

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

IA No.990/2022

in

Company Appeal (AT)(CH)(Ins) No.337/2022

(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)

(Arising out of the Impugned Order dated 21.01.2022 in

MA/76/KOB/2020 in IBA/240/KOB/2019

passed by the 'Adjudicating Authority' (National Company Law
Tribunal, Kochi Bench, Kerala)

In the matter of:

1. M.K. Resely,
S/o. M.S. Kochuthampi,
Murickolil House, Nadackal P.O.
Erattupetta Village, Kottayam District
Kerala, PIN – 686 124

2. M.K. Faisal,
S/o. M.S. Kochuthampi,
Murickolil House, Nadackal P.O.
Erattupetta Village, Kottayam District
Kerala, PIN – 686 124

3. M.K. Anas,
S/o. M.S. Kochuthampi,
Murickolil House, Nadackal P.O.
Erattupetta Village, Kottayam District
Kerala, PIN – 686 124

4. Ancy MOL
Murickolil House, Nadackal P.O.
Erattupetta Village, Kottayam District
Kerala, PIN – 686 124

5. Amina S
Murickolil House, Nadackal P.O.
Erattupetta Village Kottayam District
Kerala, PIN – 686 124
 6. Dr. Mohammed Ismail
S/o. M.K. Mohammed Ali,
Madvana, Pathaikkara,
Perinthalmanna, Malapuram
District, Kerala 679322
 7. M.K. Nabeel,
Murickolil House, Nadackal P.O.
Erattupetta Village, Kottayam District
Kerala, PIN – 686 124
 8. Shaila Ismail,
Madavana House, Pathaikkara P.O.
Perinthalmanna, Malappuram
District, Kerala 679322
- ... Petitioners / Appellants

v

1. Union Bank of India, Erattupetta Branch,
1st Floor, Paraanal Arcade,
Aruvithara, SD Meenachil,
Erattupetta P.O.
Kottayam – 686 121.
2. Meenachil East Urban Cooperative Bank Ltd.
No.4266, Poonjar, Poonjar Thekkekara P.O.
Kottayam District – 686582, represented by its
Chief Manager.
3. C.A. Mahalingam Suresh Kumar,
Liquidator of M/s. Raihan Healthcare Private Limited
M/s. SPP & Co., Chartered Accountants.
No.27/9, Nivedh Vikas, Pankaja Mill Road,
Puiyakulam, Coimbatore – 641045. ... Respondents / Respondents

Present :

For Appellants : Mr. S. Easwaran, Advocate
For Respondent No.1 : Mr. Varun Srinivasan, Advocate (For Caveator)
For Respondent No.2 : Mr. Shinu J. Pillai, Advocate
For Respondent No.3 : Mr. A.G. Sathyanarayana, Advocate
(For Liquidator)

ORDER

(Virtual Mode)

Justice M. Venugopal, Member (Judicial):

Background:

The ‘Petitioners’ / ‘Appellants’ have preferred the instant IA No.990/2022 in Comp. App. (AT)(CH)(Ins) No.337/2022, before this ‘Appellate Tribunal’, seeking to exclude the period from 25.01.2022 till 22.06.2022 (‘147 Days’) in computing the ‘Period of Limitation’.

Petitioners’ / Appellants’ Submissions :-

2. The ‘Petitioners’ / ‘Appellants’ have filed the Comp. App. (AT)(CH)(Ins) No.337/2022, on being dissatisfied with the ‘impugned order’ dated 21.01.2022, passed by the ‘Adjudicating Authority’ (National Company Law Tribunal, Kochi Bench, Kerala) in ‘Allowing’ MA/76/KOB/2020 in IBA/240/KOB/2019, filed by the 3rd Respondent / Liquidator, seeking direction from the ‘Adjudicating Authority’, (National Company Law Tribunal,

Kochi Bench, Kerala), to 'add' the 'personal properties' of the 'Petitioners' / 'Appellants', into the 'Liquidation Estate' of the 'Corporate Debtor'.

3. It is represented on behalf of the 'Petitioners' / 'Appellants' that as per the ingredients of Section 61 of the Insolvency & Bankruptcy Code, 2016, an 'Appeal', as against the 'Order' of the 'Adjudicating Authority' (National Company Law Tribunal, Kochi Bench, Kerala) should have been filed within '30 Days' from the date of 'Receipt' of the 'Order' of the 'Authority'. In the instant case, the 'impugned order', was passed on 21.01.2022 in MA/76/KOB/2020 in IBA/240/KOB/2019 and uploaded on the website of the 'National Company Law Tribunal, Kochi Bench' on 25.01.2022.

4. The Learned Counsel for the Petitioners contends that they were advised that the 'Order' passed by the 'Adjudicating Authority' (National Company Law Tribunal, Kochi Bench, Kerala) was without 'Jurisdiction' and hence, they filed the 'Writ Petition No.2832/2022', before the 'Hon'ble High Court of Kerala' on 26.01.2022 and on 22.04.2022, the said Writ Petition came to be 'dismissed'. Further, Writ Appeal No.537 of 2022 was filed before the Hon'ble High Court of Kerala (as against the 'Order' of 'dismissal' made in 'Writ Petition No.2832/2022') and an 'interim order', was passed. Later, the said 'Appeal' came to be 'dismissed'.

5. The Learned Counsel for the ‘Petitioner’ adverts to the fact that in Writ Appeal No.537 of 2022, it was ordered that the ‘period spent’, before the ‘Hon’ble High Court of Kerala’, in prosecuting the case would be taken ‘note’ of, by the ‘Appellant Tribunal’, while considering the ‘Petition’ / ‘Condonation of Delay’. In this connection, the ‘Learned Counsel for the Petitioner’ points out that in the ‘Decision’ of the Hon’ble Supreme Court of India’ in *Kalparaj Dharamshi and another v Kotak Investment Advisors Limited and another reported in (2021) 10 SCC at Page No.401*, wherein it was observed and held that the Provisions of Section 14 of the Limitation Act, 1963, will apply to the ‘Proceedings’ before the ‘Tribunal’.

6. The clear cut stand of the ‘Petitioners’ is that, the instant Comp. App. AT (Ins) No.337/2022, should have been filed on or before 25.02.2022 and that the ‘Appellant Tribunal’, can ‘Condone the Delay’, if ‘sufficient cause’, is shown for a period not exceeding to ‘15 Days’. In this regard, it is the ‘fervent plea’ of the Petitioners that the period from 25.01.2022 (the date on which the ‘impugned order’ MA/76/KOB/2020 in IBA/240/KOB/2019 of the ‘Adjudicating Authority’ was uploaded on the website) to 22.06.2022 is liable to be excluded and that the ‘Hon’ble Division Bench of the High Court of Kerala’, had permitted the ‘Appellant’, to prefer an ‘Appeal’, within ‘Two Weeks’ from the date of the ‘Judgment’ in Writ Appeal dated 22.06.2022. As

a matter of fact, the copy of the ‘Judgment in Writ Appeal No.537/2022 was received on 29.06.2022 and the ‘Appeal’ came to be filed on 14.07.2022, within the time granted by the Hon’ble High Court of Kerala.

7. The forceful contention advanced on behalf of the ‘Petitioners’ is that the ‘Tribunal’, may be pleased to exclude the period from 25.01.2022 till 22.06.2022 (‘147 days’), spent by the ‘Petitioners’ / ‘Appellants’, in prosecuting the ‘Writ Petition’ and ‘Writ Appeal’, before the Hon’ble High Court of Kerala, for the purpose of computing the ‘Period of Limitation’, in preferring the instant Comp. App. (AT)(CH)(Ins) No.337/2022 , as per Section 14 of the ‘Limitation Act 1963’. The Learned Counsel for the ‘Petitioners’ / ‘Appellants’ adverts to the following ‘dates’ for consideration of this ‘Tribunal’, which are as under: -

A	Date of the order of the Adjudicating Authority	21.1.2022
B	Date on which order was updated	25.1.2022
C	Date of filing of Writ Petition	26.1.2022
D	Date of Judgment in WP 2832 of 2022	22.4.2022
E	Date of filing of WA 537 of 2022	25.4.2022
F	Date of Judgment in WA	22.6.2022
G	Time Taken and the Date on which the appeal is filed before NCLAT	14 days from 22.06.2022 to 6.7.2022

H	Period sought to be excluded	25.1.2022 to 22.6.2022 (147 days)
I	Normal date for filing appeal	25.2.2022
J	Condonable Limit of 15 days expired	12.3.2022

8. The Learned Counsel for the ‘Petitioners’ / ‘Appellants’ comes out with an ‘Argument’, that if the period of ‘147 Days’ from 25.01.2022 till 22.06.2022 are excluded, under Section 14 of the Limitation Act 1963, then, the instant Comp. App. (AT)(CH)(Ins) No.337/2022 is within the time and that the time taken for filing the Writ Petition is ‘One Day’ time taken for preferring an ‘Appeal’ before this ‘Tribunal’, is ‘14 days’ from 22.06.2022 and further ‘147 days’ is excluded, then, the ‘Appeal’ is presented, well within the specified period prescribed under Section 61 of the Insolvency & Bankruptcy Code, 2016.

9. The Learned Counsel for the ‘Petitioners’ / ‘Appellants’ contends that the 1st Respondent’s ‘Plea’, that the instant Comp. Appl. (AT)(CH)(Ins) No.337/2022 is not filed within ‘14 days’ from the date of the ‘Hon’ble Division Bench Judgment’ in Writ Appeal No.537 of 2022, is an ‘incorrect one’, because of the fact that there was no ‘Direction’ to prefer an ‘Appeal’, within ‘Two Weeks’, and further that the ‘Interim Order’, was extended for a

period of 'Two Weeks', so as to enable the 'Petitioners' / 'Appellants' to prefer an 'Appeal'.

10. The Learned Counsel for the Petitioners refers to the 'Order' of this 'Tribunal' dated 15.03.2021 in IA/774/2020 in Comp. App. (AT) (INS) No.294/2020, whereby and whereunder, Section 14 of the 'Limitation Act' 1963, was applied and that the 'Appeal', was entertained.

Petitioners' Decisions :-

11. The Learned Counsel for the Petitioners relies on the 'Decision' of the Hon'ble High Court in 'Kalparaj Dharmshi and another v Kotak Investment Advisors Limited and another reported in 2021 10 SCC Page 401 at Special Pages 440, 442, 443 and 448, wherein at Paragraphs 64, 68 & 84, it is observed as under:

64. ``Thus, this Court relying on the earlier judgements in Bhudan Singh v. Nabi Bus (1969) 2 SCC 481 J. Kumaradasan Nair V. Iric Sohan (2009) 12 SCC 175 : (2000) 4 SCC (Civ) 656 and Consolidated Engg. Enterprises v. Irrigation Deptt., (2008) 7 SCC 169 observed, that the object of enacting the legislation is to advance public welfare. The entire legislative process is influenced by considerations of justice and reason. Justice and reason constitute the great general legislative intent in every piece of legislation. It has been held by this Court, that in the absence of some other indication that the harsh or ridiculous

effect was actually intended by the legislature, there is little reason to believe, that it represents the legislative intent. It is further observed, that the provisions contained in Sections 5 and 14 of the Limitation Act are meant for grant of relief, where a person has committed some mistake. In J.Kumaradasan Nair (2009) 12 SCC 175 : (2009) 4 SCC (Civ) 656, it has been observed, that when sub-section (2) of Section 14 of the Limitation Act per se is not applicable, the same would not mean, that the principles akin thereto would not be applicable.

68. Coming to the facts of the present case, immediately after NCLT pronounced its judgment on 28.11.2019 Connect Residuary (P) Ltd. v. Ricoh (India) Ltd., 2019 SCC Online NCLT 14842 and even before the certified copy was made available on 18.12.2019, KIAL had filed writ petition before the Division Bench of the Bombay High Court on 11.12.2019 on the principal ground, that the procedure followed by NCLT was in breach of principles of natural justice. Such a ground could be legitimately pursued before a writ court. In that sense, it was not a proceeding before a wrong court, as such. Perusal of the judgment and order dated 28.01.2020 Kotak Investment Advisors Ltd. v. Krishna Chamadia, 2020 SCC OnLine Bom 197, passed by the Division Bench of the Bombay High Court, which dismissed the writ petition on the ground of availability of alternate and equally efficacious remedy would reveal, that the said writ petition was hotly contested between the parties and by an order running into 32 pages, the Division Bench of the Bombay High Court

dismissed Kotak Investment Advisors Ltd. v. Krishna Chamadia, 2020 SCC OnLine Bom 197, the petition relegating the petitioner therein (i.e. KIAL) to avail of an alternate remedy available in law.

84. *This Court clearly held, that the decision in Union of India v. Popular Construction Co., (2001) 8 SCC 470 cannot be construed to mean as a ruling, that provisions of Section 14 of the Limitation Act are also not applicable to an application challenging an award under Section 34 of the Act. It has been held, that in the Arbitration Act, there is no express provision excluding application of the provisions of Section 14 of the Limitation Act to an application filed under Section 34 of the Arbitration Act for challenging the award. It has further been found, that there is fundamental distinction between the discretion to be exercised under Section 5 of the Limitation Act and exclusion of the time provided in Section 14 of the said Act. It was held, that the power to excuse delay and grant an extension of time under Section 5 is discretionary, whereas under Section 14, exclusion of time is mandatory, if the requisite conditions are satisfied. It held, that the effect of Section 14 is that in order to ascertain what is the date of expiration of the “prescribed period”, the days excluded from operating by way of limitation, have to be added to what is primarily the period of limitation prescribed.”*

12. The Learned Counsel for the Petitioners seeks in aid of the ‘Order’ dated 15th March 2021 In IA No.774/2020, in Comp. App. (AT) (INS) No.294/2020, between the State Bank of India, Kolkatta v Visa Steel Ltd.,

through Vice Chairman and Managing Director, Bhubaneswar, Odisha, wherein at 'Paragraphs 25 to 33', it is observed as under:-

25. *There is no two opinion of the vital fact that on 20.8.2019, pursuant to the liberty being granted by the Hon'ble Supreme Court (to withdraw the Civil Appeal) on 29.7.2019, an Application for 'Review' of the 'Impugned Order' dated 25.6.2019 (First Impugned Order) bearing CA No.87/CTB/2019) filed before the 'Adjudicating Authority' and that the 'Review Application' was filed within 30 days from the date of the order of the Hon'ble Supreme Court.*

26. *It is to be pointed out that the 'Review Application' filed by the Applicant/Appellant before the 'Adjudicating Authority' was pending between August 2019 till January 2020 for approximately 140 days and the 'Adjudicating Authority' ultimately dismissed the 'Review Application' based on 'lack of jurisdiction'. The plea of the Petitioner/Appellant is that the 'Review' is the continuation of 'original proceeding' of Section 7 of the 'Insolvency & Bankruptcy Code'. Therefore, as a matter of abundant caution and to prevent technical objections, being raised in filing of the present 'Appeal', the delay of 193 days in filing the IA No.774 of 2020 has to be excused by this 'Tribunal'.*

27. *On behalf of the 'Respondent', it is submitted that the IA No.774 of 2020 filed by the Petitioner/Appellant is not maintainable because of the fact that the 'delay' in question is beyond not only the initial period of 30 days, but also the 'further period' as provided under the 'Statute' and in fact there is a delay of 193 days.*

28. *Section 61 of the 'Insolvency & Bankruptcy Code' enjoins that an 'Appeal' shall be filed within 30 days before the National Company Law Appellate Tribunal and a further period of 15 days is provided only if 'sufficient cause' is made out for preferring the 'Appeal' within the extended period. Furthermore, the aspect of 'Consolidated Appeal' does not arise in any event, the 'application for condonation of delay', is liable to be dismissed, of course with costs.*

29. *One cannot ignore a prime fact that the 'term' 'sufficient cause' implies no negligence, nor inaction nor want of bonafides on the part of the litigant. In fact, in excluding the time, the period starting from the institution of former proceeding till the end of the said proceeding, would be calculated. If a litigant was bonafide prosecuting his rights in a 'Court'/'Tribunal' due to wrong advise, the limitation shall remain in 'limbo', which is the underlying Principle of Section 14 of the Limitation Act, 1963.*

30. *The essence of 'sufficient cause' is whether it was an act of prudence or reasonable man on the part of person filing an 'Appeal'. It is to be taken note of that whether the 'Appellant' had acted with reasonable diligence in prosecuting his 'Appeal'."*

31. *It is to be remembered that if an individual permits 'limitation' to expire and plead 'sufficient cause' for not filing an 'Appeal' earlier, he ought to establish that because of some event or circumstances arising before the limitation expired, it was not possible for him to prefer an 'Appeal' within time. It cannot be gainsaid that if 'sufficient cause' is shown, the 'Court of Law' / 'Tribunal' is to exercise its discretion.*

32. According to the ‘Respondent’ in the judgment of this ‘Tribunal’ in *Radhika Meharv v. Vaayu Infra Structure LLP in. Company Appeal (AT) (INS) 121 of 2019*, after considering the provisions of the Limitation Act, at Para 9 has observed as under:

“In the aforesaid circumstances, as the Appeal is filed after 30 days and beyond 15 days thereafter, i.e., after 45 days of the date of the receipt / knowledge of the order, we hold that we have no jurisdiction to entertain the appeal.”

33. It comes to be known that the Petitioner / Appellant has summarized the ‘time lines’ in a tabular form for ease of convenience, which runs as follows: -

<i>Period</i>	<i>Event</i>	<i>Time Spent</i>
<i>28 June 2019 to 4 July 2019</i>	<i>The time taken from the date of filing for a certified copy of the First Impugned Order to the filing of the interlocutory application in with the Civil Appeal before the Hon’ble Supreme Court.</i>	<i>6 days</i>
<i>4 July 2019 to 29 July 2019</i>	<i>The time taken from filing the Application along with the Civil Appeal filed before the Hon’ble Supreme Court to disposal of the same by the Hon’ble Supreme Court with the express liberty to file review application before the Ld. Adjudicating Authority.</i>	<i>25 days</i>
<i>29 July 2019 to</i>	<i>Time taken by the Appellant to file the Review Application before the Lt. Adjudicating Authority pursuant to the</i>	<i>22 days</i>

20 August 2019	<i>express liberty granted by the Hon'ble Supreme Court</i>	
20 August 2019 to 10 January 2020	<i>Application and pass the Second Impugned Order</i>	143 days
10 January 2020 to 4 February 2020	<i>Time taken by the Appellant to file the present consolidated Appeal before the Hon'ble NCLAT</i>	25 days
<i>Total</i>		224 days

1st Respondent's contentions:

13. The Learned Counsel for the '1st Respondent' / 'Bank' submits that the instant Comp. App. (AT)(CH)(Ins) No.337/2022, should have been filed by the 'Petitioners' / 'Appellants', within '30 Days' from the date of the 'impugned order' dated 21.01.2022, passed by the 'Adjudicating Authority' ('National Company Law Tribunal', Kochi Bench, Kerala), which was not preferred by the 'Petitioners' / 'Appellants' and there has occasioned a delay of '147 Days'.

14. According to the Learned Counsel for the 1st Respondent, the 'Petitioners' / 'Appellants' had filed a Writ Petition No.2832/2022, before the Hon'ble High Court of Kerala, on 26.01.2022, even though the 'impugned

order’ was pronounced on 21.01.2022. However, the aforesaid Writ Petition came to be dismissed on 22.04.2022.

15. On behalf of the 1st Respondent, it is brought to the ‘Notice’ of this ‘Tribunal’, that a ‘Writ Appeal No.537/2022’, was filed by the ‘Petitioners’ / ‘Appellants’, before the Hon’ble High Court of Kerala, challenging the ‘Order’, before the Hon’ble High Court of Kerala dated 22.04.2022. On 22.06.2022, in the said Writ Appeal, the following ‘Order’ came to be passed :-

“In view of the request made by the Learned Counsel for the appellants to continue the said interim order; after hearing the respective counsel appealing of the respondents, we are inclined to extend the said interim order for a period of two weeks from today enabling the appellant to prefer the appeal before the appellate Tribunal.”

16. The Learned Counsel for the ‘1st Respondent’ adverts to the ‘Petitioners’ / ‘Appellants’ were to prefer an ‘Appeal’ within ‘Two Weeks’ from the date of the ‘Order’ dated 22.06.2022, passed in Writ Appeal No.537/2022 and that the last date for filing of the ‘Appeal’ was to be on or before 05.07.2022. However, the ‘Appeal’, alone, was filed by the ‘Petitioners’ / ‘Appellants’ on 06.07.2022, before this ‘Tribunal’.

17. The clear cut stand of the 1st Respondent is that the ‘Petitioners’ / ‘Appellants’ very well knew that when an ‘Order’, was passed by an

‘Adjudicating Authority’, (‘National Company Law Tribunal’, Kochi Bench, Kerala), the ‘Appeal’, if any, would lie, as per Section 61 of the Insolvency & Bankruptcy Code, 2016 and that the Petitioners had, for reasons best known to them, had intentionally prosecuted the matter, before the Hon’ble High Court. In this connection, the Learned Counsel for the 1st Respondent refers to the ‘Decision’ of the Hon’ble Supreme Court in *Kalparaj Dharmshi and another vs Kotak Investment Advisors Limited and another* reported in 2021 10 SCC at Page No.401 at Special Page 435, wherein at Paragraph 54, it is observed as under:-

54. ``In the present case, the dates are not in dispute. The Judgment of NCLT is dated 28.11.2019 Connect Residuary (P) Ltd. v. Ricoh (India) Ltd., 2019 SCC OnLine NCLT 14842. As such, as per Section 61 (2) of the I & B Code, the appeal was required to be filed on the prior to 28.12.2019. The appeal could have been filed within a further period of fifteen days, if NCLAT was satisfied, that there was sufficient cause for not filing the appeal within a period of thirty days. As such, the said period would come to an end on 12.1.2020. The certified copy of the impugned judgment of NCLT was made available on 18.12.2019. If the allowance for the said period is granted, the appeal should have been preferred on or prior to 2.2.2020. However, in the present case, the appeal is filed on 18.2.2020. It is also not in dispute, that immediately after the order was passed on 28.11.2019 Connect Residuary (P) Ltd. v. Ricoh (India) Ltd., 2019 SCC OnLine NCLT 14842 by NCLT, KIAL preferred a writ petition being Writ Petition (L) No. 3621 of 2019 before the Division Bench of the Bombay High Court on 11.12.2019. The said writ petition came to be dismissed on 28.1.2020 Kotak

Investment Advisors Ltd. v. Krishna Chamadia, 2020 SCC OnLine Bom 197 on the ground, that KIAL had an alternate and efficacious remedy available under Section 61 of the I&B Code and as such, it was relegated to the alternate remedy available in law.”

18. It is represented on behalf of the 1st Respondent that in the present Case, the ‘Petitioners’ / ‘Appellants’, had not made efforts, to apply for a ‘Certified Copy’ of the ‘impugned order’, as they had stated in their ‘Notes of Submissions’, as under:-

“Still further it was stated before this Tribunal that Certified Copy of the order was not produced. Certified Copy of the order was produced under instructions from Registry on 15.09.2022. Therefore the said objection is also not sustainable.”

19. The ‘Contention’ advanced on behalf of the 1st Respondent is, that in the ‘Decision’ of the Hon’ble Supreme Court of India in ‘*Kalparaj Dharmshi and another v Kotak Investment Advisors Limited and another 2021 10 SCC at Page 401*, the ‘Writ Petition’ was filed, before the ‘Receipt’ of the ‘Certified Copy’ of the ‘impugned order’ and hence, the ingredients of ‘Section 14 of the Limitation Act, 1963’, were applied. However, in the instant Case, on ‘hand’, the ‘Certified Copy’ of the ‘impugned order’, was already ready, and that the ‘Petitioners’ / ‘Appellants’ had not taken effective steps. Even otherwise, that apart, even on a plain and simple reading of the

‘Order’ of the Hon’ble High Court of Kerala. It is clear that the ‘Appeal’, was to be filed within ‘Two Weeks’ from 22.06.2022, viz., the date of the ‘Order’. As such, the ‘Direction’ issued by the Hon’ble High Court of Kerala must be strictly construed and therefore, the instant Comp. App. (AT)(CH)(Ins) No.337/2022, preferred by the ‘Petitioners’ / ‘Appellants’, after the said ‘time line’ is ‘bad’ in ‘Law’.

20. The Learned Counsel for the 1st Respondent, forcefully puts forward an ‘Argument’ that the instant Comp. App. (AT)(CH)(Ins) No.337/2022, was filed before this ‘Tribunal’ on 06.07.2022. However, the contention of an ‘Appeal Petition’ was filed only on 15.09.2022. This is in ‘negation’ of the ‘Order’ of the Hon’ble High Court of Kerala, wherein a ‘Direction’, was issued to prefer the ‘Appeal’, before the ‘Appellate Tribunal’ (‘while extending the interim order for a period of two weeks, from 22.06.2022’). Already, in preferring the ‘Appeal’, there was a ‘delay’ of ‘147 Days’, but for the ‘Leave’ and ‘Liberty’, granted by the ‘Hon’ble High Court of Kerala’, the ‘Appeal’, is not maintainable.

21. The Learned Counsel for the 1st Respondent refers to the ‘averments’ made by the ‘Petitioners’ / ‘Appellants’, in the instant Comp. App. (AT)(CH)(Ins) No.337/2022, wherein at Paragraph No.6, under the caption ‘Limitation’, it is stated as under:-

“The period spent before the High Court was directed to be excluded by virtue of the provisions contained in Section 14 of the Limitation Act, 1963 if any application for condonation of delay was filed. Hence the appeal is preferred along with the application for condonation of delay.”

22. It is represented on behalf of the 1st Respondent that the ‘Petition’ for ‘Condonation of Delay’, was not filed by the ‘Petitioners’ / ‘Appellants’ along with the instant Comp. App. (AT)(CH)(Ins) No.337/2022, and further that the ‘Petitioners’ / ‘Appellants’ had filed a Special Leave to Appeal (C) No(s).12357/2022, before the ‘Hon’ble Supreme Court of India’, assailing, the ‘Order’ dated 22.06.2022, passed by the Hon’ble High Court of Kerala in Writ Appeal No.537/2022. The Hon’ble Supreme Court of India, on 29.07.2022, had dismissed the Special Leave Petition, finding no grounds to interfere with the ‘impugned judgment’ and order, passed by the Hon’ble High Court.

23. The Learned Counsel for the 1st Respondent takes a stand that in the present Case, the ‘impugned order’ was passed by the ‘Adjudicating Authority’ (‘National Company Law Tribunal’, Kochi Bench, Kerala) on 21.01.2022 in MA/76/KOB/2020 in IBA/280/2019(CB), but the instant Comp. App. (AT)(CH)(Ins) No.337/2022 was lodged only on 06.07.2022 and that too, without the ‘Certified Copy’ of the ‘Order’. In short, non-filing of

the ‘Certified Copy of the Impugned Order’, together with the instant Comp. App. (AT)(CH)(Ins) No.337/2022 is a ‘fatal case’ of the ‘Petitioners’ / ‘Appellants’.

24. Also, on behalf of the 1st Respondent, a reference is made to Rule 22 (2) of the NCLAT Rules, 2016, as under: -

‘Every Appeal shall be accompanied by a ‘Certified Copy’ of the impugned order’ (Sic).

25. In this connection, the Learned Counsel for the 1st Respondent relies on the ‘Decision’ of the Hon’ble High Court in “V. Nagarajan vs Sks Ispat and Power Limited, reported in (2022)2SCC at Page 244, wherein at Paragraphs 21 and 22, it is observed as under:-

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.

*22. On the second question, Rule 22(2) of the NCLAT Rules mandates the certified copy being annexed to an appeal, which continues to bind litigants under the IBC. While it is true that the tribunals, and even this Court, may choose to exempt parties from compliance with this procedural requirement in the interest of substantial justice, as reiterated in Rule 14 of the NCLAT Rules, the discretionary waiver does not act as an automatic exception where litigants make no efforts to pursue a timely resolution of their grievance. **The appellant having failed to apply for a certified copy, rendered the appeal filed before the NCLAT as clearly barred by limitation.**”*

26. The Learned Counsel for the 1st Respondent refers to the ‘Judgment’ of this ‘Tribunal’ in the matter of ‘Johnson Lifts Pvt. Ltd. V Tracks & Towers Infratech Pvt. Ltd.’ dated 19.10.2022 (vide Comp. App. (AT) (CH) (Ins) No.370/2022) (MANU / NL / 0819/2022), wherein at ‘Paragraph 12’, it is observed as under:-

12. ``Furthermore, in the teeth of the decision of the Hon’ble Supreme Court in V. Nagarajan Versus SKS Ispat and Power Ltd. & Ors. reported in 2022 SCC at Page 244 and also in the light of the order dated 12.10.2022 in the Comp. App. (AT) (Insolvency) No.1169 of 2022 between Exide Industries Ltd V. Jitender Kumar Jain, Resolution Professional of Morakhia Copper & Alloys Pvt. Ltd. passed by the Principal Bench, New Delhi, this ‘Tribunal’ comes to a ‘resultant conclusion’ that the instant Comp. App. (AT)(CH)(Ins) No.370/2022 is liable to be ‘dismissed’, as ‘not maintainable’ and accordingly, the same is

‘dismissed’. *The connected IA Nos.870 and 871/2022 are Closed.”*

27. Besides the above, the Learned Counsel for the 1st Respondent places reliances on the following ‘Judgments / Decisions’: -

a) Company Appeal (AT) (Insolvency) No.1169 of 2022 Exide Industries Ltd. v Jitender Kumar Jain, Resolution Professional of Morakhia Copper & Alloys Pvt. Ltd.

b) Company Appeal (AT) (Insolvency) No.877 of 2022, 44 Noida Infratech (Two) Pvt. Ltd. v. Enforcement Directorate Kolkata Zone Office and Ors.

c) Company Appeal (AT) (Insolvency) No.335 of 2020 Prakash Chandra Kapoor and Ors. v. Edelweiss Asset Reconstruction Company Ltd. and Ors.

d) Company Appeal (AT) (Insolvency) No.955 of 2022 Chhote Lal Gupta, Proprietor Tirupati Enterprises v. Jai Balaji Jyoti Steels Ltd.

e) Company Appeal (AT) (Insolvency) No.527 of 021 Central Board of Trustee, Employees Provident Fund Organization v. Shri Dutta India Pvt. Ltd.

3rd Respondent’s Pleas :

28. The Learned Counsel for the 3rd Respondent contends that the ‘Petitioners’ / ‘Appellants’, instead of preferring an ‘Appeal’, in terms of the ingredients of Section 61 of the Insolvency & Bankruptcy Code, 2016, they

had filed W.P. No.2832/2022, before the Hon'ble High Court of Kerala, on 26.01.2022, despite the fact, that the 'impugned order' of the 'Adjudicating Authority' (National Company Law Tribunal, Kochi Bench, Kerala), passed on 21.01.2022 and the said 'Writ Petition' was 'dismissed' by the Hon'ble High Court of Kerala on 22.04.2022. Also, that the 'Petitioners' / 'Appellants', had filed W.A. No.537/2022 and on 22.06.2022, the Hon'ble High Court of Kerala was inclined to extend the 'Interim Order' for a period of 'Two Weeks from Today', enabling the 'Appellant', to prefer the 'Appeal', before the 'Appellate Tribunal'.

29. According to the 3rd Respondent, the 'Petitioners' / 'Appellants' were to file an 'Appeal', within 'Two Weeks', from the date of the 'Judgment' dated 22.06.2022 and the 'Last Date' for filing an 'Appeal', was on or before 05.07.2022. But, the 'Petitioners' / 'Appellants', have filed the instant Comp. App. (AT) (CH) (Ins) No.337/2022, on 06.07.2022, and as such, there is a further 'delay', caused by the 'Petitioners' / 'Appellants'.

30. The Learned Counsel for the 3rd Respondent points out that the Hon'ble Supreme Court in Civil Appeal No.3327 of 2020 in the matter in between "*V. Nagarajan vs Sks Ispat and Power Limited and others*" at Paragraph 33, had held that the 'Limitation' starts from the date of the 'Pronouncement of Order' and the onus, on the 'Appellant' to convince and establish, before the

‘Tribunal’, that the ‘Appeal’, is within the ‘Limitation’ and also any other ‘Proceedings’ before any other ‘Code’, will not save ‘Limitation’.

31. The Learned Counsel for the 3rd Respondent comes out with the ‘Plea’ that the ‘Petitioners’ / ‘Appellants’ are endeavouring, to drag on the ‘Legal Proceedings’ in every ‘Forum’, by suppressing the ‘material fact’ and hence, prays for ‘dismissal’ of the ‘Condone Delay Application’.

Bonafide Litigious Activity :-

32. At this juncture, this ‘Tribunal’, pertinently points out that the ‘Legislature’, has enacted Section 14 of the Limitation Act, 1963, to exempt a ‘particular’ / ‘certain period’, covered by a ‘Bonafide Litigious Activity’. Inherently, there is an ‘element of Mistake’, in the invocation of Section 14 of the Limitation Act, 1963. As a matter of fact, in extending the benefit of the ingredients of ‘Section 14’ of the ‘Limitation Act, 1963, to a ‘Party’ / ‘Litigant’, the ‘Tribunal’, is to see whether the ‘conduct’ will satisfy the ‘test of prosecuting’ a ‘Given Proceeding’ in a ‘Good faith’ and ‘Due diligence’. In short, if a ‘Good faith’ is established, Section 14 of the Limitation Act, 1963, can be pressed into service, in the considered opinion of this ‘Tribunal’.

33. It is significantly pointed out by this ‘Tribunal’ that the ‘period of Limitation’ for filing a ‘Suit’ / ‘Appeal’, is fixed by ‘Law’ / ‘Statute’ / ‘Code’

and ordinarily, it cannot be deemed to be 'excluded' or 'extended', automatically or as a 'matter of routine'.

34. In the instant Case, 'on hand', the 'Petitioners' / 'Appellants', pray before this 'Tribunal', that the period from `25.01.2022 to 22.06.2022', is liable to be excluded and that the 'Hon'ble High Court of Kerala' in 'W.A. No.537/2022', had permitted the 'Appellants', to file an 'Appeal' within 'Two Weeks', and that the `copy of the said Judgment', in 'Writ Appeal', was received on 29.06.2022 and that the present Comp. App. (AT) (CH) (Ins) No.337/2022, was filed before this 'Tribunal', on 14.07.2022 ('Physical Copy' of 'Material Papers', being filed). In fact, a mere 'running of the eye', 'contents' of the 'E-Portal' received by this 'Tribunal' (vide at Page No.600 of 'Volume-III' of the 'Appellants' 'Paper Book') exhibits that 'E-filing' of the 'instant Comp. App. (AT) (CH) (Ins) No.337/2022', was made on 06-07-2022 22:07:946.

35. In this connection, this 'Tribunal', on going through the 'Judgment' of the Hon'ble High Court of Kerala at Ernakulam, in W.A. No.537/2022 between M.K. Resely, Kottayam District and 7 Others v Union Bank of India, led by its Chief Manager, Kottayam and 3 Ors., indicates that at Paragraph '24', the Hon'ble High Court of Kerala, was inclined to extend the 'interim

order', for a period of 'Two Weeks' from 'Today' (22.06.2022), enabling the 'Appellants', to prefer an 'Appeal', before the 'Appellate Tribunal'.

36. In view of the fact, that the 'Petitioners' / 'Appellants' have indulged in 'Bonafide Litigious Activity', in preferring the W.P. No.2832/2022 and W.A. No.537/2022, before the Hon'ble High Court of Kerala, this 'Tribunal', by construing the ingredients of Section 14 of the 'Limitation Act' 1963, in a liberal manner and by applying 'Equity', permits the exclusion of period from '25.01.2022 till 22.06.2022' ('147 days'), in computing the 'Period of Limitation', and consequently 'disposes of' the IA/990/2022, without Costs.

Company Appeal (AT)(CH)(Ins) No.337/2022

(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)

(Arising out of the Impugned Order dated 21.01.2022 in

MA/76/KOB/2020 in IBA/240/KOB/2019

passed by the 'Adjudicating Authority' (National Company Law Tribunal', Kochi Bench, Kerala)

In the matter of:

1. M.K. Resely,
S/o. M.S. Kochuthampi,
Murickolil House, Nadackal P.O.
Erattupetta Village, Kottayam District
Kerala, PIN – 686 124

2. M.K. Faisal,
S/o. M.S. Kochuthampi,
Murickolil House, Nadackal P.O.
Erattupetta Village, Kottayam District
Kerala, PIN – 686 124

3. M.K. Anas,
S/o. M.S. Kochuthampi,
Murickolil House, Nadackal P.O.
Erattupetta Village, Kottayam District
Kerala, PIN – 686 124
 4. Ancy MOL
Murickolil House, Nadackal P.O.
Erattupetta Village, Kottayam District
Kerala, PIN – 686 124
 5. Amina S
Murickolil House, Nadackal P.O.
Erattupetta Village Kottayam District
Kerala, PIN – 686 124
 6. Dr. Mohammed Ismail
S/o. M.K. Mohammed Ali,
Madvana, Pathaikkara,
Perinthalmanna, Malapuram
District, Kerala 679322
 7. M.K. Nabeel,
Murickolil House, Nadackal P.O.
Erattupetta Village, Kottayam District
Kerala, PIN – 686 124
 8. Shaila Ismail,
Madavana House, Pathaikkara P.O.
Perinthalmanna, Malappuram
District, Kerala 679322
- ... Appellants

v

1. Union Bank of India, Erattupetta Branch,
1st Floor, Paraanal Arcade,
Aruvithara, SD Meenachil,
Erattupetta P.O.,
Kottayam – 686 121.

2. Meenachil East Urban Cooperative Bank Ltd.
No.4266, Poonjar, Poonjar Thekkekara P.O.
Kottayam District – 686582 represented by its
Chief Manager.
3. C.A. Mahalingam Suresh Kumar,
Liquidator of M/s. Raihan Healthcare Private Limited
M/s. SPP & Co., Chartered Accountants.
No.27/9, Nivedh Vikas, Pankaja Mill Road,
Puiyakulam, Coimbatore – 641045. ... Respondents

Present :

- For Appellants : Mr. S. Easwaran, Advocate
For Respondent No.1 : Mr. Varun Srinivasan, Advocate (For Caveator)
For Respondent No.2 : Mr. Shinu J. Pillai, Advocate
For Respondent No.3 : Mr. A.G. Sathyanarayana, Advocate
(For Liquidator)

JUDGMENT

(Virtual Mode)

Justice M. Venugopal, Member (Judicial):

The ‘Appellants’ have preferred the instant Comp. App. (AT) (CH) (Ins) No.337/2022, before this ‘Appellate Tribunal’, as an ‘Aggrieved Person’, on being dissatisfied, with the ‘impugned order’ dated 22.01.2022 in MA/76/KOB/2020 in IBA/240/KOB/2019, passed by the ‘Adjudicating Authority’ (‘National Company Law Tribunal’, Kochi Bench, Kerala).

2. At the outset, this ‘Tribunal’, points out that ‘Limitation’ is undoubtedly an ‘issue of Jurisdiction’. To put it succinctly, Section 3 of the

'Limitation Act, 1963', places an 'embargo', on the 'Court', to entertain a 'suit', preferring an 'Appeal', and filing of an 'Application', if it is found to be barred by 'Limitation', in the earnest opinion of this 'Tribunal'. Also that, it is to be remembered that Section 3 of the Limitation Act, 1963, casts a 'duty' upon the 'Court', to dismiss the 'Application', 'barred by time', although the 'Limitation', has not been projected as a 'defence', as per the 'Decision' of the Hon'ble Orissa High Court in Rajkishore Mohanty and Anr. v Kangali Maharana and Ors. AIR 1972 Ori 119 (Full Bench). Therefore, it is quite obvious that the ingredients of Section 3 of the Limitation Act, 1963, are quite imperative, as opined by this 'Tribunal'.

3. Section 408 of the Companies Act, 2013, provides for the 'Constitution' of 'National Company Law Tribunal'. Section 410 of the Act, deals with the 'Constitution' of 'National Company Law Appellate Tribunal'. This 'Tribunal' worth recalls and recollects the decision of the 'Hon'ble Supreme Court' in Inacio Martini v Narayan Hari Nayak, (2010) 6 SCR 857, wherein it is observed and held that the 'Tribunal', is constituted to decide the matters mentioned therein, and only that 'Tribunal', is empowered to entertain the said matter. An 'Appeal' remedy, from an order of a 'Tribunal', is provided to an 'Appellate Tribunal', and the order of an 'Appellate Tribunal' can be assailed before the 'Hon'ble Supreme Court'.

4. It comes to be known that the ‘Appellants’, as ‘Petitioners’, have preferred IA/990/2022, in the instant Comp. App. (AT) (CH) (Ins) No.337/2022, seeking to exclude the period from 25.01.2022 (uploaded on the website) till 22.06.2022 (‘147 days’) in computing the ‘period of Limitation’ for filing the instant Comp. App. (AT) (CH) (Ins) No.337/2022 and this ‘Tribunal’, after contest, has allowed the IA/990/2022, ‘without Costs’, for resorting to a ‘Bonafide Litigious Activity’, with ‘Good Faith’ and ‘Due Diligence’.

5. It cannot be forgotten that the Hon’ble High Court of Kerala, had permitted the ‘Appellants’ in W.A. No.537/2022, to prefer an ‘Appeal’, before this ‘Appellate Tribunal’, within ‘Two Weeks’, from the date of the ‘Judgment’ (dated 22.06.2022) and going by the ‘tenor and spirit’ of the ‘Judgment’ of the Hon’ble High Court of Kerala in W.A. No.537/2022 dated 22.06.2022, it is quite latently and patently evident that the ‘Last Date’ for preferring the instant Comp. App. (AT) (CH) (Ins) No.337/2022, was to be ‘on or before 05.07.2022’. However, the ‘E-Portal’ of this ‘Tribunal’, shows that the instant Comp. App. (AT) (CH) (Ins) No.337/2022 was filed on ‘06-07-2022 22:07:946’. As such, there is a ‘delay’ of ‘One Day’, in preferring the instant Comp. App. (AT) (CH) (Ins) No.337/2022, before this ‘Appellate Tribunal’. Hence, this ‘Tribunal’, comes to a consequent

conclusion that the ‘Appellants’ have preferred the instant Comp. App. (AT) (CH) (Ins) No.337/2022, with a further delay of ‘One Day’, by not adhering to the ‘tenor and spirit’ of the ‘Judgment’ of the Hon’ble High Court of Kerala in W.A. No.537/2022, in a meticulous and scrupulous manner.

Viewed in the above perspective, the filing of the instant Comp. App. (AT) (CH) (Ins) No.337/2022 by the ‘Appellants’, ‘per se’, is beyond the ‘prescribed time limit’, granted by the Hon’ble High Court of Kerala in its ‘Judgment’ in WA/537/2022 dated 22.06.2022 and, therefore, the said Comp. App. (AT) (CH) (Ins) No.337/2022, is not entertained by this ‘Tribunal’ and the same is ‘rejected’. No Costs. The connected IA/907/2022 (For ‘Urgent Listing’) IA/758/2022 (For ‘Stay’) and IA/759/2022 (For ‘Exemption’) are Closed.

[Justice M. Venugopal]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

24.11.2022

ghk/tm