

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

**Company Appeal (AT) (Insolvency) No. 215 of 2024  
& I.A. No. 734 of 2024**

**In the matter of:**

**Supreme Construction Developers Pvt. Ltd.**

**....Appellant**

**Vs.**

**Puranik Builders Ltd.**

**...Respondent**

**For Appellant:** Present but appearance not marked.

**For Respondent:** Mr. Krishnendu Datta, Sr. Advocate with Mr. Anish Agarwal, Mr. Tejas Agarwla and Mr. Pratik Kr. Chakma, Advocates.

**JUDGMENT  
(01<sup>st</sup> March, 2024)**

**Ashok Bhushan, J.**

This is an application praying for Condonation of Delay in filing the Appeal. This Appeal has been filed against the order dated 07.11.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-IV. The Appeal have been e-filed on 06.01.2024. The ground taken in the Affidavit is that the order dated 07.11.2023 was uploaded on the website of the NCLT only on 19.12.2023 and the Appellant applied for certified copy which was received only on 20.12.2023, hence, the delay may be condoned.

**2.** Learned Counsel for the Appellant has relied on the judgment of the Hon'ble Supreme Court in "**Sanjay Pandurang Kalate vs. Vistra ITCL**

***(India) Limited & Ors.- Civil Appeal Nos. 7467-7468 of 2023***” decided on 04.12.2023.

**3.** Learned Counsel for the Respondent opposing the submission of the Appellant submits that the impugned order was passed on 07.11.2023 in presence of Counsel for the Appellant. It has further been pleaded by the Counsel for the Respondent that the order was pronounced on 07.11.2023 itself in presence of the Counsel for both the parties, hence, the date of uploading of the order is not relevant. Limitation for filing the Appeal shall commence from the date when order was passed.

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

**5.** The order dated 07.11.2023 which is challenged in this Appeal is to the following effect;-

*“1. Mr. Shyam Kapadia, Ld. Counsel for the Petitioner present. Mr. Trivedi, Ld. Counsel for the Applicant in IA-5059(MB)2023 present.*

*2. IA-5059(MB)2023: This is an application filed for seeking recalling of the order dated 09.10.2023. There is no valid reasons cited for recalling the order. Hence, IA-5059(MB)2023 is dismissed.”*

**6.** The above order clearly indicates that the order was passed in presence of both the parties and the IA filed by the Appellant was dismissed by the aforesaid order. When the order is passed in presence of both the counsel,

Appellant cannot contend that he was not aware of the order passed moreso, when the order was dismissing IA filed by the Appellant himself.

7. Judgment of the Hon'ble Supreme Court in "**Sanjay Pandurang Kalate**" (supra) was a case where both the counsel agreed that no substantive order was pronounced on 17.05.2023 and the order was uploaded only on 30.05.2023. It was noticed by the Hon'ble Supreme Court that 17.05.2023 was day when hearing was concluded but no substantive order was passed. In paragraph 19 of the judgment of the Hon'ble Supreme Court, following has been noticed:-

*"19. In the present case, the cause list for 17 May 2023 placed on record by the appellant indicates that the case was listed for admission and not for pronouncement. Further, on a specific query of the Court, it is not in dispute between counsel for the appellant and the respondent, that no substantive order was passed on 17 May 2023 by the NCLT. In these circumstances, limitation would not begin to run on 17 May 2023 which was the date on which hearings concluded. As no order was passed before 30 May 2023, there was no occasion for the appellant to lodge an application for a certified copy on 17 May 2023. Time for filing an appeal would commence only when the order appealed from was uploaded since prior to that date no order was pronounced."*

8. The Judgment of the Hon'ble Supreme Court in "**Sanjay Pandurang Kalate**" (supra) is clearly distinguishable and has no application in the

present case where order was passed in presence of both the parties dismissing the IA filed by the Appellant. Certified copy of the order was not applied by the Appellant within 30 days from passing of the order and from the copy of the order annexed along with the Appeal, it is clear that the application given by the Appellant referred as “D. 19518 dated 19.12.2023”. Thus, certified copy was applied by the Appellant after 30 days. When an order is passed by the Adjudicating Authority it casts an obligation on the party to apply for certified copy if the benefit under Section 12 of the Limitation Act are sought to be claimed and party intent to file an appeal. We may refer to the judgment of the Hon’ble Supreme Court in **“V. Nagarajan vs. SKS Ispat and Power Limited and Ors.- (2022) 2 SCC 244”**.

9. In the Delay Condonation Application filed by the Appellant in paragraph 3 the Appellant states *“that the matter was listed before the Ld. NCLT on 07.11.2023 for purpose of “For Seeking Appropriate Directions” whereupon the impugned Order came to be passed”*. There are no averments in the application that no order was passed on 07.11.2023 by the Court. Appellant sought to rely on date of uploading of the order which may not help the Appellant in the present case. As noticed above, the order was passed in presence of both the parties whose presence are noted in the order. We, thus, are of the view that the limitation to file an appeal shall commence from 07.11.2023 and the Appeal having been filed beyond 15 days after expiry of the limitation, delay cannot be condoned. Our jurisdiction to condone the delay is limited to only 15 days by Section 61(2) proviso.

**10.** In result, the Delay Condonation Application is dismissed. Memo of Appeal is rejected.

**[Justice Ashok Bhushan]  
Chairperson**

**[Justice Yogesh Khanna]  
Member (Judicial)**

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

**New Delhi**  
Anjali