

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

Company Appeal (AT) (Insolvency) No. 955 of 2022

IN THE MATTER OF:

**Chhote Lal Gupta,
Proprietor, Tirupati Enterprises**

...Appellant

Versus

Jai Balaji Jyoti Steels Ltd.

...Respondent

Present:

For Appellant: Mr. A.K. Shrivastava, Mr. Akash Sharma, Mr. S.P. Singh Chawla, Advocates

For Respondent:

ORDER

10.08.2022: This Appeal has been filed against the Order dated 13th May, 2022 passed by the National Company Law Tribunal, Cuttack Bench, Cuttack. By which Order, the I.A.(IB) No. 113/CB/2020 filed by the Appellant has been dismissed.

2. This Appeal has been filed against the said Order on 08th July, 2022. Learned Counsel for the Appellant relying on a Judgment of Hon'ble Supreme Court in **(2022) 2 SCC 244 "V. Nagarajan Vs. S.K.S. Ispat and Power Ltd."** submits that the Appeal is within time.

3. He submits that certified copy was applied on 08th June, 2022 i.e. within 30 days from the date of the Impugned Order which was made available on 09th June, 2022 hence thereafter the Appellant will have 30 days' time to file this Appeal and having been filed on 08th July, 2022 is within time.

4. We have considered the submissions of Learned Counsel for the Appellant and perused the record.

5. Under Section 61 (2) of the Code, the period provided for filing the Appeal is 30 days from the date of Order. The Appellant is entitled to exclude the period for which certified copy was under preparation. Certified Copy was applied on 08th June, 2022 and delivered on 09th June, 2022 hence two days period is entitled to be excluded in computing the limitation. 13th May, 2022 was the date on which Order was passed by the Adjudicating Authority hence Appellant has time to file the Appeal till 12th June, 2022 and further he is entitled for extension of two days limitation i.e. up 14th June, 2022 and this Tribunal has power to condone the delay of only 15 days, the delay in the present Appeal is more than 15 days hence we are unable to condone the delay.

6. Learned Counsel for the Appellant relying on the Judgement of ‘V. Nagarajan’ (supra) referred to paragraph 22 and 33 and submits that from the date of the certified copy of the Order was made available he had at least 45 days to file the Appeal as has been observed in paragraph 22. Paragraph 22, 33 and 35 of the Judgement is as follows:

“22. However, the Court clarified that this would no longer apply once an application for a certified copy is made and the order has been received. Irrespective of when the free certified copy is received, the limitation period would then be computed from the date of receipt of the certified copy:

“13..... But the appellants in this case, chose to apply for a certified copy after 27 days of the pronouncement of the order in their presence and they now fall back upon Section 421(3).

14. *Despite the above factual position, we do not want to hold against the appellants, the fact that they waited from 25-10-2019 (the date of the order of NCLT) up to 21-11-2019, to make a copy application. But at least from 19-12-2019, the date on which a certified copy was admittedly received by the counsel for the appellants, the period of limitation cannot be stopped from running. From 19-12-2019, the date on which the counsel for the appellants received the copy of the order, the appellants had a period of 45 days to file an appeal. This period expired on 2-2-2020.*

.....

33. *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.

.....

35. *The appellant was present before the NCLT on 31 December 2019 when interim relief was denied and the miscellaneous application was dismissed. The appellant has demonstrated no effort on his part to secure a certified copy of the said order and has relied on the date of the uploading of the order (12 March 2020) on the website. The period of limitation for filing an appeal under Section 61(1) against the order of the NCLT dated 31 December 2019, expired on 30 January 2020 in view of the thirty-day period prescribed under Section 61(2). Any scope for a condonation of delay expired on 14 February 2020, in view of the outer limit of fifteen days prescribed under the proviso to Section 61(2). The lockdown from 23 March 2020 on account of the COVID-19 pandemic and the suo motu order of this Court has had no impact on the rights of the appellant to institute an appeal in this proceeding and the NCLAT has correctly dismissed the appeal on limitation.*

Accordingly, the present appeal under Section 62 of the IBC stands dismissed.”

7. In paragraph 22, the Hon’ble Supreme Court was considering the case of “Sagufa Ahmed Vs. Upper Assam Plywood Productions (P) Ltd.” case (2021) 2 SCC 317, and those observations were with regard to the said case and in so far as the limitation under Section 61, paragraph 33 and 35 are very clear. It has been noticed in paragraph 33 that Section 61(1) and 61(2) omit the requirement of limitation being computed when the “Order is made available to the aggrieved party”, the change in statutory provision of Section 421 of the Companies Act and 61 has been clearly noticed and in paragraph 35 it has held that period will expire after 30 days from the date of order.

8. Learned Counsel for the Appellant further relied on paragraph 33 of the Judgement of Supreme Court in the matter of **“National Spot Exchange Limited Vs. Anil Kohli, RP for Dunar Foods Limited”, (2021) SCC OnLine SC 716** which is as under:

“33. In view of the afore-stated settled proposition of law and even considering the fact that even the certified copy of the order passed by the adjudicating authority was applied beyond the period of 30 days and as observed hereinabove there was a delay of 44 days in preferring the appeal which was beyond the period of 15 days which maximum could have been condoned and in view of specific statutory provision contained in Section 61(2) of the IB Code, it cannot be said that the NCLAT has committed any error in dismissing the appeal on the ground of limitation by observing that it has no jurisdiction and/or power to condone the delay exceeding 15 days.”

9. The paragraph 33 of the above judgement in no manner helps the Appellant which clearly indicates that the limitation is 30 days for filing the Appeal under Section 61 and the power to condone the delay cannot be exercised exceeding 15 days.

We thus are of the view that this Appeal is clearly barred by time. The Appeal is dismissed as barred by time.

**[Justice Ashok Bhushan]
Chairperson**

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

Basant/nn