

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI**

(APPELLATE JURISDICTION)

IA No. 34 of 2023

in

Company Appeal (AT) (CH) (INS.) No. 13 of 2023

and

Company Appeal (AT) (CH) (INS.) No. 13 of 2023

Under Section 61 of the Insolvency and Bankruptcy Code, 2016)

**(Arising out of the `Order` dated 26.10.2022 in CP(IB)No.33/7/AMR/2019,
passed by the `Adjudicating Authority`, (National Company
Law Tribunal, Amaravati Bench)**

In the matter of:

Sridhar Cherukuri

S/o. Ch. Jagannadha Rao,
Suspended Director,
M/s. Transstroy (India) Ltd.
8-2-684/2, Flat No. 106
Rocklevez, Gulmohar Avenue,
Road No. 12, Near ICICI Bank,
Banjara Hills, Hyderabad – 500 034

..... Petitioner /
Appellant

v.

Dr. G.V. Narasimha Rao

301, Alekhya Raindrops
Gautami Enclave, Kondapur
Hyderabad – 500 084

..... Respondent No. 1 /
Liquidator

**M/s. Hruday Infra and Resource
Solution Pvt. Ltd.**

2/3, Crescent Park Street,
T Nagar, Chennai
Tamil Nadu – 600 017

..... Respondent No.2 /
Successful Bidder

Present:

For Appellant : Mr. Vijay Narayan, Senior Advocate
For Mr. K. Moorthy, Advocate

For Respondent No.1 : Mr. P.H. Arvindh Pandian, Senior Advocate
For Mr. Pradeep Joy, Advocate

For Respondent No.2 : Mr. Satish Parasaran, Senior Advocate
For Ms. Harshini Jhothiraman, Advocate

ORDER
(Virtual Mode)

Justice M. Venugopal, Member (Judicial):

IA No. 34 of 2023 in Comp. App (AT) (CH) (INS.) No. 13 of 2023:

According to the 'Petitioner / Appellant' (not being a 'Party'), to the IA (IBC) No. 39 of 2022 in TCP (IB) No. 33 / 7 / AMR /2019, filed by the '1st Respondent / 'Liquidator' / 'Petitioner', after coming to know of the 'impugned order' dated 26.10.2022, passed by the 'Adjudicating Authority', ('National Company Law Tribunal', Amaravati Bench), has preferred the instant Comp. App (AT) (CH) (INS) No. 13 of 2023, as an 'Aggrieved Person', seeking to 'condone the delay of 17 days' in preferring the instant 'Appeal'.

2. The 'Petitioner / Appellant', had applied for a certified copy of the 'impugned order' dated 26.10.2022 in IA (IBC) No. 39 of 2022 in TCP (IB) No. 33 / 7 / AMR /2019, and that the said copy, was made available to him, only on 24.11.2022.

3. Further, the limitation for filing an 'Appeal', had expired on 26.11.2022 and that in the 'Notes of Submissions', the 'Petitioner / Appellant', had mentioned that in IA No. 34 of 2023 in Comp. App (AT) (CH) (INS.) No. 13 of 2023, the 'delay was mistakenly mentioned as '17 days', instead of '14 days', and the 'mistake' was only an 'inadvertent error'.

Appellant's Contentions:

4. The Learned Senior Counsel for the 'Petitioner / Appellant' submits that, the computation of 14 days in preferring the instant 'Appeal', as per the provisions of Section 61 (2) of the I & B Code, 2016, is shown as under:

Period	Days	Provision
26.10.2022 to 25.11.2022	<i>Expiry of 30 days (excluding the date of the order i.e. 26.10.2022)</i>	<i>As per Section 61(2) of the I and B Code, every appeal should be filed within 30 days</i>
26.11.2022 to 10.12.2022 (Saturday)	<i>Expiry of 15 days thereafter</i>	<i>As per Section 61 (2) of the I and B Code, NCLAT may allow an appeal filed after the expiry of 30 days, but such period shall not exceed 15 days</i>
09.12.2022	<i>e-filing of the Appeal on the 44th day.</i>	<i>In term of the NCLAT Circular in F.No.23/4/2022 – Estt. / NCLAT dt. 24.12.2022 ``Limitation shall be computed from the date of e-filing''</i>

10.12.2022 (Saturday)	<i>Expiry of 45 days from the passing of the impugned order dated 26.10.2022</i>	
10.12.2022 to 11.12.2022 (Saturday and Sunday)	<i>The Court or office was closed due to holiday</i>	<i>Section 10 of the General Clauses Act, 1897 reads that if the court of office is closed on the last day of the prescribed period then the act or proceeding is considered as done in due time if it is done or taken on the next day afterwards on which the court is open</i>
12.12.2022 (Monday)	<i>Filing of physical copies of the appeal on the 45th day i.e. the physical copies of the appeal is filed within 3 days of e-filing.</i>	<i>In term of the NCLAT Circular in F.No. 23/4/2022 – Estt. / NCLAT dt. 24.12.2022. The hard copy has to be filed within 7 days of e-filing’’</i>

5. The Learned Counsel for the ‘Petitioner / Appellant’, refers to the Circular of this ‘Tribunal’, in F. No.23/4/2022-Estt./NCLAT dated 24.12.2022 and submits that having taken note of the current situation, the Circular was issued, withdrawing the previous ‘Order’ in F.No.10/37/2018-NCLAT dated 21.10.2022 and the same is as follows:

“(2) Limitation shall be computed from the date of e-filing. The hard copy has to be filed within 7 days of e-filing. However, the competent authority is at liberty to notify to extend the period of filing hard copy in case of any unforeseen exigency. In a case where hard copy is filed after 7 days, the appeal will be placed before the Tribunal for appropriate order.”

6. The Learned Counsel for the ‘Petitioner / Appellant’, adverts to the ingredients of Section 10 of the General Clauses Act, 1897, which proceeds as under:

“10 (1) Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open: Provided that nothing in this section shall apply to any act or proceeding to which the 6 Indian Limitation Act, 1877, applies.”

7. It is the version of the ‘Petitioner /Appellant’ that the ‘Appeal Paper Book’, was uploaded in the ‘Efiling Portal’, on 09.12.2022, and that the expiry of 45 days, from the date of the ‘impugned order’ dated 26.10.2022 in IA(IBC) No. 39 of 2022 in TCP (IB) No. 33 / 7 / AMR / 2019, on the file of the ‘Adjudicating Authority’, (‘National Company Law Tribunal’, Amaravati Bench), would fall on 10.12.2022 (Saturday).

8. In this connection, the Learned Counsel for the ‘Petitioner / Appellant’, points out that as the period of Limitation, came to an end on 10.12.2022, (‘Court’ holiday), when the physical copies ‘Appeal Paper Book(s)’, were submitted on ‘12.12.2022’, the ‘next working day’, is well within the period of limitation.

9. The Learned Counsel for the Petitioner / Appellant submits that, the ‘Order’ of this ‘Tribunal’ dated 09.01.2023, in IA No. 1025 of 2022 in

Comp. App (AT) (CH) (INS.) No. 418 of 2022 and Comp. App (AT) (CH) (INS.) No. 418 of 2022, between Sanket Kumar Agarwal and Anr. v. APG Logistics Pvt. Ltd., is not applicable to the facts of the instant 'Appeal', because of the fact that, in IA No. 1025 of 2022 in Comp. App (AT) (CH) (INS.) No. 418 of 2022, the 'Appeal', was preferred by the 'Appellants' on 'E-portal', on the 46th day (i.e, on 10.10.2022), from the date of the 'impugned order', and further that the 'physical copy' of the 'Appeal Paper Book', was furnished before the 'Registry' of this 'Appellate Tribunal', on 31.10.2022 (21 days thereafter).

10. The Learned Counsel for the 'Petitioner / Appellant', contends to the Judgment of the Hon'ble Supreme Court of India dated 22.10.2021, in V. Nagarajan v. SKS Ispat and Power Limited and Ors. (vide Civil Appeal No. 3327 of 2020), is 'inapplicable', to the facts of the instant Comp. App (AT) (CH) (INS.) No. 13 of 2023, because of the reason that in the present case, the 'Appeal' is filed well within the specified period, as per Section 61 (2) of the I & B Code, 2016. That apart, in the Judgment of the Hon'ble Supreme Court of India in V. Nagarajan's case, the 'Appeal', was filed beyond a period of limitation, prescribed under Section 61 (2) of the I & B Code, 2016.

11. On behalf of the Petitioner / Appellant, it is represented before this `Tribunal`, that in the instant matter, the `impugned order` dated 26.10.2022, was made in IA (IBC) No. 39 of 2022 in TCP (IB) No. 33 / 7 / AMR / 2019, on the file of the `Adjudicating Authority` (`National Company Law Tribunal`, Amaravati Bench, Mangalagiri), and that the said `Order` of the `Adjudicating Authority`, was uploaded on the `Efiling Portal`, on 09.12.2022, (Friday – the 44th day, from the passing of the `impugned order`, by the `Adjudicating Authority`), and the physical copy of the `Appeal`, was submitted before the `Office of the Registry` on 12.12.2022 (the Monday thereafter), and therefore, in terms of the `Circular on E-filing`, the `Appeal`, is preferred with a further delay of `14 days`, which this `Tribunal`, is empowered to `condone` for sufficient reasons, being exhibited.

12. The Learned Counsel for the Petitioner / Appellant, takes a stand that the `delay`, if any, in submitting the physical copies of the `Appeal Paper Book`, was only, because of the Court Holiday on Saturday and Sunday (10.12.2022 and 11.12.2022 respectively), and the same is even otherwise is permitted under the `Circular` F.No. 23/4/2022 – Estt. / NCLAT, dated 24.12.2022, regarding `E-filing`.

1st Respondent's Pleas:

13. Conversely, the Learned Senior Counsel for the `1st Respondent / Liquidator`, submits that, as the `Petitioner / Appellant`, has admitted that there as occasioned a delay of `17 days`, in filing an `Appeal`, beyond a `15 days period`, on this score, the instant Comp. App (AT) (CH) (INS.) No. 13 of 2023, is to be dismissed, as `barred by Limitation`.

14. The Learned Counsel for the 1st Respondent, contends that, to escape from the consequences of the admitted fact of limitation, the Learned Counsel for the `Appellant` (in oral argument), sought to set up an `alternate argument`, by mentioning that the `delay is of 14 days only`, since the case was `e-filed` within `14 days`, and the 15th day, being a `Holiday`, the case of physical filing, made on the `next working day`.

15. The Learned Counsel for the 1st Respondent, adverts to the relevant dates as under:

<i>Date</i>	<i>Event</i>
26.10.2022	<i>Impugned order in IA No. 39 of 2022 in TCP (IB) No. 33/7/AMR/2019 (on the File of the `Adjudicating Authority`, NCLT, Amaravati Bench)</i>
25.11.2022	<i>30-day period lapses, i.e. last date of the `prescribed period`, within which, the appeal could have been filed without any delay</i>
09.12.2022	<i>Date of e-filing of the Appeal</i>
10.12.2022	<i>45th day from the impugned order, i.e. last date within</i>

	<i>which the Appeal could have been filed, albeit with delay. In other words, the last date of the `further period`</i>
12.12.2022	<i>Date of physical filing of the Appeal with delay of 17 days</i>

16. Advancing his arguments, the Learned Counsel for the 1st Respondent, refers to the `Circular` of this `Tribunal` in F.No.10/37/2018-NCLAT, dated 21.10.2022 and points out that a Circular mandated that the date of physical filing alone would be reckoned as `relevant` for the purpose of `computing the Limitation`.

17. In this regard, the Learned Counsel for the 1st Respondent, adverts to the `relevant portion` of the aforesaid `Circular Order`, dated 21.10.2022, which runs as under:

``Hence, with regard to computation of limitation in Appeals, following directions are hereby issued by the Competent Authority:-

- (1) The period of limitation shall be computed from the date of presentation of Appeal as per Rule 22 of the NCLAT Rules, 2016.*
- (2) The requirement of filing Appeals by electronic mode shall continue along with mandatory filing of the Appeals as per Rule 22 of the NCLAT Rules, 2016.*
- (3) This order will be effective with effect from 1st November 2022.``*

18. The Learned Counsel for the 1st Respondent, takes a stand that from the above 'Circular', which came into effect from 01.11.2022, the date of presentation i.e., the date of physical filing alone, should be deemed to be relevant for the purpose of computing the Limitation. Furthermore, this 'Order', which came into force, on 01.11.2022, remained in force till 24.12.2022, and was later withdrawn as per Order dated 24.12.2022, bearing F.No.23/4/2022-Estt./NCLAT.

19. According to the 1st Respondent, the relevant portion of the 'Order' dated 24.12.2022 in F.No.23/4/2022/Estt./NCLAT, issued by the 'Competent Authority', reads as under :

(1) The order F.No.10/37/2018-NCLAT dated 21.10.2022 is hereby withdrawn and superseded by this order.

(2) Limitation shall be computed from the date of e-filing. The hard copy has to be filed within 7 days of e-filing. However, the competent authority is at liberty to notify to extend the period of filing hard copy in case of any unforeseen exigency. In a case where hard copy is filed after 7 days, the appeal will be placed before this Tribunal for appropriate order.

(3) The requirement of filing Appeals by electronic mode shall continue along with mandatory filing of the Appeals as per Rule 22 of the NCLAT Rules, 2016.''

20. The Learned Counsel for the 1st Respondent points out that in terms of the 'Order' dated 21.10.2022 in F.No.37/2018 – Estt./NCLAT, it is

evident that, the `date of physical filing`, alone is relevant for computing the `aspect of Limitation`.

21. Expatiating submissions, the Learned Counsel for the 1st Respondent contends that it is settled `Law` in cases, where the `Appeal`, is `barred by Limitation`, before the introduction of a `Retrospective Amendment`, such `Time Barred Cases`, cannot stand revived by a `subsequent amendment`, which enlarges `Limitation`.

22. According to the 1st Respondent, in the instant `Appeal`, was time barred on 10.12.2022 (on the 45th day) and it cannot be revived, by the `withdrawal` of the earlier `Order` of this `Tribunal` dated 21.10.2022, by the `Order` dated 24.12.2022.

23. The other contention put forward on behalf of the 1st Respondent is that, the `Appellant`, on demurrer, had corrected, reckoned the date of physical filing and had pleaded that there is a `delay of 17 days`. The `Appellant` having acquiesced to this position in `Law`, by its `pleadings`, during arguments, seeks to restate the dates erroneously and in `violation` of the aforesaid position in `Law`, by referring to the `E-filing date`, for the first time.

24. The Learned Counsel for the 1st Respondent points out that the 'Appellant', while admitting the date of physical filing, ought to be reckoned as the 'date for computing the Limitation', had argued that the '45th day', i.e., 10.12.2022, falls on a 'Saturday', and that 12.12.2022, being the 'next working day', should be calculated as the 'last date of Limitation', as per Section 10 of the Limitation Act, 1963.

25. The Learned Counsel for the 1st Respondent points out that the 'Appellant' has endeavoured to hinder the 'Corporate Insolvency Resolution Process' and the 'Liquidation Proceedings', of the 'Corporate Debtor', from the first day, and one of the 'Assets', was sold in e-auction dated 08.12.2021, was the Residential Property at Jubilee Hills, Hyderabad, belonging to the 'Corporate Debtor', and that the said 'Property', is in possession of the 'Appellant'. Moreover, the 'Liquidator', had filed a 'Petition' (IA No. 352 of 2022 on 11.11.2022), to direct the 'Appellant', to extend co-operation to the 'Liquidation Proceedings', as per Section 35 (1) (n) of the I & B Code, 2016, and the same is pending.

26. The Learned Counsel for the 1st Respondent comes out with a plea that the present 'Appeal', is 'not maintainable', because of the fact that the proviso to Section 61 of the Code, provides for the 'condonation of

delay', by the 'Appellate Tribunal', to a maximum period of 15 days', and that only when 'sufficient cause', for the 'delay', is 'exhibited', by the 'Appellant'. Also that, post completion of the said 'time limit', there is no provision, prescribed under the 'Code', for the 'condonation of delay', by this 'Appellate Tribunal'.

27. In this regard, the Learned Counsel for the 1st Respondent, adverts to Section 61 of the I & B Code, 2016, which proceeds to the following effect:

''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 days 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.''

28. While concluding, the Learned Counsel for the 1st Respondent submits that the instant 'Appeal', is an after thought of non co-operation and the 'Application' under Section 35 (1) (n) of the Code, is only to 'derail' the 'Closure' of 'Liquidation Proceedings'.

1st Respondent's Citations:

Hon'ble Supreme Court's Decisions:

29. The Learned Counsel for the 1st Respondent, refers to the Judgment of the Hon'ble Supreme Court of India, in T. Kaliamurthi & Anr. v. Five Gori Thaikal Wakf & Ors. (2008) 9 SCC 306 (vide Civil Appeal No. 4988 – 4991 of 2000 dated 01.08.2008), wherein at Paragraphs 22 and 23, it is observed as under:

22. ``..... It is well settled that no statute shall be construed to have a retrospective operation until its language is such that would require such conclusion. The exception to this rule is enactments dealing with procedure. This would mean that the law of limitation, being a procedural law, is retrospective in operation in the sense that it will also apply to proceedings pending at the time of the enactment as also to proceedings commenced thereafter, notwithstanding that the cause of action may have arisen before the new provisions came into force. However, it must be noted that there is an important exception to this rule also. Where the right of suit is barred under the law of limitation in force before the new provision came into operation and a vested right has accrued to another, the new provision cannot revive the barred right or take away the accrued vested right. At this juncture, we may again note Section 6 of the General Clauses Act, as reproduced herein earlier. Section 6 of the General Clauses Act clearly provides that unless a different intention appears, the repeal shall not revive anything not in force or existing at the time at which the repeal takes effect, or affects the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or affect any right, privilege, obligation or liability acquired, accrued, or incurred under any enactment so repealed.

23. From the above, it is clear that the right of action, which is barred by limitation at the time when the new act comes into force, cannot be revived by the change in the law subsequently’’

30. The Learned Counsel for the 1st Respondent, adverts to the Judgment of the Hon’ble Supreme Court of India, in *Sagufa Ahmed v. Upper Assam Plywood Products Pvt.Ltd.*, reported in (2021) 2 SCC 317 (vide Civil Appeal No. 3007 – 3008 of 2020 dated 18.09.2020), wherein at Paragraphs 22 to 25, it is observed as under:

22. ``The words “prescribed period” appear in several Sections of the Limitation Act, 1963. Though these words “prescribed period” are not defined in Section 2 of the Limitation Act, 1963, the expression is used throughout, only to denote the period of limitation. We may see a few examples:

(i) Section 3(1) makes every proceeding filed after the prescribed period, liable to be dismissed, subject however to the provisions in Sections 4 to 24.

(ii) Section 5 enables the admission of any appeal or application after the prescribed period.

(iii) Section 6 uses the expression prescribed period in relation to proceedings to be initiated by persons under legal disability.

23. Therefore, the expression “prescribed period” appearing in Section 4 cannot be construed to mean anything other than the period of limitation. Any period beyond the prescribed period, during which the Court or Tribunal has the discretion to allow a person to institute the proceedings, cannot be taken to be “prescribed period”.

24. In Assam Urban Water Supply and Sewerage Board v. Subash Projects and Marketing Limited MANU/SC/0054/2012 : (2012) 2

SCC 624, this Court dealt with the meaning of the words “prescribed period” in paragraphs 13 and 14 as follows:

“13. The crucial words in Section 4 of the 1963 Act are “prescribed period”. What is the meaning of these words?”

14. Section 2(j) of the 1963 Act defines

“2(j) 'period of limitation' which means the period of limitation prescribed for any suit, appeal or application by the Schedule, and 'prescribed period' means the period of limitation computed in accordance with the provisions of this Act.

Section 2(j) of the 1963 Act when read in the context of Section 34(3) of the 1996 Act, it becomes amply clear that the prescribed period for making an application for setting aside arbitral award is three months. The period of 30 days mentioned in proviso that follows sub-section (3) of Section 34 of the 1996 Act is not the 'period of limitation' and, therefore, not 'prescribed period' for the purposes of making the application for setting aside the arbitral award. The period of 30 days beyond three months which the court may extend on sufficient cause being shown under the proviso appended to Sub-section (3) of Section 34 of the 1996 Act being not the 'period of limitation' or, in other words, 'prescribed period', in our opinion, Section 4 of the 1963 Act is not, at all, attracted to the facts of the present case.

25. Therefore, the appellants cannot claim the benefit of the order passed by this Court on 23.03.2020, for enlarging, even the period up to which delay can be condoned. The second contention is thus untenable.’

31. The Learned Counsel for the 1st Respondent, cites the Judgment of the Hon’ble Supreme Court of India, in Assam Urban Water Supply and Sewerage Board v. Subash Projects and Marketing Limited (2012) 2 SCC

624 (vide Civil Appeal No. 2014 of 2006 dated 19.01.2012), wherein, at

Paragraphs 6 to 9, it is observed as under:

6. *Mr. Shyam Divan, learned senior counsel for the respondents, on the other hand, submitted that the High Court did not commit any error in upholding the view of the District Judge, Kamarup, Guwahati. According to the learned senior counsel, the High Court's view is consistent with Section 34(3) of the 1996 Act, particularly proviso (3) thereof.*

7. *Section 34(3) of the 1996 Act provides that an application for setting aside an award may be made within three months of the receipt of the arbitral award. The proviso that follows sub-section (3) of Section 34 provides that on sufficient cause being shown, the court may entertain the application for setting aside the award after the period of three months and within a further period of 30 days but not thereafter.*

8. *In Popular Construction Co. (supra), this Court has held that an application for setting aside an award filed beyond the period mentioned in Section 34(3) would not be an application "in accordance with sub-section (3) as required under Section 34(1) of the 1996 Act" and Section 5 of the 1963 Act has no application to such application. In para 12 of the report, it was held in Popular Construction Co. (supra) thus:-*

"12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of the Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result".

9. *Recently, in the State of Maharashtra Vs. Hindustan Construction Company Limited², a two Judge Bench of this Court speaking through one of us (R.M. Lodha, J.) emphasised the mandatory nature of the limit to the extension of the period provided in proviso to Section 34(3) and held that an application for setting aside arbitral award under Section 34 of the 1996 Act has to be made within the time prescribed under sub-section (3) of Section 34, i.e., within three months and a further period of 30 days on sufficient cause being shown and not thereafter.’*

32. The Learned Counsel for the 1st Respondent, refers to the Judgment of the Hon’ble Supreme Court dated 22.10.2021 in V. Nagarajan v. SKS Ispat and Power Ltd. and Ors., reported in MANU/SC/0956/2021 : 2022 2 SCC 244, wherein at Paragraphs 21 and 25, it is observed as under:

21. *"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."

“25. The law on limitation with respect to the IBC is settled and emphatic in its denunciation of delays. The power to condone delay is tightly circumscribed and conditional upon showing sufficient cause, even within the period of delay which is capable of being condoned. The IBC is a watershed legislation which seeks to overhaul the previous bankruptcy regime which was afflicted by delays and indefinite legal proceedings. IBC sought to structure and streamline the entire process of insolvency, right from the initiation of insolvency to liquidation, as a one-stop mechanism.”

Appellate Tribunal’s Decisions:

33. The Learned Counsel for the 1st Respondent, refers to the Judgment of this ‘Tribunal’, in Exide Industries Ltd. v. Jitender Kumar Jain, Resolution Professional of Morakhia Copper & Alloys Pvt. Ltd. (vide Company Appeal (AT) (Insolvency) No. 1169 of 2022, wherein, at Paragraph 6, it is observed as under:

6. “In view of the law laid down by the Hon’ble Supreme Court, the limitation for filing the Appeal begins when order was pronounced. The mere fact that Appellant received free certified copy of the Impugned Order on 27th July, 2022, the period of limitation shall not stop running after passing of the order/judgment. Our jurisdiction to condone the delay is only limited to 15 days under Section 61(2) proviso. There being delay

of more than 15 days, the Delay Condonation Application cannot be allowed. Application is dismissed. Consequently, the Memo of Appeal is rejected.’’

34. The Learned Counsel for the 1st Respondent, refers to the Judgment of this `Tribunal' dated 19.10.2022, in Johnson Lifts Pvt. Ltd. v. Tracks & Towers Infratech Pvt. Ltd. MANU/NL/0819/2022, (vide Comp. App (AT) (CH) (INS.) No. 371 of 2022, wherein, at Paragraphs 9 to 12, it is observed as under:

“9. In this connection, it is out of place for this 'Tribunal', to make a pertinent mention of the 'Hon'ble Supreme Court Judgment' (Three Member Bench) between V. Nagarajan Versus SKS Ispat and Power Ltd. & Ors., wherein at 'Paragraph 21', it is observed as under: -

"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."

10. At this juncture, this 'Tribunal', aptly points out the 'Order' passed by this 'Appellate Tribunal' (Three Member Bench) Principal Bench, New Delhi in the matter of 'Exide Industries Ltd. V. Jitender Kumar Jain, Resolution Professional of Morakhia Copper & Alloys Pvt. Ltd.' (vide Company Appeal (AT) (Insolvency) No.1169 of 2022), wherein at Paragraph No.6, it is observed as under:-

"In view of the law laid down by the Hon'ble Supreme Court, the limitation for filing the Appeal begins when order was pronounced. The mere fact that Appellant received free certified copy of the Impugned Order on 27th July, 2022, the period of limitation shall not stop running after passing of the order/judgment. Our jurisdiction to condone the delay is only limited to 15 days under Section 61(2) proviso. There being delay of more than 15 days, the Delay Condonation Application cannot be allowed. Application is dismissed. Consequently, the Memo of Appeal is rejected."

11. Considering the fact that the instant Comp. App. (AT)(CH)(Ins) No.371/2022 was filed by the 'Appellant' before this 'Tribunal', on 09.09.2022 and this 'Tribunal', bearing in mind that the 'outer limit' of 45 Days (30 + 15) came to an end on 05.09.2022 and admittedly, as such, the instant Comp. App. (AT)(CH)(Ins) No.371/2022 is clearly 'barred by time'.

12. Furthermore, in the teeth of the decision of the Hon'ble Supreme Court in V. Nagarajan Versus SKS Ispat and Power Ltd. & Ors. reported in 2022 SCC at Page 244 and also in the light of the order dated 12.10.2022 in the Comp. App. (AT) (Insolvency) No.1169 of 2022 between Exide Industries Ltd. V. Jitender Kumar Jain, Resolution Professional of Morakhia Copper & Alloys Pvt. Ltd., passed by the Principal Bench, New Delhi, this 'Tribunal' comes to a 'resultant conclusion' that the instant Comp. App. (AT)(CH)(Ins) No.371/2022 is liable to be 'dismissed', as 'not maintainable' and accordingly, the same is 'dismissed'. The connected IA No.869/2022 is Closed.'''

2nd Respondent's Submissions:

35. On behalf of the `2nd Respondent / Successful Purchaser' (in `Liquidation Process'), it is submitted that the `delay beyond 15 days', cannot be condoned', and further that in the present case, the `45th day', happened to be a `Saturday', Viz. 10.12.2022, and that the `Filing was done on 12.12.2022 (Monday).

36. Also that, it is projected on the side of the Learned Senior Counsel for the 2nd Respondent that the instant `Appeal', being `time barred', on the `45th day' Viz. on 10.12.2022, cannot be resurrected by means of `withdrawal' of the earlier `Order' dated 21.10.2022 of the `NCLAT', by the `Order' dated 24.12.2022 of this `Appellate Tribunal'.

37. Since the 2nd Respondent's side, has relied upon the same Decisions / Citations / Judgments of the Hon'ble Supreme Court of India

and that of the `Appellate Tribunal`, as cited by the 1st Respondent's side, the same are not repeated.

Computation of Time:

38. For the ingredients of Section 10 of the General Clauses Act, 1897, to be pressed in to service, all that is required is that, there ought to be a `period prescribed`, and that period should `lapse` / `expire` on a `holiday`. Also that, the operative play of Section 10 of the Act, 1897, cannot be turned down on an `unsubstantial ground(s)`.

Rule of Construction:

39. It is a cardinal principle of construction that, every `Statute`, is `Prima Facie Prospective`, unless, it is `expressly` or by `necessary implication`, made to have a `Retrospective Operation` in character. Also that, there is a `Presumption of Prospectivity`, enunciated in `Legal Maxim`, `Nova Constitutio Futuris Formam Imponere Debet, Non Praeteritis`, i.e., `a new law ought to regulate, what is to follow, not the past and this `Presumption` operates, unless shown to the contrary, by `express provision`, in the `Statute` or is otherwise `discernible by necessary implication`, as per decision of the Hon'ble Supreme Court of India, in `Monnet Ispat & Energy Ltd. v. Union of India & Ors. (2012) 11 SCC 1, Page 90.

40. Further, unless there are words in the 'Statute', sufficient to show the intention of 'Legislature', to affect the 'existing rights', it is deemed to be prospective only 'Nova Constitutio Futuris Formam Imponere Debet, Non Praeteritis' (C 2 C Int 392 C Doolubdass Pettamberdass & Ors. v. Ramloll Thackoorseydass & Ors. (1850) 5 MIA 109 PP 126, 127 (BARRON PARKE MR); K.S. Paripoornan v. State of Kerala 1994 JT 6 SC 182 at 213, 214.

41. As a logical corollary of general rule that, 'Retrospective Operation', is not taken to be meant, unless that intention is manifested by express words or by 'necessary implication'.

Discussions:

42. Admittedly, in IA No. 39 of 2022 in TCP (IB) No. 33 / 7 / AMR / 2019, the 'Adjudicating Authority', had passed the 'impugned order' dated 26.10.2022. The 'Appellant / Suspended Director' of the 'Corporate Debtor' ('M/s. Transstroy (India) Ltd.', the 'Promoter' of the 'Corporate Debtor'), has preferred the instant Comp. App. (AT) (CH) (INS) No. 13 of 2023, before this 'Tribunal', on 09.12.2022 at 1.00 P.M. (through E-filing Portal vide Filing No. 9805118 / 02500 / 2022 – Bharatkosh ID : 091222010335), by making a payment of Rs.5,000/-. In fact, the e-filing was completed on 09.12.2022 and the payment was made successfully.

43. As per Section 61 (2) of the I & B Code, 2016, every 'Appeal', under sub-section 1 of Section 61 (1), shall be filed by 'any person', aggrieved by the 'Order' of the 'Adjudicating Authority', within 30 days before the 'National Company Law Appellate Tribunal'. In reality, the 'Appellate Tribunal', shall 'condone the delay beyond 30 days', but shall not exceed 15 days, provided sufficient cause was shown, for not filing the 'Appeal', ofcourse, 'after the expiry of 30 days from the date of passing of the order', by an 'Adjudicating Authority'.

44. In the instant case, the 'impugned order' dated 26.10.2022 in IA No. 39 of 2022 in TCP (IB) No. 33 / 7 / AMR / 2019, was passed by the 'Adjudicating Authority' ('National Company Law Tribunal', Amaravati Bench). For preferring an 'Appeal', by an 'Aggrieved Person' ('Appellant'), as per Section 61 (1) of the Code, is 30 days from the date of passing of an 'Order', by the 'Adjudicating Authority' ('Tribunal'), and 30 days period expired on 25.11.2022. In the present case, the Comp. App (AT) (CH) (INS.) No. 13 of 2023, was filed before this 'Tribunal', on 09.12.2022 at 1.00 P.M. – Friday (through E-filing Portal vide Filing No. 9805118 / 02500 / 2022 – Bharatkosh ID : 091222010335). However, the physical filing of the material papers of the instant 'Company Appeal', was made on 12.12.2022 (47th day – Monday).

45. In this connection, this 'Tribunal', points out that the outer limit for preferring an 'Appeal' (30 + 15 = 45 days). Although, on behalf of the Appellant, a plea is taken that 10.12.2022, was a second Saturday (Holiday) for this 'Appellate Tribunal', the physical copies of the 'Appeal Paper Book(s)', were furnished on 12.12.2022 (Monday), being the 'next working day' of this 'Appellate Tribunal', and therefore, the instant 'Appeal', is filed well within time.

46. Further that the 'Appellant', to fortify his stand, adverts to Section 10 of the General Clauses Act, 1897, and further, that the reliance is placed upon the 'Order' of this 'Tribunal' dated 24.12.2022 (vide F.No.23/4/2022 – Estt. / NCLAT), in and by which, the earlier 'Order' of this 'Tribunal' dated 21.10.2022 (F.No. 10/37/2018 / NCLAT), was withdrawn, by superseding the 'Order', of this 'Tribunal', is of the considered view that the 'Order' of this 'Tribunal' in F.No.10/37/2018 – NCLAT dated 21.10.2022, was in live force, not only on 09.12.2022 (Friday), but also on 12.12.2022 (Monday), when the 'Appellant', had filed his 'Appeal Papers', through e-filing and physical filing.

47. A mere running of the eye of the aforesaid Circular dated 21.10.2022 of this 'Tribunal', indicates that the Competent Authority', had issued the directions that;

- (1) *The period of limitation shall be computed from the date of presentation of Appeal as per Rule 22 of the NCLAT Rules, 2016.*
- (2) *The requirement of filing Appeals by electronic mode shall continue along with mandatory filing of the Appeals as per Rule 22 of the NCLAT Rules, 2016.*
- (3) *This order will be effective with effect from 1st November 2022.’’*

48. Added further, the aforesaid ‘Order’ of this ‘Tribunal’ dated 21.10.2022, had clearly mandated that ‘All concerned shall ensure that Appeals are presented as per Rule 22 of the NCLAT Rules, 2016, within the period of Limitation at the Filing Counter’.

Rule 22 of the NCLAT Rules, 2016:

49. For fuller and better appreciation of the subject matter in issue, this ‘Tribunal’, pertinently, refers to ‘Rule 22 of the NCLAT Rules, 2016’, which reads as under:

*‘‘22. Presentation of Appeal. – (1) Every appeal shall be presented in **Form No.NCLAT 1** in triplicate by the appellant or petitioner or applicant or respondent, as the case may be, in person or by his duly authorised representative duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same.*

(2) Every appeal shall be accompanied by a certified copy of the impugned order.

(3) All documents filed in the Appellate Tribunal shall be accompanied by an index in triplicate containing their details and the amount of fee paid thereon.

(4) Sufficient number of copies of the appeal or petition or application shall also be filed for service on the opposite party as prescribed.

(5) In the pending matters, all other applications shall be presented after serving copies thereof in advance on the opposite side or his advocate or authorised representative.

(6) The processing fee prescribed by the rules, with required number of envelopes of sufficient size and notice forms as prescribed shall be filled along with memorandum of appeal.’’

50. From the above, it is latently and patently quite clear that the period of Limitation as per ‘Order’ of this Tribunal dated 21.10.2022, shall be ‘calculated’ from the presentation of the ‘Appeal’, in the instant case, the ‘Appeal’, having been presented by the ‘Appellant’, (submission of ‘Appeal papers’, through physical mode (on 12.12.2022), on the ‘47th day’, which is beyond the ‘45 days’ (30 + 15 days), clearly ‘barred’ by ‘Limitation’.

51. Also that, the further ‘delay of 2 days’, after ‘45 days’, is beyond a period of Limitation (30 + 15 days), which cannot be ‘condoned’, by this ‘Appellate Tribunal’, and in this regard, this ‘Tribunal’ has no ‘power’ to ‘excuse’ the same.

52. Besides the above, at the time of `e-filing of Appeal Papers`, before this `Tribunal` on 09.12.2022, as well as at the time of `physical filing of Appeal Papers on 12.12.2022`, by the `Appellant`, the `Order` of the `Competent Authority` of this `Tribunal` dated 21.10.2022 (vide F.No.10/37/2018 – NCLAT), was very much in force and subsisting. Therefore, placing of heavy reliance on the `Order` of the `Competent Authority` of this `Tribunal` dated 24.12.2022 (vide F. No. 23/4/2022 – Estt./NCLAT), stating that the earlier `Order` of this `Tribunal` dated 21.10.2022 (vide F.No.10/37/2018-NCLAT) was withdrawn and superseded by the latter `Order` dated 24.12.2022 of this `Tribunal`, sans merits, all the more, when the `Order` dated 24.12.2022 of this `Tribunal` (F. No. 23/4/2022 – Estt./NCLAT), is only `Prospective` in `Character` and it is neither `Retroactive` nor `Retrospective`. As such, the `contra plea`, taken on behalf of the `Appellant`, is `unworthy of acceptance`, and the same is negated.

53. Dealing with the `plea` of the `Appellant`, that the ingredients of Section 10 of the General Clauses Act, 1897, will apply, to the facts of the present case, because of the fact that the `period of Limitation`, came to an end on 10.12.2022 (Court Holiday Date) and that the `physical copies of the Appeal Paper(s)`, were furnished to the Registry on 12.12.2022, the `next working day` of this `Tribunal`, and hence the instant `Company

Appeal’, is well within the period of Limitation, this ‘Tribunal’, has succinctly and unerringly point out that, in view of the ‘Order’ dated 21.10.2022 of this ‘Tribunal’, was in force and the same was not annulled, varied or superseded and was alive and in existence, the falling back upon of ‘Section 10 of the General Clauses Act, 1897’, is nothing, but an exercise in futility, as held by this ‘Tribunal’, against the ‘Appellant’.

54. Be that as it may, in the light of foregoing detailed upshot, this ‘Tribunal’, on a careful consideration of divergent contentions advanced on either side, and also taking into account of the facts and circumstances of the present case in an encircling manner, comes to a consequent conclusion that the instant Comp. App (AT) (CH) (INS.) No. 13 of 2023, is ‘barred by time’, and further that the IA No. 34 of 2023 in CA (AT) (CH) (INS. No.) 13 of 2023, seeking to ‘condone the delay of 14 days’, in filing the instant ‘Appeal’, is ‘per se’, ‘not maintainable’, and the ‘delay’ in question, is not a ‘condonable’ one. Viewed in that perspective, the IA No. 34 of 2023, fails.

Result:

In fine, IA No. 34 of 2023 in Comp. App (AT) (CH) (INS.) No. 13 of 2023 is dismissed. No costs.

Main Company Appeal (AT) (CH) (INS.) No. 13 of 2023:

Consequent to the dismissal of IA No. 34 of 2023 in Comp. App (AT) (CH) (INS.) No. 13 of 2023, by this `Tribunal`, the instant main Comp. App (AT) (CH) (INS.) No. 13 of 2023, is not `entertained`, by this `Tribunal`, and the same is `rejected`. The connected pending IA No. 33 of 2023 and IA No. 35 of 2023 are Closed.

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

**[Shreesha Merla]
Member (Technical)**

27/01/2023

SR / TM