

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI**

(APPELLATE JURISDICTION)

IA No. 383 / 2023

in

Company Appeal (AT) (CH) (INS) No. 99 of 2023 &

IA No.384/2023

**(Arising out of the 'Impugned Order' dated 23.12.2022 in
IA(IBC) No.203/KOB/2022 in CP(IBC) No.18/KOB/2021, passed by the
'Adjudicating Authority', (National Company Law Tribunal',
Kochi Bench)**

In the matter of:

Korah John aged 63 yrs.
Son of Late M.K. John,
Marikudiyil House,
Pazhanganad, Kizhakkambalam,
Ernakulam – 683 562, now residing
at Milgram Plantations, Mlamala,
Thengakkal PO,
Vandiperiyar 685 533.
v.

.... Appellant

JM Financial Asset Reconstruction
Company Ltd., (acting in capacity
as trustee of JMF ARC- Federal
Bank March 2013-Trust), 7th Floor,
Cnergy Appasaheb Marathe Marg,
Prabhdevi, Mumbai – 400 025.

... 1st Respondent

CA. Francis Mathew,
Resolution Professional, Unitek
Power Solutions India Ltd., IBBI
Reg No.IBBI/1PA-001/1P-P00995/
2017-18/11642, having address at
Illickal House, Pakalomattam P.O.,
Kottayam District, Pin code – 686 633.

... 2nd Respondent

Present:

For Appellant : Mr. B. Ashok Shenoy, Advocate
For Respondent No.1 : Mr. Srinath Sridevan, Senior Advocate
For Mr. Ashwin Shanbhang, Advocate

ORDER
(Hybrid Mode)

[Per : Jatindranath Swain, Member (Technical)]

1. The instant Appeal has been filed by the Appellant against the Impugned Order dated 23.12.2022 in IA(IBC) No.203/KOB/2022 in CP(IBC) No.18/KOB/2021 on the file of National Company Law Tribunal (NCLT), Kochi Bench. Along with the Appeal, 3 Interlocutory Applications (IA) have been filed. They are IA No.375/2023 to Condone Delay of 8 days in representation of the papers, IA No.383/2023 seeking to Condone Delay of 14 days in filing the Appeal and IA No.384/2023 seeking an interim stay of the operation of the Impugned Order of NCLT, Kochi.
2. The matter was heard on 24.04.2023. IA No.375/2023 was allowed and delay of 8 days in re-presenting the papers was condoned. Then, IA No.383/2023 seeking condonation of delay, was taken up for consideration. Noting that the 45 days period, from the date of pronouncement of the Impugned Order expired on 06.02.2023, that the Appeal has been filed on 09.02.2023 after the expiry of 45 days period, from the date of Judgment / Order of the Adjudicating Authority / NCLT, Kochi Bench and that, the outer limit of time period granted under section

61(2) of Insolvency & Bankruptcy Code, 2016 has been breached, this 'Tribunal', dismissed the IA No.383/2023 seeking Condonation of Delay in filing the Appeal and also dismissed the main Appeal CA (AT) (Ins) No.99/2023, as time barred.

3. The Appellant appealed against the order of NCLAT dated 24.04.2023 in Hon'ble Supreme Court and the Hon'ble Supreme Court after hearing the case and observing made that there is a lack of clarity, regarding the date of uploading of the Impugned Order of NCLT, Kochi Bench on its website, passed an Order on 25.09.2023, setting aside the Impugned Order of NCLAT, Chennai Bench dated 24.04.2023 and remitted the proceedings back to NCLAT, Chennai for fresh decision on whether the Appeal was filed within the period of limitation and on whether the Appellant has demonstrated a sufficient cause within the ambit of section 61 of IBC, 2016 for exercise of the discretion to Condone Delay, not exceeding 15 days.
4. As per the order of Hon'ble Supreme Court, hearing on IA No.383/2023 was taken up afresh. The Appellant has contended that the order was pronounced on 23.12.2022 in virtual mode and the order was digitally signed only at 3.25 PM of the same day as can be seen in the copy of the impugned order. The copy of the order was uploaded on 26.12.2022 and the Certified Copy of the order was sent by NCLT Registry to him by email on 27.12.2022. Thus, for him the clock should start running from 27.12.2022, the date on which he received the Certified Copy, or at the

most from 26.12.2022 when the copy was uploaded because he has no way of knowing what was there in the order. Computing from 27.12.2022, the time taken by him for filing the Appeal in 44 days (excluding 27.12.2022) and computing from 26.12.2022 (the day, order copy was uploaded) the time taken is 45 days. Accordingly, the Appellant states that his Appeal is within the outer limit of 45 days and hence not barred by limitation.

5. On the issue of 14 days delay beyond 30-day period in filing the Appeal, list out the reasons as under: -

- i) The documents to be cited and attached to the appeal paper book relate to the year 2008 and they had to be traced which took time.
- ii) The Appellant was staying in a remote hilly tract in Idukki district far from the Counsel's place and office and because of old age and age-related ailments the task of contacting the counsel and supplying him with relevant documents took time. He states that the delay was only due to above, is inadvertent and hence may be condoned.

6. The Respondent contends that the Impugned Order was pronounced by NCLT, Kochi Bench on 23.12.2022, that the application IA(IBC) No.203/KOB/2022 in CP(IBC) No.18/KOB/2021 was listed for hearing on the same date at serial no.7 in the cause list, that the Appellant was present before NCLT and hence, he had notice of the same. He further states that since the Appellant has not applied for a Certified Copy of the Impugned Order till date, the period of limitation will start from 23.12.2022 as per the

principles laid down in the decision of Hon'ble Supreme Court dated 22.10.2021, in the case of V. Nagarajan Vs. SKS Ispat & Power Ltd in Civil Appeal No.3327 of 2020 [(2022) 2 SCC 244].

7. The Respondent further contends that the Appellant has not given credible reasons for the delay of 14 days (as claimed by him) beyond the 30 days period and that no document pertaining to the year of 2008 has been filed by the Appellant in the present Appeal despite taking the plea that it took time to procure the same. He refers to the index of typed set of papers attached to this Appeal Petition to prove his point. He further states that the Appellant had always access to the so-called old papers including those relating to the year 2008 as he had filed the same in his reply in the matter of IA(IBC) No.203/KOB/2022 before NCLT, Kochi Bench and a perusal of the index of reply filed by the Appellant will show that all documents in respect of loans / financial liabilities have been filed by him. Therefore, he contends that the Appellant has not made out 'Sufficient Cause', for Condonation of Delay and hence, the Application for Condonation of Delay, should be rejected.
8. The Appellant cites the Judgment of Hon'ble Supreme Court dated 04.12.2023, in Civil Appeals No. 7467-7468 of 2023, in the matter of Sanjay Pandurang Kalate Vs. Vistra ITCL (India) & Ors, especially para-19 to state that this decision departs from the decision made in V. Nagarajan case and that the date of uploading of the judgement should

be the crucial date and not the date of pronouncement of the judgement for the purpose of calculating the limitation period. He has further stated that the delay to be condoned is within the outer limit of 15 days and is condonable in the light of the law laid down by the Hon'ble Apex Court in decisions in the matter of "Sanket Kumar Agarwal Vs APG Logistics Pvt. Ltd." [2023 SCC Online SC 976], "Seshnath Singh & Anr. Vs Baidyabati Sheoraphuli Cooperative Bank Ltd. & Anr.", [2021 (7) SCC 313], "S. Ganesharaju (Dead) through LRs and Anr Vs. Narasamma (Dead) through LRs and Ors" [2013 (11) SCC 341] and "Collector, Land Acquisition, Anantnag and Anr Vs. Mst.Katiji and Ors" [1987 (2) SCC 107], which lay down the proposition that a liberal approach has to be adopted for condonation of delay even in matters arising under the IBC.

9. The contentions of the Appellant and the Respondent and the citations were examined in detail. It is seen that the impugned order was pronounced on 23.12.2022 which has been accepted by the Appellant. However, his contention is that, it has been signed at 3.25 PM on the same date and the two subsequent days being holidays, it is not possible for him to know the details of the order so as to start his preparations for the Appeal. And therefore, the limitation period should start from 27.12.2022 or at the maximum, 26.12.2022 when the order was uploaded. He cites the decision of the Hon'ble Supreme Court in Sanjay Pandurang Kalate case to state that the date of uploading of the order, should be the crucial date for the

purpose of computing the limitation period. However, in the above-mentioned case the judgement was not pronounced on the date of hearing and was pronounced at a later date and therefore a departure was made from the principle laid down in the decision made in V. Nagarajan case and the date of uploading of the judgement was taken as the starting point from which the time line for appeal would commence. However, it is seen that in the present case, the application was listed for hearing on 23.12.2022 and the order was pronounced on the same day which is proved on the basis of the fact that the order copy was digitally signed by Member (Judicial) at 3.25 PM on 23.12.2022 and this has been acknowledged by the Appellant. Therefore, it will not be possible to deviate from the decision in V. Nagarajan case especially when he has not applied for a certified copy within the limitation period.

10. Even if his plea that the Order was made ready in the afternoon only, that the next 2 days were holidays and therefore, he could have reacted to the Order only from 26.12.2022 at the earliest and therefore, the limitation period should be computed from 26.12.2022 is to be accepted , it is still difficult to accept his plea for condonation of delay of 15 days, beyond the 30-day period. The reasons he has given are very general in nature and not convincing. Staying in a remote hilly tract in the present digital age of smart phones and mobile internet is not a reason for not being able to take action in a prompt and timely manner. Further the claim that substantial

time was spent in tracing and retrieving 15-year old records loses its credibility on face of the contention of the Respondent that all the records were already filed with NCLT and that it was always with him. The Appellant has tried to counter this by saying that the Respondent has not filed any documents to support his contention. The same can be said for the Appellant too. It is seen that the Respondent has at least offered the index of the typed set of papers annexed to the Appeal before NCLAT and the Application filed before NCLT to support his contention. On the other hand, the Appellant has not shown a single document which as per his claim took a long time to trace and collect. This makes us to come to the conclusion that 'sufficient cause' has not been demonstrated to merit condonation of delay of 14 days beyond the 30-day period.

11. The Appellant has cited a number of decisions of Hon'ble Supreme Court to support his plea that a liberal approach be adopted for condonation of delay even in matters arising under the IBC. In this matter, we have to say that the objective of IBC is to ensure timely resolution of insolvency and accordingly provisions have been put in place including strict timelines for the legal and administrative processes and therefore, adopting a liberal approach, needless to say, will defeat the objectives of the Code and will run counter to the view expressed in V. Nagarajan case and other similar cases.

12. In view of the above, this ‘Tribunal’, comes to the conclusion that the Appeal has been filed beyond the prescribed time limit as stipulated in section 61(2) of Insolvency & Bankruptcy Code 2016 and the Appellant has not demonstrated a ‘Sufficient Cause’ within the ambit of the said section to enable this ‘Tribunal’, to exercise its discretion to condone the delay not exceeding 15 days. Accordingly, the Application in IA No. 383 of 2023, in Company Appeal (AT) (CH) (Ins) No. 99 of 2023 is found devoid of merits and is hereby dismissed.

Company Appeal (AT) (CH) (INS) No. 99 of 2023

Consequent to the dismissal of IA No. 383 of 2023, seeking condonation of delay, the Company Appeal (AT) (CH) (INS) No. 99 of 2023, is not ‘entertained’, and hereby ‘Rejected’. The connected IA No. 384 of 2023 (For Stay) is closed.

**[Justice M. Venugopal]
Member (Judicial)**

**[Justice Sharad Kumar Sharma]
Member (Judicial)**

**[Jatindranath Swain]
Member (Technical)**

NB: This Order is pronounced, in terms of
Rule 92 of the NCLAT Rules, 2016

03.05.2024

VG/TM