

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1893 of 2024

&

I.A. No. 6999 of 2024

IN THE MATTER OF:

Shakir

...Appellant(s)

Versus

Fruitful Buildcon Pvt. Ltd.

...Respondent(s)

Present:

For Appellant : Mr. Ankur Singhal, Advocate.

For Respondents :

O R D E R
(Hybrid Mode)

17.10.2024: **I.A. No. 6999 of 2024**

This is an application praying for condonation of 18 days' delay in filing the appeal. Ld. Counsel for the Appellant submits that the delay is not 18 days since he is entitled for the benefit of the time when he received the free of cost copy from the NCLT. He submits that he received the free of cost copy of the order dated 16.07.2024 on 23.07.2024. Hence, the period from 16.07.2024 to 23.07.2024 be excluded. He has relied on the Judgment of Hon'ble Supreme Court in Civil Appeal No. 10424 of 2024 '*State Bank of India vs. India Power Corporation Ltd.*' He has relied on paragraph no.4,5, 6 and 19 which are as follows:

“4. The appeal before the NCLAT, Chennai was filed on 02.12.2023. The appellant filed an application for condonation of delay on the ground that the appeal had been lodged with a delay of 3 days beyond the 30 day period prescribed in Section 61(2).

5. A divergence arose between the two members of the NCLAT on 01.05.2024. The Judicial Member held that the certified copy which was filed by the appellant was a “free of cost” copy and hence in the absence of an application for the grant of a certified copy, the delay of three days could not be condoned. The Technical Member, on the other hand, held that no distinction could be made between certified copies obtained through the payment of fee and a free copy and sufficient cause was shown for condoning the delay of three days.

6. The divergence was, thereafter, referred to a third Member of the NCLAT who has ruled that the free copy provided under Rule 50 of the National Company Law Tribunal Rules 2016 cannot be treated as a certified copy which is referred to in Rule 22 (2) of the NCLAT Rules 2016.

19. Rule 22(2) of the NCLAT Rules requires that every appeal shall be accompanied by a certified copy of the impugned order. Rule 50 of the NCLT Rules prescribes that the Registry shall send a certified copy of the final order free of cost and certified copies may be made available on payment of costs in terms of the Schedule of Fees in all other cases. Both the certified copy which is made available free of cost as well as the certified copy which is made available on the payment of costs, are treated as certified copies for the purpose of Rule 50. A litigant who does

*not apply for a certified copy cannot then fall back and claim that he was awaiting the grant of a free copy to obviate the bar of limitation. This was the position in the decision of this Court in **V Nagarajan**".*

2. In the present case the impugned order passed on 16.07.2024 was pronounced on 16.07.2024 and the petitioner who is operational creditor was present, represented by a Ld. Counsel. Appeal has been e-filed on 02.09.2024, 15 days' limitation for filing the appeal expired on 15.08.2024 and the appeal is filed on the 18th day. The question as to whether the appellant should be given the benefit of time which was taken in receiving the free of cost copy is the question to be answered.

3. Present is the case where it is not the case of the appellant that he even applied for certified copy of the order. He is relying only on the free of cost copy of the order which stated to be received on 23.07.2024.

4. The Judgment of Hon'ble Supreme Court which has relied by appellant itself indicate that the litigant who does not apply for the certified copy cannot then fall back and claim that he was awaiting the grant of the free copy to obviate the bar of limitation. Judgment of the Hon'ble Supreme Court in "*V Nagarajan vs. SKS Ispat and Power Ltd. & Ors.*" has laid down that limitation for filing the appeal commences from the date of order is pronounced and litigant has to be vigilant in applying the certified copy of the order. In

CA (AT) (Ins) No. 1893 of 2024 and IA No. 6999 of 2024

paragraph 33 of the Judgment of the Hon'ble Supreme Court in “(2022) 2 SCC 244, *V Nagarajan vs. SKS Ispat and Power Ltd. & Ors.*” following has laid down:

“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.”

5. The mere fact that the appellant received free of cost copy on 23.07.2024 cannot arrest the running of the limitation which began on the date when the Judgment was pronounced. The judgment which has been relied by the appellant in 'State Bank of India vs. India Power Corporation Ltd.' where the delay was within the condonable period. In the present case the delay being of 18 days is beyond our jurisdiction as per Section 61(2) proviso. The delay condonation petition is dismissed. Memo of Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

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