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2023 INSC 1063

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos 7467-7468 of 2023

Sanjay Pandurang Kalate **…Appellant**

Versus

Vistra ITCL (India) Limited and Others **…Respondents**

J U D G E M E N T

Dr Dhananjaya Y Chandrachud, CJI

1. Admit.

2. These appeals arise under Section 62 of the Insolvency and Bankruptcy Code 2016[1] from a judgement dated 14 September 2023 of the National Company Law Appellate Tribunal.[2] The NCLAT dismissed the appeal against the order of the National Company Law Tribunal, Mumbai[3] on the ground of limitation.

3. At the outset, it is clarified that the findings in this judgement are limited to a determination of the question of limitation. The detailed facts and averments on the

[1] "IBC"
[2] "NCLAT"
[3] "NCLT"

merits of the larger dispute between the parties are not analysed in the judgment.

4. Briefly, respondent 1, Vistra ITCL (India) Limited filed an application under Section 7 of the IBC seeking the initiation of the Corporate Insolvency Resolution Process[4] against Evirant Developers Private Limited, the Corporate Debtor. The appellant is a former director of the Corporate Debtor, who alleges that the Section 7 application filed by respondent 1 is based on collusion with the various respondents, including respondent 2 and respondent 3, who are former directors of the Corporate Debtor. The appellant filed an interlocutory application before the NCLT alleging *inter alia* that the reply to the Section 7 application on behalf of the Corporate Debtor was filed by respondent 2 without authorization of the Board of Directors or intimation to the appellant.

5. On 17 May 2023, the NCLT heard the application filed by the appellant. From the submissions and on a specific query of the Court, it appears that it is not in dispute between the counsel for the appellant and the respondent that on 17 May 2023, the order of the NCLT was not **pronounced** and no substantive order was passed. The order was uploaded by the Registry of the NCLT on 30 May 2023 though the order carries the date of 17 May 2023. By the order, the NCLT dismissed the appellant's application on the grounds that the application was filed without authorization from the Board of Directors of the Corporate Debtor and was *prima facie* frivolous, to delay the proceedings in the Section 7 application. The appellant applied for a certified copy on 30 May 2023, which was received on 1 June 2023. The appeal against the order was e-filed before the NCLAT on 10 July 2023.

6. The appellant filed an application for condonation of delay along with the appeal. The appellant contended that (i) the appellant became aware of the contents of

[4] "CIRP"

the order only on 30 May 2023 and the limitation period should run from this date; (ii) the NCLAT was closed for summer vacations between 05 June 2023 and 02 July 2023 and this period should be excluded from the calculation of limitation.

7. In the background of the above events, the issue before the NCLAT was whether the appeal was instituted within limitation. In its impugned order, the NCLAT concluded that the appeal was barred by limitation on the ground that it was instituted beyond the outer limit of 45 days permissible under Section 61 of the IBC. The NCLAT relied on this Court's decision in **V Nagarajan** v. **SKS Ispat**[5] and rejected the appellant's contention that the time should begin to run from 30 May 2023 – the date of upload. As the limitation period was found to have begun on 17 May 2023, the filing of the appeal on 10 July 2023 was held to be beyond the outer limit of 45 days prescribed under the IBC. Further, the NCLAT rejected the contention that the annual summer vacations from 05 June 2023 to 02 July 2023 should be excluded as the NCLAT had issued a notification stating that the registry would remain open and filing of appeals was permissible during the vacation. Accordingly, the appeal was dismissed as barred by limitation.

8. Separately, it may be noted that on 19 May 2023, the NCLT allowed respondent 1's Section 7 application and initiated CIRP against the Corporate Debtor. The appellant's appeal against the order has been dismissed by the NCLAT on 05 October 2023.

[5](2022) 2 SCC 244

9. The table below indicates the relevant dates:

Date	Event
17.05.2023	The appellant's interlocutory application was heard by the NCLT. However, no order was pronounced.
30.05.2023	The order dismissing the above interlocutory application was uploaded on the website of the NCLT. However, the order bears the date of 17.05.2023 (date of hearing)
30.05.2023	The appellant applied for a certified copy of the NCLT order.
01.06.2023	The appellant received a certified copy of the NCLT Order.
29.06.2023	30-days from the date of upload of the NCLT Order.
10.07.2023	The appellant e-filed the appeal before the NCLAT.

10. The right to file an appeal against an order of the NCLT before the NCLAT arises from Section 61 of the IBC, which is in the following terms:

> "**61. Appeals and appellate authority** – (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."

Section 61(2) provides for a limitation period of thirty days. The proviso to the section provides that the NCLAT may allow the appeal to be filed after the expiry of the thirty-day period if it is satisfied that there was sufficient cause for not filing the appeal, but such period shall not exceed fifteen days. Therefore, 45 days is the outer limit within which an appeal from an order of the NCLT may be filed before the

NCLAT.

11. The table of dates in paragraph 9 above indicates that there are two possible scenarios. If this Court holds that limitation commences from 30 May 2023, the date of e-filing of the appeal will fall within the condonable period of 15 days. Alternatively, if limitation is held to commence from 17 May 2023, the date of e-filing of the appeal exceeds the outer limit of 45 days and cannot be condoned.

12. In its impugned order, the NCLT has relied on the decision in **V Nagarajan** *(supra)* to dismiss the appeal on the ground of limitation. The appellant has sought to distinguish the present case from **V Nagarajan** *(supra)* on both facts and law and has relied on the decision in **Sanket Kumar Agarwal** v. **APG Logistics Private Limited**[6]. Therefore, it would be pertinent for us to clarify the law on the limitation period applicable for filing an appeal against an order of the NCLT under the IBC.

13. In **V Nagarajan** *(supra),* a three-judge Bench of this Court noted that the significant difference between Section 421(3) of the Companies Act and Section 61(2) of the IBC is the absence of the words "*from the date on which a copy of the order of the Tribunal is made available to the person aggrieved*" in the latter. The Court held that limitation commences from the date of **pronouncement** and not the date of upload of the order or receipt of a certified copy. However, the Court expressly clarified that the time taken to procure the certified copy will be excluded from the calculation of the period of limitation, provided the appellant applies within the prescribed period of limitation under Section 61(2) of the IBC.

14. On the facts of the case, the Court noted that the appeal was barred by limitation as the appellant did not even attempt to secure a certified copy and only relied on the date of uploading the order on the website. Significantly, in the case, there was

[6] 2023 SCC OnLine SC 976

a **pronouncement** on the date mentioned on the order and the appellant did not dispute his presence before the NCLT when the order was pronounced in open court. Speaking through one of us (D.Y. Chandrachud, J), the Court held as follows:

> "**33.** The answer to the two issues set out in Section C of the judgment—(i) when will the clock for calculating the limitation period run for proceedings under IBC; and (ii) is the annexation of a certified copy mandatory for an appeal to NCLAT against an order passed under IBC — must be based on a harmonious interpretation of the applicable legal regime, given that IBC is a Code in itself and has overriding effect. Sections 61(1) and (2) 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 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 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 Rules and prevent limitation from running. Accepting such a construction will upset the timely framework of 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.
>
> **35.** The appellant was present before NCLT on 31-12-2019 when interim relief was denied and the miscellaneous application was dismissed. The appellant has demonstrated no effort on his part to secure a certified copy of the said order and has relied on the date of the uploading of the order (12-3-2020) on the website. The period of limitation for filing an appeal under Section 61(1) against the order of NCLT dated 31-12-2019, expired on 30-1-2020 in view of the thirty-day period prescribed under Section 61(2). Any scope for a condonation of delay expired on

> 14-2-2020, in view of the outer limit of fifteen days prescribed under the proviso to Section 61(2). The lockdown from 23-3-2020 on account of the Covid-19 Pandemic and the suo motu order of this Court has had no impact on the rights of the appellant to institute an appeal in this proceeding and NCLAT has correctly dismissed the appeal on limitation. Accordingly, the present appeal under Section 62 IBC stands dismissed."

15. Subsequently, in **Sanket Agarwal** *(supra),* this Court clarified the law laid down in **V Nagarajan** and held that (i) the limitation stops running on the e-filing of an appeal before the NCLAT and not on presentation of a physical copy; (ii) the date on which the order is **pronounced** is to be excluded from the calculation of limitation, and (iii) the time taken by the NCLT to provide the appellant with the certified copy would be excluded from the calculation of limitation, provided the appellant applies within the prescribed period of limitation under Section 61(2) of the IBC. The Court held:

> "28. In the present case, the application for a certified copy was sent from Delhi to Chennai on 2 September 2022, which was received on 5 September 2022, within the period of limitation of 30 days specified in Section 61(2). This aspect lies in contrast to the facts as they obtained before this Court in the judgment in **V Nagarajan** (supra) where even the application for obtaining the certified copy was not filed. In the present case, the appellant exercised due diligence and applied for a certified copy upon pronouncement of the order in terms of Rule 22(2) of the NLCAT Rules 2016. The certified copy was provided to the appellant on 15 September 2022. Hence, the period of 10 days between 5 September 2022 and 15 September 2022 taken by the court to provide a certified copy of the order ought to be excluded when determining the period of limitation under Section 61(2) of the IBC.
>
> 29. In view of the above discussion, we have come to the conclusion that the NCLAT was

in error in dismissing the appeal on the ground of limitation."

16. From the above discussion of law, It is clear that the date on which the limitation begins to run is intrinsically linked to the date of **pronouncement**. The question that arises in the facts of the present case, therefore, is when is an order deemed to be pronounced. The National Company Law Tribunal Rules, 2016[7] provide guidance in this regard. Rule 89(1) of the NCLT Rules indicates that when NCLAT registry publishes its cause list, a distinction is drawn between cases listed for pronouncement of orders and other cases. It states as follows:

> "89. **Preparation and publication of daily cause list**.— (1) The Registry shall prepare and publish on the notice board of the Registry before the closing of working hours on each working day the cause list for the next working day and subject to the directions of the President, listing of cases in the daily cause list shall be in the following order of priority, unless otherwise ordered by the concerned Bench; namely;-
>
> (a) **cases for pronouncement of orders**;
>
> (b) cases for clarification;
>
> (c) cases for admission;
>
> (d) cases for orders or directions;
>
> (e) part-heard cases, latest part-heard having precedence; and
>
> (f) cases posted as per numerical order or as directed by the Bench;"
>
> (emphasis supplied)

17. Further, Part XIX of the NCLAT Rules governs the 'disposal of cases and pronouncement of orders'. The following rules are relevant:

> "146. **Disposal of Cases.-** On receipt of an application, petition, appeal etc, the Tribunal, after giving the parties a reasonable opportunity of being heard, pass such orders thereon as it thinks fit:
>
> Provided that the Tribunal, after considering an appeal, may summarily dismiss the same, for reasons to be recorded, if the Tribunal is of opinion

[7] "NCLT Rules"

that there are no sufficient grounds for proceedings therewith.

150. **Pronouncement of Order**.- (1) The Tribunal, after hearing the applicant and respondent, **shall make and pronounce** an order either at once or, as soon as thereafter as may be practicable but not later than thirty days from the final hearing.

(2) Every order of the Tribunal shall be in writing and shall be signed and dated by the President or Member or Members constituting the Bench which heard the case and pronounced the order.

(3) A certified copy of every order passed by the Tribunal shall be given to the parties.

(4) The Tribunal, may transmit order made by it to any court for enforcement, on application made by either of the parties to the order or suo motu.

(5) Every order or judgment or notice shall bear the seal of the Tribunal.

151. **Pronouncement of order by any one member of the Bench.-**(1) Any Member of the Bench may pronounce the order for and on behalf of the Bench.

(2) When an order is pronounced under this rule, the Court Master shall make a note in the order sheet, that the order of the Bench consisting of President and Members was pronounced in open court on behalf of the Bench."

(emphasis supplied)

18. The above provisions of the NCLT Rules, 2016 make a clear distinction between the 'hearing' of an appeal and the 'pronouncement' of the order. Rule 150(1) provides that after hearing the parties, the order may be pronounced either at once or soon thereafter, as may be practicable, but not later than thirty days from the final hearing. Further, Rule 151 indicates that a member of the bench may pronounce the order for and on behalf of the Bench. When the order is pronounced, the court master shall make a note in the order sheet to that effect. The language of the above rules indicates that the pronouncement of the order is necessary and cannot be dispensed with.

19. In the present case, the cause list for 17 May 2023 placed on record by the appellant indicates that the case was listed for admission and not for pronouncement. Further, on a specific query of the Court, it is not in dispute between counsel for the appellant and the respondent, that no substantive order was passed on 17 May 2023 by the NCLT. In these circumstances, limitation would not begin to run on 17 May 2023 which was the date on which hearings concluded. As no order was passed before 30 May 2023, there was no occasion for the appellant to lodge an application for a certified copy on 17 May 2023. Time for filing an appeal would commence only when the order appealed from was uploaded since prior to that date no order was **pronounced**.

20. In **V Nagarajan** *(supra)*, there was an unequivocal pronouncement of the order before the upload of the order and thus, the decision is not applicable to the facts of the case. In the facts of the present case, the date of upload of the order is the same as the date of pronouncement. To avoid situations such as these, in cases where the matter has been heard on a particular day but the order is pronounced on a later date, the NCLT must refrain from affixing the date of hearing on the order. Such an approach would be a violation of the NCLT Rules, which create a distinction between hearing and pronouncement and do not allow the NCLT to dispense with the requirement of pronouncement.

21. In view of the above, the period of limitation began to run on 30 May 2023. The 30-day limitation period provided in Section 61(2) of the IBC concluded on 29 June 2023. Though the appeal was filed beyond the period of thirty days, it was within the condonable period of fifteen days. We are of the considered view that the appeal should be restored to the NCLAT for reconsidering whether the appellant has shown sufficient cause for condoning the delay beyond thirty days. To facilitate this, the impugned order of the NCLAT declining to condone the delay is set aside

and the proceedings are restored to the file of the NCLAT. We are not inclined to stay the CIRP at this stage. However, the NCLAT is directed to dispose of the appeal at the earliest.

22. Before concluding, we must note that it was settled in **Sanket Agarwal** (supra) that the date of e-filing of the appeal and not filing of the physical copy of the appeal stops the limitation from running. One of us (D.Y. Chandrachud, J.) had occasion to observe that the requirement of e-filing followed by physical filing results in duplication of effort and is a disincentive for e-filing. The Court held that:

> "30. **[…]** Moreover, it is utterly incomprehensible why NCLAT should insist on physical filing in addition to e-filing. This unnecessarily burdens litigants and the Bar and is a disincentive for e-filing. A lawyer or litigant who is compelled to file physical copies in addition to e-filed documents will have no cogent reason to resort to e-filing. This duplication of effort is time consuming. It adds to expense. It leaves behind a carbon footprint which is difficult to efface. The judicial process has traditionally been guzzling paper. This model is not environmentally sustainable. If some judges are uncomfortable with e-files, the answer is to provide training to them and not to continue with old and outmoded ways of working. The judiciary has to modernize and adapt to technology. The tribunals can be no exception. This can no longer be a matter of choice. The IBC is a significant prong in economic reforms. It has radically reshaped the law relating to insolvency and bankruptcy. The manner in which the law is administered will have to keep pace with technology. Both the Union government in its rule making capacity and the administrative heads of tribunals must ensure a seamless transition to working in the electronic mode."

23. We must appreciate the swift action taken by the NCLAT in view of the above observations. On 15 May 2023, soon after the decision in **Sanket Agarwal** *(supra),* an order was issued by the Registrar, NCLAT noting that "*filing of hard copies of*

Appeals/ Interlocutory Applications/ Reply / Rejoinder etc. shall not be mandatory with immediate effect." Such proactive action by tribunals is essential to ensure that the move towards a modernized and technology-friendly judiciary trickles down to every judicial forum across the country. We record our appreciation of the proactive steps taken by the Chairperson, Members and the Registry of the NCLAT.

24. The appeals are accordingly disposed of.

25. Pending applications, if any, stand disposed of.

……..…..…..……..CJI.
[Dr Dhananjaya Y Chandrachud]

……..…..…..……..J.
[J B Pardiwala]

……..…..…..……..J.
[Manoj Misra]

New Delhi;
December 4, 2023
CKB