

A SAGUFA AHMED & ORS.

v.

UPPER ASSAM PLYWOOD PRODUCTS PVT. LTD. & ORS.

(Civil Appeal Nos. 3007-3008 of 2020)

B SEPTEMBER 18, 2020

**[S. A. BOBDE, CJI, A. S. BOPANNA AND
V. RAMASUBRAMANIAN, JJ.]**

Companies Act, 1956:

- C *s. 421(3) Proviso – Delay of more than 45 days – In filing appeal – Against order of National Company Law Tribunal – Application for condonation of delay as well as the appeal dismissed by Appellate Tribunal – Appeal to Supreme Court – Held: Appellate Tribunal was empowered to condone the delay only upto period of 45 days – The delay beyond 45 days could not have been condoned even in view of the order of the Supreme Court whereby the period of limitation was extended in view of Covid-19 pandemic.*
- D *Maxims:*

- E *'Vigilantibus Non Dormientibus Jura Subveniunt' –
Applicability of.*

Limitation Act, 1963:

- F *s. 4 – Expression ‘prescribed period’ under – Connotation of – Held: The expression denotes period of limitation and not the period during which the Court/ Tribunal has discretion to allow a person to institute the proceedings.*

Words and Phrases:

Expression “prescribed period” – Meaning of, in the context of s.4 of Limitation Act, 1963.

G **Dismissing the appeals, the Court**

- H **HELD: 1.1 It is true that the period of limitation of 45 days prescribed in Section 421(3) would start running only from the date on which a copy of the order of the Tribunal is made available to the person aggrieved. It is also true that under Section 420(3) of the Act read with Rule 50, the appellants were entitled**

to be furnished with a certified copy of the order free of cost. A
Therefore if the appellants had chosen not to file a copy application, but to await the receipt of a free copy of the order in terms of Section 420(3) read with Rule 50, they would be perfectly justified in falling back on Section 421(3), for fixing the date from which limitation would start running. But the appellants, chose to apply for a certified copy after 27 days of the pronouncement of the order in their presence and they now fall back upon Section 421(3). [Paras 13 and 14][477-D-F]

1.2 From 19.12.2019, the date on which a certified copy was admittedly received by the counsel for the appellants, the period of limitation cannot be stopped from running. From 19.12.2019, the date on which the counsel for the appellants received the copy of the order, the appellants had a period of 45 days to file an appeal. This period expired on 02.02.2020. By virtue of the proviso to Section 421(3), the Appellate Tribunal was empowered to condone the delay upto a period of 45 days. This period of 45 days started running from 02.02.2020 and it expired even according to the appellants on 18.03.2020. The appellants did not file the appeal on or before 18.03.2020, but filed it on 20.07.2020. The lock down was imposed only on 24.03.2020. [Paras 15, 16 and 17][477-G-H; 478-A-B] C D E

2.1 To get over their failure to file an appeal on or before 18.03.2020, the appellants rely upon the order of this Court dated 23.03.2020 wherein this Court has taken *Suo Motu* cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that might be faced by litigants across the country in filing their petitions/ applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State). What was extended by the above order of this Court was only “the period of limitation” and not the period upto which delay can be condoned in exercise of discretion conferred by the statute. The above order was intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by general or special law. The law of limitation finds its root in two latin maxims, one of F G H

- A which is *Vigilantibus Non Dormientibus Jura Subveniunt* which means that the law will assist only those who are vigilant about their rights and not those who sleep over them. 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. [Paras 18, 19 and 25][478-C-E; 479-B-C; 481-D]
- B **2.2 Section 10 of the General Clauses Act, 1897 provides for *Computation of time*. The principle forming the basis of Section 10(1) of the General Clauses Act, also finds a place in Section 4 of the Limitation Act, 1963 which provides for *expiry of prescribed period when court is closed*.** 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. 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”. [Paras 20, 21, 22 and 23][479-D, G, H; 480-B-C, E]
- C
- D
- E

Assam Urban Water Supply and Sewerage Board v. Subash Projects and Marketing Limited (2012) 2 SCC 624 : [2012] 1 SCR 403 – relied on.

Case Law Reference

- | | | | |
|---|-------------------------|------------------|----------------|
| F | [2012] 1 SCR 403 | relied on | Para 24 |
|---|-------------------------|------------------|----------------|
- CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 3007-3008 of 2020.
- From the Judgment and Order dated 04.08.2020 of the National Company Law Appellate Tribunal, New Delhi (NCLAT) in I.A. No. 1771 of 2020 with Company Appeal (AT) No. 118 of 2020.
- Sajan Poovayya, Sr.Adv., Gunjan Singh, Satya Mitra, Chandrashekhar A. Chakalabbi, Angshuman Sarma, Prathibhanu, Raksha Agarwal, Shiv Kumar Pandey, Awanish Kumar, Anshul Rai for M/s. Dharmaprabhas Law Associates, Advs. for the appearing parties.

H

The Judgment of the Court was delivered by A

V. RAMASUBRAMANIAN, J.

1. Challenging an order passed by the National Company Law Appellate Tribunal (hereinafter referred to as 'NCLAT') dismissing an application for condonation of delay as well as an appeal as time barred, the appellants have come up with the above appeals. B

2. We have heard Mr. Gunjan Singh, learned counsel for the appellants and Mr. Sajan Poovayya, learned Senior Counsel who accepts notice on behalf of the first respondent. C

3. The appellants *herein* together claim to hold 24.89% of the shares of a company by name Upper Assam Plywood Products Private Limited, which is the first respondent herein. The appellants moved an application before the Guwahati Bench of the National Company Law Tribunal (hereinafter referred to as 'NCLT') for the winding up of the company. The said petition was dismissed by the NCLT by an order dated 25.10.2019. D

4. According to the appellants, they applied for a certified copy of the order of the NCLT dated 25.10.2019, on 21.11.2019 (though the appellants have claimed in the Memo of Appeal that they applied for a certified copy on 21.11.2019, the copy application filed as Annexure P-1 bears the date 22.11.2019). E

5. According to the appellants, the certified copy of the order dated 25.10.2019 passed by the NCLT was received by their counsel on 19.12.2019, pursuant to the copy application made on 21.11.2019. F

6. Though the appellants admittedly received the certified copy of the order on 19.12.2019, they chose to file the statutory appeal before NCLAT on 20.07.2020. The appeal was filed along with an application for condonation of delay. G

7. By an order dated 04.08.2020, the Appellate Tribunal dismissed the application for condonation of delay on the ground that the Tribunal has no power to condone the delay beyond a period of 45 days. Consequently the appeal was also dismissed. It is against the dismissal of both the application for condonation of delay as well as the appeal, that the appellants have come up with the present appeals. H

- A 8. The contentions raised by the learned counsel for the appellants are *two-fold namely (i)* that the Appellate Tribunal erred in computing the period of limitation from the date of the order of the NCLT, contrary to Section 421(3) of the Companies Act, 2013, and *(ii)* that the Appellate Tribunal failed to take note of the lockdown as well as the order passed by this Court on 23.03.2020 in Suo Motu Writ Petition (Civil) No.3 of 2020, extending the period of limitation for filing any proceeding with effect from 15.03.2020 until further orders.

9. Let us now test the correctness of the contentions one by one.

Contention-1

- C 10. Section 420(3) of the Companies Act, 2013 mandates the NCLT to send a copy of every order passed under Section 420(1) to all the parties concerned. Section 420(3) reads as follows:

"420. Orders of Tribunal -

- D (1) xxxx
- (2) xxxx
- (3) *The Tribunal shall send a copy of every order passed under this section to all the parties concerned".*

- E 11. Rule 50 of the National Company Law Tribunal Rules, 2016 also mandates the Registry of the NCLT to send a certified copy of the final order to the parties concerned free of cost. However, Rule 50 also enables the Registry of the NCLT to make available the certified copies with cost as per schedule of fees in all other cases (meaning thereby ‘to persons who are not parties’). Rule 50 reads as follows : -

- F ***"50. Registry to send certified copy. - The Registry shall send a certified copy of final order passed to the parties concerned free of cost and the certified copies may be made available with cost as per the schedule of fees, in all other cases."***

- G 12. Section 421(1) provides for a remedy of appeal to the Appellate Tribunal as against an order of NCLT. Sub-Section (3) of Section 421 prescribes the period of limitation for filing an appeal and the proviso thereunder confers a limited discretion upon the Appellate Tribunal to condone the delay. Sub-Section (3) of Section 421 together with the proviso thereunder reads as follows:

- H

"421. Appeal from orders of Tribunal -

A

(1) xxxx

(2) xxxx

(3) *Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed:*

B

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period."

C

13. Therefore, it is true, as contended by the appellants, that the period of limitation of 45 days prescribed in Section 421(3) would start running only from the date on which a copy of the order of the Tribunal is made available to the person aggrieved. It is also true that under Section 420(3) of the Act read with Rule 50, the appellants were entitled to be furnished with a certified copy of the order free of cost.

D

14. Therefore if the appellants had chosen not to file a copy application, but to await the receipt of a free copy of the order in terms of Section 420(3) read with Rule 50, they would be perfectly justified in falling back on Section 421(3), for fixing the date from which limitation would start running. But the appellants in this case, chose to apply for a certified copy after 27 days of the pronouncement of the order in their presence and they now fall back upon Section 421(3).

E

F

15. Despite the above factual position, we do not want to hold against the appellants, the fact that they waited from 25.10.2019 (the date of the order of NCLT) upto 21.11.2019, to make a copy application. But atleast from 19.12.2019, the date on which a certified copy was admittedly received by the counsel for the appellants, the period of limitation cannot be stopped from running.

G

16. From 19.12.2019, the date on which the counsel for the appellants received the copy of the order, the appellants had a period of 45 days to file an appeal. This period expired on 02.02.2020.

H

- A 17. By virtue of the proviso to Section 421(3), the Appellate Tribunal was empowered to condone the delay upto a period of 45 days. This period of 45 days started running from 02.02.2020 and it expired even according to the appellants on 18.03.2020. The appellants did not file the appeal on or before 18.03.2020, but filed it on 20.07.2020.
- B It is relevant to note that the lock down was imposed only on 24.03.2020 and there was no impediment for the appellants to file the appeal on or before 18.03.2020. To overcome this difficulty, the appellants rely upon the order of this Court dated 23.03.2020. This takes us to the second contention of the appellants.

Contention-2

- C 18. To get over their failure to file an appeal on or before 18.03.2020, the appellants rely upon the order of this Court dated 23.03.2020 in *Suo Motu Writ Petition (Civil) No.3 of 2020*. It reads as follows:
- D *"This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State)."*
- E *To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.*
- F *We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.*
- G *This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction.*

Issue notice to all the Registrars General of the High Courts, returnable in four weeks." A

19. But we do not think that the appellants can take refuge under the above order. *What was extended by the above order of this Court was only "the period of limitation" and not the period upto which delay can be condoned in exercise of discretion conferred by the statute.* The above order passed by this Court was intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by general or special law. It is needless to point out that the law of limitation finds its root in two latin maxims, one of which is *Vigilantibus Non Dormientibus Jura Subveniunt* which means that the law will assist only those who are vigilant about their rights and not those who sleep over them. B

20. It may be useful in this regard to make a reference to Section 10 of the General Clauses Act, 1897 which reads as follows: C

"10. Computation of time - (1) Where, by any 19 [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: D

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 (15 of 1877), applies. E F

(2) This section applies also to all [Central Acts] and, Regulations made on or after the fourteenth day of January, 1887." G

21. The principle forming the basis of Section 10(1) of the General Clauses Act, also finds a place in Section 4 of the Limitation Act, 1963 which reads as follows: -

"4. Expiry of prescribed period when court is closed.—Where the prescribed period for any suit, appeal or application H

A *expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens.*

B *Explanation.— A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day.”*

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:

C (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.

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

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

F 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”.

G 24. In ***Assam Urban Water Supply and Sewerage Board Versus Subash Projects and Marketing Limited***¹, this Court dealt with the meaning of the words “*prescribed period*” in paragraphs 13 and 14 as follows:

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

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

J “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. A

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.” B C

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. Hence the appeals are liable to be dismissed. Accordingly, they are dismissed. D

Kalpana K. Tripathy

Appeals dismissed.