not be appropriate and "the knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fair play and natural justice, the expression... used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively". Admittedly the award was never communicated to the respondents. Therefore the question before us boils down to this. When did the respondents know the award either actually or constructively? Learned counsel for the appellant has placed very strong reliance on the petition which the respondents made for interim payment of compensation on December 24, 1954. He has pointed out that the learned Subordinate Judge relied on this petition as showing the respondents' date of knowledge and there are no reasons why we should take a different view. It seems clear, to us that the ratio of the decision in Raja

Harish Chandra case (supra) is that the party affected by the award must know it, actually or constructively, and the period of six months will run from the date of that knowledge. Now knowledge of the award does not mean a mere knowledge of the fact that an award has been made. The knowledge must relate to the essential contents of the award. These contents may be known either actually or constructively. If the award is communicated to a party under Section 12(2) of the Act, the party must be obviously fixed with knowledge of the contents of the award whether he reads it or not. Similarly when a party is present in court either personally or through his representative when the award is made by the Collector, it must be presumed that he knows the contents of the award. Having regard to the scheme of the Act we think that knowledge of the award must mean knowledge of the essential contents of the award. Looked at from that point of view, we do not think that it can be inferred from the petition dated December 24, 1954 that the respondents had knowledge of the award. One of the respondents gave evidence before the learned Subordinate Judge and she said:

"The application marked as Ex. D-1 was given by me but the amount of compensation was, not known to me, nor did I know about acquisition of the land. Chaudhari Mohd. Sadiq, my Karinda had told me on the day I filed the said application that the land had been acquired by the Government."

This evidence was not seriously contradicted on behalf of the appellant and the learned Subordinate Judge did not reject it. It is worthy of the note that before the Collector also the appellant did not seriously challenge the statement of the respondents that they came to know of the award on July 22, 1955 the date on which the compensation was paid. On the reply which the appellant filed before the learned Subordinate Judge there was no contradiction of the averment that the respondents had come to know of the award on July 22, 1955. That being the position we have come to the conclusion that the date of knowledge in this case was July 22, 1955. The application for a reference was clearly made within six months from that date and was not therefore barred by time within the meaning of the second part of clause (b) of the proviso to Section 18 of the Act.”

21. It is noticeable from both the above judgments that it was held in the statutory scheme of Land Acquisition Act that right to make a reference under Section 18 shall arise from knowledge of the award. It was also held that the knowledge of award may be actually or constructively. It was held by the Hon’ble Supreme Court in **“Raja Harish Chandra Raj Singh”** (supra) that if the award was pronounced in the presence of the party whose right is affected by it, it can be said to be made when pronounced. It was held that the knowledge of the party affected by the award may be either actual or constructive. In **“State of Punjab”** (supra), the Hon’ble Supreme Court held that the knowledge must relate to the essential contents of the award. These

contents may be known either actually or constructively. When a party affected by the award is present at the time when pronouncement of the award knowledge of the contents of the award has to be read constructively to the party, which is the law laid down by the Hon'ble Supreme Court in the above case.

22. The present is a case where order is pronounced by the Adjudicating Authority in accordance with the statutory Rules namely— National Company Law Tribunal Rules, 2016. In the facts of both the above Appeals, we have noticed that the orders were pronounced by the Adjudicating Authority in presence of Counsel for the Appellant, thus, the knowledge of the order has to be constructively communicated on the Appellant and it is not open for the Appellant that they were not aware of the contents of the order. Limitation for filing of the Appeal does not commence on the date when Appellant became aware of contents but it shall commence when order was pronounced.

23. The Hon'ble Supreme Court in ***“V. Nagarajan vs. SKS Ispat and Power Limited and Ors.- (2022) 2 SCC 244”*** has elaborately considered the question of all aspects of limitation for filing an Appeal under Section 61 of the IBC. In paragraph 16 of the judgment, two issues were noticed in following manner:-

“16.1. (i) when will the clock for calculating the limitation period run for appeals filed under IBC; and

16.2. (ii) is the annexing of a certified copy mandatory for an appeal to NCLAT against an order passed under IBC.”

24. The Hon’ble Supreme Court has noticed that in Section 421(3) of the Companies Act, 2013, the Appeal was to be filed from the date when copy of the order of the Tribunal is made available to the person aggrieved which expression is omitted in Section 61 of the IBC. The same was noticed in paragraph 24 of the judgment in following words:-

“24. IBC is a complete code in itself and overrides any inconsistencies that may arise in the application of other laws. Section 61 IBC, begins with a non obstante provision- "notwithstanding anything to the contrary contained under the Companies Act, 2013" when prescribing the right of an aggrieved party to file an appeal before NCLAT along within the stipulated period of limitation. The notable difference between Section 421(3) of the Companies Act and Section 61(2) IBC is in the absence of the words "from the date on which a copy of the order of the Tribunal is made available to the person aggrieved" in the latter. The absence of these words cannot be construed as a mere omission which can be supplemented with a right to a free copy under Section 420(3) of the Companies Act read with Rule 50 of the NCLT Rules for the purposes of reckoning limitation. This would ignore the context of IBC's provisions and the purpose of the legislation.”

25. The Hon'ble Supreme Court further observed that even an aggrieved party expected to file an appeal, the party has to pro-active and has to apply for certified copy of the order. In paragraph 31 of the judgment, following has been laid down:-

“31. The import of Section 12 of the Limitation Act and its Explanation is to assign the responsibility of applying for a certified copy of the order on a party. A person wishing to file an appeal is expected to file an application for a certified copy before the expiry of the limitation period, upon which the b "time requisite" for obtaining a copy is to be excluded. However, the time taken by the court to prepare the decree or order before an application for a copy is made cannot be excluded. If no application for a certified copy has been made, no exclusion can ensue. In fact, the Explanation to the provision is a clear indicator of the legal position that the time which is taken by the court to prepare the decree or order cannot be excluded before the application to obtain a copy is made. It cannot be said that the right to receive a free copy under Section 420(3) of the Companies Act obviated the obligation on the appellant to seek a certified copy through an application. The appellant has urged that Rule 14 of the NCLAT Rules empowers NCLAT to exempt parties from compliance with the requirement of any of the rules in the interests of substantial justice, which has been typically exercised in favour of allowing d a downloaded copy in lieu of a certified copy. While it may well be true that waivers on filing an appeal with a certified copy are often granted for the purposes of

judicial determination, they do not confer an automatic right on an applicant to dispense with compliance and render Rule 22(2) of the NCLAT Rules nugatory. The act of filing an application for a certified copy is not just a technical requirement for computation of limitation but also an indication of the diligence of the aggrieved party in pursuing the litigation in a timely fashion. In a similar factual scenario, NCLAT had dismissed an appeal²¹ as time-barred under Section 61(2) IBC since the appellant therein was present in court, and yet chose to file for a certified copy after five months of the pronouncement of the order.”

26. The Hon'ble Supreme Court categorically held in paragraph 32 of the judgment that the limitation commenced once the order was pronounced. In paragraph 32 of the judgment, following was laid down:-

“32. The appellant had argued that the order of NCLAT notes that NCLT Registry had objected to the appeal in regard to limitation, to which the appellant had filed a reply stating that the limitation period would begin from the date of the uploading of the order, which was 12-3-2020. The appellant submitted that the suo motu order of this Court dated 23-3-2020, taking retrospective effect from 15-3-2020, made under Article 142 of the Constitution, extended the limitation until further orders, which renders the appeal filed on 8-6-2020 within limitation. However, it is important to note that this Court had only extended the period of limitation applicable in the proceedings, only in cases where such

period had not ended before 15-3-2020. In this case, owing to the specific language of Sections 61(1) and 61(2), it is evident that limitation commenced once the order was pronounced and the time taken by the court to provide the appellant with a certified copy would have been excluded, as clarified in Section 12(2) of the Limitation Act, if the appellant had applied for a certified copy within the prescribed period of limitation under b Section 61 (2) IBC. The construction of the law does not import the absurdity the appellant alleges of an impossible act of filing an appeal against an order which was uploaded on 12-3-2020. However, the mandate of the law is to impose an obligation on the appellant to apply for a certified copy once the order was pronounced by NCLT on 31-12-20193, by virtue of Section 61(2) IBC read with Rule 22(2) of the NCLAT Rules. In the event the appellant was correct in his assertion that a correct copy of the order was not available until 20-3-2020, the appellant would not have received a certified copy in spite of the application till such date and accordingly received the benefit of the suo motu order of this Court which came into effect on 15-3-2020. However, in the absence of an application for a certified copy, the appeal was barred by limitation much prior to the suo motu direction of this Court, even after factoring in a permissible fifteen days of condonation under Section 61(2). The Court is not empowered to condone delays beyond statutory prescriptions in special statutes containing a provision for limitation.”

27. The Hon'ble Supreme Court in "**V. Nagarajan**" (supra) has also referred to earlier judgment of the Hon'ble Supreme Court in "**Kalpraj Dharamshi vs. Kotak Investment Advisors Ltd.- (2021) 10 SCC 401**" wherein in paragraph 53 of the judgment, the Hon'ble Supreme Court noticing Section 61 of the IBC has observed that an appeal will have to be preferred within a period of 30 days from the date on which the order was passed by the NCLT. Paragraph 53 is as follows:-

"3. Since there is a period different from the one which is prescribed by the Schedule to the Limitation Act, the limitation for an appeal would be governed Section 61 of the I&B Code, which is a special statute. As such, an appeal will have to be preferred within a period of thirty days from the date on which the order was passed by NCLT. However, if NCLAT is satisfied, that there was sufficient cause for not filing the appeal within a period of thirty days, it may allow an appeal to be filed within a further period of fifteen days. As such, the normal period of limitation prescribed under the I&B Code is thirty days, with a provision for allowing the filing of an appeal within a further period of fifteen days, if NCLAT is satisfied, that there was a sufficient cause for not filing the appeal within thirty days."

28. We may also refer to the judgment of the Hon'ble Supreme Court in Civil Appeal No.2212 of 2021- "**Safire Technologies Pvt. Ltd. V. Regional Provident Fund Commissioner & Anr.**" decided on 29.04.2022. It is to be

noticed that in the above case, judgment of the Hon'ble Supreme Court in "**Raja Harish Chandra Raj**" (supra) was relied. In the above case, contention of the Appellant was that the limitation for filing an Appeal under Section 61 shall arise from the date of knowledge. The said contention was rejected. Following was held by the Hon'ble Supreme Court in the above case:-

"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 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.”

29. Learned Counsel for the Appellant has also relied on the judgment of the Hon’ble Supreme Court in **“D. Saibaba vs. Bar Council of India and Anr.- (2003) 6 SCC 186”**. In the above case, Review Petition was filed by the Appellant was rejected as barred by time and the Hon’ble Supreme Court has occasion to examine Section 48-AA of the Advocates Act, 1961. Contention was raised in the Appeal that right to review can be exercised only when order is known or communicated to the aggrieved person. The Hon’ble Supreme Court has held that the expression “the date of that order” as occurring in Section 48-AA has to be construed as meaning the date of communication or knowledge of the order. The Hon’ble Supreme Court also in the said case has

referred to judgment of **“Raja Harish Chandra Raj Singh”** (supra). In paragraphs 9 and 10, following was held:-

“9. So far as the commencement of the period of limitation for filing the review petition is concerned we are clearly of the opinion that the expression "the date of that order" as occurring in Section 48-AA has to be construed as meaning the date of communication or knowledge of the order to the review petitioner. Where the law provides a remedy to a person, the provision has to be so construed in case of ambiguity as to make the availing of the remedy practical and the exercise of power conferred on the authority meaningful and effective. A construction which would render the provision nugatory ought to be avoided. True, the process of interpretation cannot be utilized for implanting a heart into a dead provision; however, the power to construe a provision of law can always be so exercised as to give throb to a sinking heart.

10. An identical point came up for the consideration of this Court in Raja Harish Chandra Raj Singh v. Dy. Land Acquisition Officer'. Section 18 of the Land Acquisition Act, 1894 contemplates an application seeking reference to the court being filed within six months from the date of the Collector's award. It was held that "the date of the award" cannot be determined solely by reference to the time when the award is signed by the Collector or delivered by him in his office. It must involve the consideration of the question as to when it was known to the party concerned either

actually or constructively. If that be the true position, then placing a literal and mechanical construction on the words "the date of the award" occurring in the relevant section would not be appropriate. It is fair and just that a decision is communicated to the party whose rights will ultimately be affected or who will be affected by the decision. The knowledge, either actual or constructive, of the party affected by such a decision, is an essential element which must be satisfied before the decision can be brought into force. Thus construed, the making of the award cannot consist merely of the physical act of writing an award or signing it or even filing it in the office of the Collector; it must involve the communication of the said award to the party concerned either actually or constructively. A literal or mechanical way of construing the words "from the date of the Collector's award" was held to be unreasonable. The Court assigned a practical meaning to the expression by holding it as meaning the date when the award is either communicated to the party or is known by him either actually or constructively."

30. The Hon'ble Supreme Court in the same judgment in paragraph 14 has also held that the expression "the date of that order", therefore, mean and must be construed as meaning the date of **communication or knowledge, actual or constructive**, of the order sought to be reviewed. In paragraph 14 of the judgment, following was held:-

"14. How can a person concerned or a person aggrieved be expected to exercise the right of review conferred by the provision unless the order is communicated to or is

known to him either actually or constructively? The words "the date of that order", therefore, mean and must be construed as meaning the date of communication or knowledge, actual or constructive, of the order sought to be reviewed."

31. In the present case, orders passed by the Adjudicating Authority were pronounced in the open Court in the presence of the Counsel for the Appellant. In any view of the matter, they cannot contend that they do not have even constructive knowledge of the order on the said date. Knowledge of the order has to be actual or constructive knowledge and when the orders are pronounced, it can very well be said that the constructive knowledge has to be imputed to the contents of the order to an aggrieved party. In event the submission of the Appellant is accepted that unless the contents of the order are known to an aggrieved party, he cannot exercise the right of appeal and period of limitation for filing an Appeal shall not commence till he is aware of the contents of the order, it may lead to uncertainty and delay in resolution process which are not in accordance with the scheme of the IBC. IBC is a statute which provide for timely resolution/ liquidation of the Corporate Debtor. Timeline for various acts are prescribed. The Hon'ble Supreme Court in "**V. Nagarajan**" (supra) has held that Section 61 has to be interpreted keeping in view the purpose and object of the IBC and Section 61 has to be put to interpretation in the above manner. We, thus, are of the view that the submission of the Appellant that the period of limitation shall commence for filing the Appeal when aggrieved party/ Appellant is aware of the contents of the order cannot be accepted.

32. In the present case, when orders were pronounced by the Adjudicating Authority, they cannot be allowed to contend that they are not aware of the order of the Adjudicating Authority. Further, Section 12 of the Limitation Act provides for exclusion of the time taken in obtaining certified copy of an order. After an order is pronounced which pronouncement is well known to the Appellant in the present case, it was open for them to apply for the certified copy of order, even if they are not aware of the contents of the order as per their submissions on that date. Certified copy of the order could have been very well obtained by them and time taken in preparing the certified copy of the order is required to be excluded. It is the scheme of the Limitation Act, 1963 which has been held to be applicable in the IBC proceeding. Law, thus, clearly provides opportunity to any aggrieved party to obtain certified copy of the order and file an appeal after exclusion of the period obtaining in certified copy of the order. Legislative scheme takes care of all situations where order was pronounced by a Court, it is expected for the parties to diligently apply for certified copy of the order in event there may be any chance to file an appeal.

33. In view of the foregoing discussions, we are of the view that Question (i) has to be answered in following manner:-

The limitation for filing an Appeal under Section 61 shall commence from the date when the order is pronounced and not from the date when

aggrieved party or Appellant claims to have knowledge of the contents of the order.

Question No.(ii)

34. It is undisputed that the order was pronounced on 08.05.2023. The order clearly notices the presence of the Counsel who appeared on the date physically/ video conferencing. It is not denied by the Appellant that the order was pronounced on 08.05.2023. The submission of the Appellant that he came to know about the contents of the order only when order was received by an e-mail dated 02.06.2023 as noticed above. The Hon'ble Supreme Court in "**V. Nagarajan**" (supra) and "**Kalpraj Dharamshi vs. Kotak Investxment Advisors Ltd.**" (supra) already held that the limitation for filing an appeal under Section 61 shall commence from the date of the order. We have already held while considering Question No.(i) that the limitation shall not commence when aggrieved party or Appellant came to know of the contents of the order. The Appeal having been filed on 04.07.2023 i.e. after 15 days from expiry of limitation, there is a delay of 27 days in filing the Appeal. Our jurisdiction to condone the delay is limited to only 15 days under Section 61(2), the Delay Condonation Application cannot be allowed. We, thus, are of the view that no sufficient ground has been made out in I.A. No.3694 of 2023 to condone the delay in filing the Appeal being Company Appeal (AT) (Insolvency) No. 1071 of 2023.

Question No.(iii)

35. The order was pronounced by the Adjudicating Authority on 12.01.2023. Counsel for the Successful Resolution Applicant i.e. Appellant was present when the order was pronounced. Thus, limitation for filing the appeal begins from 12.01.2023 and shall not be depending upon the knowledge of the contents of the order to the Appellant as has been held by us while considering Question No.(i). Appellant's case is that he has applied for certified copy on 06.02.2023 and he has received free of cost copy on 08.02.2023. Even if exclusion of the aforesaid period is given, it shall be only 3 days against the order dated 12.01.2023. Appeal has been filed on 11.03.2023 even after giving exclusion of 3 days, period of 45 days shall come to an end by 02.03.2023, hence, the appeal has been filed with a delay of more than 15 days after expiry of limitation. Our jurisdiction to condone the delay is limited to 15 days, we are unable to condone the delay in filing the appeal.

36. We hold that there are no sufficient grounds made out in I.A. No.1956 of 2023 to condone the delay in filing the Appeal being Company Appeal (AT) (Insolvency) No.588 of 2023.

37. In view of the foregoing discussions and conclusions, we are of the view that both the Delay Condonation Applications deserve to be dismissed.

38. In result, Delay Condonation Applications are dismissed. Memo of Appeals being Company Appeal (AT) (Insolvency) No.1071 of 2023 and Company Appeal (AT) (Insolvency) No.588 of 2023 are rejected.

**[Justice Ashok Bhushan]
Chairperson**

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

**[Arun Baroka]
Member (Technical)**

New Delhi
Anjali

**Company Appeal (AT) (Insolvency) No. 1071 of 2023
& I.A. No.3694 of 2023
with
Company Appeal (AT) (Insolvency) No. 588 of 2023
& I.A. No.1956 of 2023**