

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

Company Appeal (AT) (Ins.) No. 1446 of 2022

&

I.A. No. 4551 of 2022

IN THE MATTER OF:

Diwakar Sharma

...Appellant

Versus

Anand Sonbhadra

RP of M/s Subhkamna Buildtech Pvt. Ltd. & Anr. ...Respondents

Present:

For Applicant: Advocate Mrinal Harshvardhan

**For Respondent: Mr. Abhishek Anand, Mr. Nipun Gautam, Advocates for
RP**

O R D E R

Per: Justice Rakesh Kumar Jain: (Oral)

28.03.2023: This appeal is against the order dated 12.09.2022, which has been filed alongwith an application i.e. I.A. No. 4551 of 2022, in which the Appellant/Applicant has prayed for condonation of delay for four days in filing of the appeal.

2. Shorn of unnecessary details, the impugned order was passed on 12.09.2022 and the appeal has been filed on 10.11.2022 by the Appellant who was confined in jail since 12.09.2018.

3. Ground taken in the application for condonation of delay read as under:-

“That Appellants declares that there is a delay in filing of present appeal. The certified copy of the impugned order 12.09.2022 was never received by the Appellant, the Resolution Professional has sent a copy of impugned order through DTDC courier on 11.10.2022. The present appeal is being filed with a delay of 4 days

after expiry of 30 days from the date of the service of order, as the Appellant was in jail and was not keeping well and admitted in the jail hospital.”

4. It is submitted that since the Appellant was not before the Court at the time of pronouncement of order, therefore, he had no knowledge about the impugned order which was conveyed to him by the RP, therefore, the limitation for filing of the appeal should be counted from the date of knowledge.

5. On the other hand, Counsel appearing on behalf of the RP has submitted that it has been held by the Hon’ble Supreme Court in the case of ***V. Nagarajan Vs. SKS Ispat and Power Limited & Ors., (2022) 2 SCC 244,*** that the period of limitation has to be counted from the date of the order not from the date of knowledge and also submitted that the period of 30 days counted from the date of impugned order i.e. 12.09.2022 expired on 12.10.2022 and if the limitation is extended by granting grace of 15 days as provided in 61(2) proviso even then the said period expired on 27.10.2022 whereas the appeal has been filed on 10.11.2022 much after the expiry of 45 days. In this regard, he has relied upon a decision in the case of ***National Spot Exchange Limited Vs. Mr. Anil Kohli, RP for Dunar Foods Limited, Civil Appeal No. 6187 of 2019 14.09.2021.***

6. We have heard Counsel for the parties and perused the record with their able assistance.

7. The issue in this case is as to whether the delay caused in filing of the appeal much beyond the period of 45 days can be condoned by this Tribunal?

8. In this regard, reference could be had to Section 61 of the Code which deals with the Appeals and Appellate Authority. It is relevant to refer to the relevant part of Section 61 of the Code which is reproduced as under:-

“Section 61: Appeals and Appellate Authority.

*61. (1) Notwithstanding anything to the contrary contained under the Companies Act 2013, any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.

(2) Every appeal under sub-section (1) shall be filed within thirty days¹ before the National Company Law Appellate Tribunal:

Provided that the National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed fifteen days.”

9. Section 61(1) provides for a right of appeal to an aggrieved person. Section 61(2) provides a period of limitation 30 days for preferring an appeal in terms of Section 61(1) before the Appellate Authority. Section 61(2) proviso provides another period of 15 days which can be extended in case the Appellant satisfies the Appellate Authority about the existence of a sufficient cause for not filing the appeal in time. There is no further provision in the Code for looking into the aspect of condonation of delay beyond the period of 15 days much less 45 days.

10. In the case of **V. Nagarajan (Supra)** the Hon’ble Supreme Court while drawing the conclusion in Para 33 has held as under:-

“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.”

11. In the case of ***National Spot Exchange Limited (Supra)*** the Hon’ble Supreme Court has held in Para 11.2 as under:-

“Thus, considering the statutory provisions which provide that delay beyond 15 days in preferring the appeal is uncondonable, the same cannot be condoned even in exercise of powers under Article 142 of the Constitution.”

12. In view of the aforesaid discussion, it is clear that there is no scope for condonation of delay beyond the period of 15 days much less 45 days as there is no window available for this Tribunal to exercise its jurisdiction for condonation of delay.

13. In view of the aforesaid facts and circumstances, we do not find any merit in the present application and the same is hereby dismissed and as a consequence thereof, the appeal is also dismissed. No costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

Sheetal/R.R