

NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH,
NEW DELHI

Comp. App. (AT) (Ins) No. 1898 of 2024 & I.A. No. 7020, 7024 of 2024
IN THE MATTER OF:

Tarandeep Kaur Ahluwalia & Ors.

...Appellants

Versus

One City Infrastructure Pvt. Ltd. & Ors.

...Respondents

Present:

For Appellants : Mr. Sahil Sethi, Samriddh Bindal, Vikash Kumar, Adv.

For Respondent : Ms. Anuja Pethia, Rishabh Govila, Adv. for ERP
Mr. Rishabh Nangia, Adv. for SRA

With

Comp. App. (AT) (Ins) No. 1899 of 2024 & I.A. No. 7025, 7026 of 2024
IN THE MATTER OF:

Shakti Bhushan Sood & Anr.

...Appellants

Versus

One City Infrastructure Pvt. Ltd. & Ors.

...Respondents

Present:

For Appellants : Mr. Sahil Sethi, Samriddh Bindal, Vikash Kumar, Adv.

For Respondent : Ms. Anuja Pethia, Rishabh Govila, Adv. for ERP
Mr. Rishabh Nangia, Adv. for SRA

O R D E R

Per: Justice Rakesh Kumar Jain (Oral)

04.10.2024: This order shall dispose of two applications bearing I.A. No. 7020 of 2024 filed in CA (AT) (Ins) No. No. 1898 of 2024 (first appeal) and I.A. No. 7026 of 2024 filed in CA (AT) (Ins) No. 1899 of 2024 (second appeal) by which the Appellant has prayed for condonation of delay of one day and not 16 days as directed by the Registry in filing the present appeal.

2. In brief, both the appeals have been filed against the common order dated 03.07.2024 by which the Tribunal has dismissed two applications i.e. 1593 of 2023 and 1594 of 2023 filed by the Appellants. It is pertinent to

mention that against the dismissal of I.A. No. 1593 of 2023, the first appeal has been filed and against the dismissal of I.A. No. 1594 of 2023, the second appeal has been filed.

3. Counsel for the Applicant in both the applications has submitted that the impugned order was passed on 03.07.2024 but the same was uploaded on the website of the NCLT on 18.07.2024. He has drawn our attention to the said mail dated 18.07.2024 sent by the NCLT attached at Annexure A13. It is submitted that the appellant came to know about the dismissal of their applications on 18.07.2024 for the first time and calculated the period of 30 days from 18.07.2024 and the appeal has been filed but during this process a delay of only one day has occurred which is within condonable period of 15 days as provided in Section 60(2) proviso of the Code. In support of his submissions, he has relied upon a decision of the Hon'ble Supreme Court in the case of Sanjay Pandurang Kalate Vs. Vistra ITC (India) Limited & Ors., (2024) 3 SCC 27. He has also submitted that even in Form NCLAT 1 (provided in Rule 22) for filing the appeals it is provided in para 2 of the said form that "Date on which the order appealed against is communicated and proof thereof, if any.", therefore, the limitation has to be counted from the date of communication of the order under the Code and not from the date of pronouncement of the order.

4. On the other hand, Counsel for Respondent No. 1 and 2 who are present in court to oppose the applications, on the advance notice given by the Appellant, has submitted that the limitation should be counted from the date of passing of the order i.e. 03.07.2024 and not from the date when it was uploaded on the website i.e. on 18.07.2024 by the NCLT. In this regard, he has relied upon a decision of the Hon'ble Supreme Court given in the case of

V. Nagarajan Vs. SKS Ispat And Power Limited & Ors., (2022) 2 SCC 244. He has further submitted that it is not a case where the order has been passed by the Adjudicating Authority after reserving the order rather the impugned order was passed at the same time after hearing was concluded and in the presence of the parties on 03.07.2024 In this regard, he has drawn our attention to the impugned order in which it has been clearly mentioned by the Adjudicating Authority “Heard, Ld. Counsels for the parties.”.

5. It is further submitted that if the limitation is to be counted from the date of pronouncement of the order, as held by the Hon’ble Supreme Court in the case of V. Nagarajan (Supra) then the appeal has been filed after the expiry of 16 days which cannot be condoned in view of the decision of the Hon’ble Supreme Court in the case of National Spot Exchange Limited Vs. Mr. Anil Kohli, Resolution Professional for Dunar Foods Limited, CA No. 6187 of 2019 in which it has been held that the period beyond 15 days cannot be condoned even in the exercise of powers under Article 142 of the Constitution.

6. He has further submitted that the judgment relied upon by the Appellant in the case of Sanjay Pandurang Kalate (Supra) is not applicable to the facts of this case because in that case, the order was not pronounced on 17.05.2023 and was uploaded on 30.05.2023 to show that the same has been pronounced on 17.05.2023 and in that background the Hon’ble Supreme Court has held that the knowledge of the pronouncement of the order was from the date of uploading the order and therefore, the period between 17.05.2023 till 30.05.2023 was excluded.

7. He has further submitted that Rule 150(1) clearly postulates that the Tribunal can pronounce the order after hearing either at once or can reserve the order and pronounce the order. It is submitted that in the present case

the order was pronounced at once on 03.07.2024 after hearing Ld. Counsel for the parties, therefore, knowledge of the order to the Appellant has to be attributed from the date of pronouncement of the order i.e 03.07.2024 and not from the date i.e. 18.07.2024 when it is alleged to have been uploaded on the website of NCLT.

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

9. The impugned order was passed on 03.07.2024. It is clear from the impugned order that it has been passed after hearing Ld. Counsel for the parties which includes the counsel for the Appellants. The order has pronounced on 03.07.2024 in court after hearing Ld. Counsel for the parties and therefore, the limitation would start not from the date i.e. 18.07.2024 when the order was uploaded by the NCLT on its website but from the date when the order was pronounced in terms of the decision of the Hon'ble Supreme Court in the case of V. Nagarajan (Supra). If the limitation is to be counted from 03.07.2024, the appeals have been filed after expiry of 16 days which cannot be condoned in any manner by this Court because in Section 61(2) proviso it has been clearly provided that the window of 15 days is provided after 30 days for the purpose of seeking condonation of delay after assigning sufficient cause that too to the satisfaction of this Court but in no case the period of 15 days can be extended. Here it is a case where the appeal has been filed on 16th day i.e. beyond the period of 15 days.

10. In so far as the case of Sanjay Pandurang Kalate (Supra) is concerned which is heavily relied upon by the Appellant, the same is not applicable to the facts of this case because in that case the order was not pronounced on 17.05.2023 rather it was made known to the parties when it was uploaded on

30.05.2023 that the application was disposed of on 17.05.2023. In this background the Hon'ble Supreme Court has given the extension of limitation from the date when the order dated 17.05.2023 came to the knowledge of the Appellant when it was uploaded on the website of the NCLT. The judgment is thus not applicable rather Rule 150(1) clearly provides that the Tribunal has the jurisdiction to pronounce the order at once or by reserving the order. In the present case, the order was passed by the Tribunal at once on 03.07.2024, therefore, the limitation shall start not from the date when it was uploaded but from the date when the order was pronounced.

11. Thus, in view of the aforesaid facts and circumstances, we hold that the period of limitation is to be counted from the date of pronouncement of the order in court on 03.07.2024 and in that process if the limitation is counted then it goes beyond the period of 15 days which cannot be condoned in any manner.

12. No other argument has been raised.

13. In view thereof, both the applications are dismissed. Since, both the applications for condonation of delay are hereby dismissed by this order, therefore, both the appeals are not found to be duly constituted and the same are also dismissed. No costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Barun Mitra]
Member (Technical)

[Mr. Naresh Salecha]
Member (Technical)

Sheetal/Ravi