# National Spot Exchange Limited vs Anil Kohli Resolution Professional For ... on 14 September, 2021

## Equivalent citations: AIR 2021 SUPREME COURT 4339, AIRONLINE 2021 SC 720

## Author: M.R. Shah

## Bench: Aniruddha Bose, M.R. Shah

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 6187 OF 2019

National Spot Exchange Limited …Appellant

Versus

Mr. Anil Kohli, Resolution Professional for
Dunar Foods Limited …Respondent

JUDGMENT

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned order dated 05.07.2019 passed by the National Company Law Appellate Tribunal, New Delhi (hereinafter referred to as the 'NCLAT') in Company Appeal (AT)(Insolvency) No. 683 of 2019, by which the NCLAT has refused to condone the delay of 44 days in preferring the appeal against the order passed by the National Company Law Tribunal (hereinafter referred to as the 'NCLT'), rejecting the claim of the appellant herein, the appellant – National Spot Exchange Limited has preferred the present appeal.

2. The facts leading to the present appeal in nutshell are as under:

> That the State Bank of India has initiated the insolvency proceedings before the NCLT under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'IBC') against one Dunar Foods Limited (hereinafter referred to as the 'Corporate Debtor') on the ground that Corporate Debtor had taken credit limits by hypothecating the commodities kept in the warehouses of the appellant – National

> Spot Exchange Limited; that the NCLT admitted the petition and commenced the corporate insolvency resolution process against the corporate debtor under the provisions of the IBC. Interim Resolution Professional (for short, 'IRP') was appointed. IRP invited the claims from the creditors of the corporate debtor – Dunar Foods Limited on or before 17.01.2018; that the appellant herein submitted its claim and also forwarded its claim through courier to IRP as per Form 'F' of the IBC. At this stage it is required to be noted that the appellant herein earlier filed Money Suit against one PD Agro Processors Pvt. Ltd. (hereinafter referred to as 'PD Agro') and the corporate debtor being Commercial Suit No. 11 of 2014 before the High Court of Judicature at Bombay. The High Court vide order dated 11.04.2014 in Notice of Motion 807 of 2014 in CS No. 328 of 2014 injuncted PD Agro and the Corporate Debtor from disposing of, alienating, encumbering, parting with possession of and/or otherwise creating third party rights in respect of its movable/immovable properties/assets; that one FIR No. 216 of 2013 was also lodged against PD Agro and subsequently the same came to be transferred to the Economic Offence Wing, Mumbai for further investigation; that the provisions of Maharashtra Protection of Depositors Act (MPID) Act, 1999 were also invoked; that it is the case on behalf of the appellant that the investigation report submitted by the investigating agency revealed that PD Agro has siphoned off funds to the tune of Rs.455 crores during the year 2011-12 and Rs. 289 crores during the year 2012-13 to the Corporate Debtor; that the High Court of Bombay passed a decree in Commercial Suit No. 11 of 2014 against PD Agro for Rs.

633,66,98,350.40 with 9% interest from the date of accrual of the course of action/default. The aforesaid shall be dealt with hereinafter. 2.1 That in response to the public announcement by the IRP inviting the claims from the creditors of the Corporate Debtor (Dunar Foods Limited) dated 6.1.2018, the appellant submitted the claim of Rs. 673.85 crores; that it was the case on behalf of the appellant that a decree has been passed against PD Agro for an amount of Rs.633,66,98,350.40 and on investigation by the Directorate of Enforcement, it is found that Rs. 744 crores have been siphoned off by PD Agro to the Corporate Debtor. IRP rejected the claim of the appellant on 18.06.2018 on the ground that there is no privity of contract between the appellant and the corporate debtor and that there is no letter or guarantee issued by the corporate debtor in favour of the appellant. That the rejection of the claim by IRP came to be challenged by the appellant before NCLT being Miscellaneous Application No. 603 of 2018 and the NCLT by order dated 6.3.2019 rejected the said application and upheld the decision of the IRP not to include the claim of the appellant as a creditor.

3. Being aggrieved and dissatisfied with the order passed by the NCLT dated 6.3.2019, the appellant herein preferred an appeal before the NCLAT. There was a delay of 44 days in preferring the said appeal. The appeal before the NCLAT was required to be filed within a maximum period of 45 days (30 days + 15 days). However, there was a further delay of 44 days beyond a total period of 45 days. Therefore, considering sub-section (2) of Section 61 of the IBC which provides for powers to the Appellate Tribunal to condone the delay of only 15 days which it can condone over the period of 30 days, if there is a sufficient cause, by the impugned order, the learned Appellate Tribunal has

dismissed the appeal on the ground that the Appellate Tribunal has no jurisdiction to condone the delay beyond 15 days and thereby the appeal is barred by limitation.

4. Feeling aggrieved and dissatisfied with the impugned order passed by the learned NCLAT in dismissing the appeal on the ground of limitation and refusing to condone the delay which was beyond the period of 15 days, which the Appellate Tribunal could have condoned, the appellant – National Spot Exchange Limited has preferred the present appeal.

5. Shri Maninder Singh, learned Senior Advocate has appeared on behalf of the appellant and Shri Abhishek, learned Advocate has appeared on behalf of the IRP.

5.1 Shri Maninder Singh, learned senior counsel appearing on behalf of the appellant has submitted that though the learned Appellate Tribunal may be justified in dismissing the appeal on the ground of limitation by holding that the Appellate Tribunal has no jurisdiction to condone the delay beyond 15 days, it is prayed to exercise the powers under Article 142 of the Constitution of India, in the peculiar facts and circumstances of the case.

5.2 It is submitted that on investigation by the Directorate of Enforcement, it is revealed that PD Agro which was the sister concern of the Corporate Debtor, has siphoned off Rs. 744 crores to the Corporate Debtor. It is submitted that there was a common management/Directors of PD Agro as well as the Corporate Debtor. It is submitted that both the Corporate Debtor and PD Agro are sister concerns and have the same management. Dunar Foods Limited is a flagship entity of PD Agro and is the main beneficiary of the funds received by PD Agro from the trades executed on the appellant's platform. It is submitted that one Mr. Ranjeev Agarwal and Ms. Sheetal Gupta are the directors and shareholders of PD Agro. Shri Ranjeev Agarwal was also the CFO of the Corporate Debtor and Ms. Sheetal Gupta is the wife of Shri Surender Gupta. It is submitted that Shri Surender Gupta is the promoter and managing director of the corporate debtor. It is submitted that even Shri Surender Gupta in his statement given under Section 50 PMLA before the Enforcement Directorate has confirmed that he was managing the affairs of PD Agro and that PD Agro is a shareholder of Dunar Foods Limited, holding 8.25% shares. It is submitted that therefore management and directors of PD Agro and the Corporate Debtor – Dunar Foods Limited played a fraud.

5.3 It is submitted that even the PD Agro admittedly owes and did not pay INR 693 crores towards their liability despite admitting its liability vide letter dated 01.08.2013 and had assured to clear its outstanding in 20 weeks in the said letter. It is submitted that during the investigation it is revealed that the corporate debtor used PD Agro as its front and had siphoned off the money. It is further submitted that even there is a decree passed by the Bombay High Court against PD Agro. It is submitted that therefore when it is revealed during investigation that the PD Agro siphoned off Rs. 744 crores to the corporate debtor, the IRP ought to have admitted the claim of the appellant even by lifting the veil. It is submitted that the NCLT has also not considered the aforesaid in its true perspective and has not even lifted the corporate veil which ought to have been done in the facts and circumstances of the case. 5.4 It is further submitted by Shri Maninder Singh, learned senior counsel appearing on behalf of the appellant that therefore in the aforesaid peculiar facts and circumstances of the case, where a huge amount of Rs. 693 crores is involved, which is due and

payable to the appellant herein, which can be said to be a public body which provided an electronic exchange platform which commenced its operations after the Ministry of Consumer Affairs, Government of India granted it an exemption under Section 27 of the Forward Contracts (Regulation) Act, 1952 to launch one-day forward contracts for buying and selling of commodities and therefore it is prayed to condone the delay in preferring the appeal before the NCLAT, in exercise of powers under Article 142 of the Constitution of India. Heavy reliance is placed on the decisions of this Court in the cases of Chitra Sharma v. Union of India, reported in (2018) 18 SCC 575; Jaiprakash Associates Limited v. IDBI Bank Limited, reported in (2020) 3 SCC 328; and Reliance General Insurance Co. Ltd. v. Mampee Timbers and Hardwares Pvt. Ltd., reported in (2021) 3 SCC 673, in support of his prayer to condone the delay beyond the time prescribed under the IBC, i.e., the delay of 44 days in preferring the appeal before the NCLAT, in exercise of powers under Article 142 of the Constitution of India.

6. The present appeal is vehemently opposed by Shri Abhishek, learned Advocate appearing for the IRP for corporate debtor. It is submitted that Section 61(2) of the Code provides for power of the Appellate Tribunal to condone the delay in the appeal. It is submitted that the Appellate Tribunal can condone the delay of only 15 days over the period of 30 days, if there is a sufficient cause. It is submitted that beyond the period of 15 days, over the period of 30 days, the Appellate Tribunal has no jurisdiction to condone the delay. It is submitted that therefore the learned Appellate Tribunal has rightly and correctly dismissed the appeal on the ground that it did not have the power to condone the delay beyond the period of 15 days, over the period of 30 days, i.e., in the present case the delay of 44 days.

6.1 It is submitted that as held by this Court in the case of Union of India v. Popular Construction Co., reported in (2001) 8 SCC 470, where the legislature prescribed a special limitation for the purpose of the appeal and the period of limitation of 60 days was to be computed after taking the aid of Sections 4, 5 and 12 of the Limitation Act, the specific inclusion of these sections meant that to that extent only the provisions of the Limitation Act stood extended and the applicability of the other provisions, by necessary implication stood excluded. 6.2 It is further submitted by the learned counsel appearing on behalf of the IRP that once the statute provides the period of limitation and to condone the delay up to a particular period and the statute specifically provides that beyond a particular period, the delay cannot be condoned, the same has to be adhered to. Heavy reliance is placed on the Constitution Bench decision of this Court in the case of New India Assurance Company Limited v. Hilli Multipurpose Cold Storage Private Limited, reported in (2020) 5 SCC 757.

6.3 It is further submitted by the learned counsel appearing for the IRP that the law made by the Parliament must be given effect to. It is submitted that as held by this Court in catena of decisions that hardship is no ground not to give effect to the mandate of Parliament and that law overrides equitable considerations. Reliance is placed on the following decisions of this Court, Rohitash Kumar v. Om Prakash Sharma, reported in (2013) 11 SCC 451 (paras 23 to 26); CMD/Chairman, Bharat Sanchar Nigam Limited v. Mishri Lal, reported in (2011) 14 SCC 739 (para 20); Raghunath Rai Bareja v. Punjab National Bank, reported in (2007) 2 SCC 230 (paras 29 to 37); Popat Bahiru Goverdhane v. Special Land Acquisition Officer, reported in (2013) 10 SCC 765 (para 16); and The Martin Burn Limited v. The Corporation of Calcutta, reported in AIR 1966 SC 529 (para 14).

6.4 Making the above submissions and relying upon the aforesaid decisions and the relevant provisions of the statute, namely, Sub-section (2) of Section 61 of the Code, it is submitted that as such no error has been committed by the learned Appellate Tribunal in not condoning the delay beyond the period of 15 days, over the period of 30 days. It is submitted that as such the learned Appellate Tribunal has acted just in consonance with the provisions of the statute and has followed the statutory provisions strictly.

6.5 Now so far as the prayer on behalf of the appellant to condone the delay beyond the period prescribed under the statute, in exercise of powers under Article 142 of the Constitution of India is concerned, it is submitted that as observed and held by this Court in the case of Oil & Natural Gas Corporation Limited v. Gujarat Energy Transmission Corporation Limited, reported in AIR 2017 SC 1352 where the statute commands that the court shall not condone the delay beyond a particular days, in other words, can condone delay only up to a particular days and not beyond that, it would come within the ambit and sweep of the provisions and policy of legislation and therefore it is un-condonable and it cannot be condoned even taking recourse to Article 142 of the Constitution of India. It is submitted that what cannot be done directly under the statute as per the statutory provisions cannot be permitted to be done indirectly, in exercise of powers under Article 142 of the Constitution of India.

6.6 It is further submitted that even otherwise and on meris also, the appellant cannot be said to be a creditor of the corporate debtor – Dunar Foods Limited. It is submitted that it is pertinent to note that if Form 'F' dated 17.01.2018 filed by the appellant and the supporting documents are perused, it is evident that the claim filed to the extent of Rs. 673.85 crores is a claim against PD Agro. It is submitted that the appellant has filed its claim against the corporate debtor on the ground that fraud/scam has been done by PD Agro in connivance with various entities including the corporate debtor and therefore an amount of Rs. 673.85 crores alleged to be payable by the PD Agro should be paid by the corporate debtor. It is submitted that even the decree passed in Commercial Suit No. 11 of 2014 has been passed only against PD Agro and not the corporate debtor. It is submitted therefore even otherwise the appellant is not a creditor of the corporate debtor and therefore IRP has rightly not entertained the claim of the appellant. It is further submitted that even thereafter the resolution plan has been approved by the NCLT – the adjudicating authority and the appellant has already assailed the approved resolution plan in Company Appeal (AT) (Insolvency) No. 424 of 2020 before the NCLAT.

6.7 Making the above submissions and relying upon the aforesaid decisions, it is prayed to dismiss the present appeal.

7. We have heard the learned counsel for the respective parties at length.

At the outset, it is required to be noted that the appellant herein has challenged the order passed by the adjudicating authority dated 6.3.2019 affirming the decision of the resolution professional of rejection of the claim of the appellant before the NCLAT. The appeal preferred before the NCLAT was under Section 61(2) of the IB Code. As per Section 61(2) of the IB Code, the appeal was required to be preferred within a period of thirty days. Therefore, the limitation period prescribed to prefer

an appeal was 30 days. However, as per the proviso to Section 61(2) of the Code, the Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of 30 days if it is satisfied that there was sufficient cause for not filing the appeal, but such period shall not exceed 15 days. Therefore, the Appellate Tribunal has no jurisdiction at all to condone the delay exceeding 15 days from the period of 30 days, as contemplated under Section 61(2) of the IB Code. Section 61(2) of the IB Code reads as under:

> "Section 61(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."

7.1 In the present case, even the appellant applied for the certified copy of the order passed by the adjudicating authority on 8.4.2019, i.e., after a delay of 34 days. Therefore, even the certified copy of the order passed by the adjudicating authority was applied beyond the prescribed period of limitation, i.e., beyond 30 days. The certified copy of the order was received by the appellant on 11.04.2019 and the appeal before the NCLAT was preferred on 24.06.2019, i.e., after a delay of 44 days. As the Appellate Tribunal can condone the delay up to a period of 15 days only, the Appellate Tribunal refused to condone the delay which was beyond 15 days from completion of 30 days, i.e., in the present case delay of 44 days and consequently dismissed the appeal. Therefore, as such, it cannot be said that the learned Appellate Tribunal committed any error in not condoning the delay of 44 days, which was beyond the delay of 15 days which cannot be condoned as per Section 61(2) of the IB Code.

8. An identical question came to be considered by this Court in the case of Popular Construction Co. (supra). While considering Section 34 of the Arbitration and Conciliation Act, 1996 which provided that an application for setting aside of the award cannot be made after three months and it further provided that if the court is satisfied that the applicant was prevented by sufficient cause from making an application within the said period of three months, it may entertain the application within a further period of thirty days, but not thereafter, after considering Section 29 (2) of the Limitation Act and after observing that "Arbitration & Conciliation Act, 1996 is a special law" and that Section 34 of the Arbitration & Conciliation Act, 1996 provides for a period of limitation different from that prescribed under the Limitation Act, ultimately this Court held that Section 5 of the Limitation Act shall not be applicable as the legislature has prescribed a special limitation for the purpose of the appeal as provided under Section 34 of the Arbitration & Conciliation Act, 1996. In paragraphs 11 & 12, it is observed and held as under:

> "11. Thus, where the legislature prescribed a special limitation for the purpose of the appeal and the period of limitation of 60 days was to be computed after taking the aid of Sections 4, 5 and 12 of the Limitation Act, the specific inclusion of these sections meant that to that extent only the provisions of the Limitation Act stood extended

and the applicability of the other provisions, by necessary implication stood excluded.

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 that 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." 8.1 An identical question came to be considered by a Constitution Bench of this Court in the case of Hilli Multipurpose Cold Storage Private Limited (supra). The question before the Constitution Bench was, whether the District Forum has the power to extend the time for filing of response to the complaint beyond the period of 15 days, in addition to 30 days, as envisaged under Section 13(2)(a) of the Consumer Protection Act? After approving the decision of this Court in the case of J.J. Merchant v. Shrinath Chaturvedi, reported in (2002) 6 SCC 635 and after considering the various decisions of this Court on the point, the Constitution Bench has ultimately concluded that "the District Forum has no jurisdiction and/or power to extend the time for filing of response to the complaint beyond the period of 15 days, in addition to 30 days, as envisaged under Section 13(2)(a) of the Consumer Protection Act.

9. It is true that in a given case there may arise a situation where the applicant/appellant may not be in a position to file the appeal even within a statutory period of limitation prescribed under the Act and even within the extended maximum period of appeal which could be condoned owing to genuineness, viz., illness, accident etc. However, under the statute, the Parliament has not carved out any exception of such a situation.

Therefore, in a given case, it may cause hardship, however, unless the Parliament has carved out any exception by a provision of law, the period of limitation has to be given effect to. Such powers are only with the Parliament and the legislature. The courts have no jurisdiction and/or authority to carve out any exception. If the courts carve out an exception, it would amount to legislate which would in turn might be inserting the provision to the statute, which is not permissible.

10. In the case of Rohitash Kumar (supra), this court observed and held as under:-

"23. There may be a statutory provision, which causes great hardship or inconvenience to either the party concerned, or to an individual, but the Court has no choice but to enforce it in full rigor. It is a well settled principle of interpretation that hardship or inconvenience caused, cannot be used as a basis to alter the meaning of the language employed by the legislature, if such meaning is clear upon a bare perusal of the Statute. If the language is plain and hence allows only one meaning, the same has to be given effect to, even if it causes hardship or possible injustice.

(Vide:

Commissioner of Agricultural Income Tax, West Bengal v. Keshab Chandra Mandal, AIR 1950 SC 265; and D. D. Joshi & Ors. v. Union of India & Ors., (1983) 2 SCC 235).

24. In Bengal Immunity Co. Ltd. v. State of Bihar & Ors., AIR 1955 SC 661 it was observed by a Constitution Bench of this Court that, if there is any hardship, it is for the legislature to amend the law, and that the Court cannot be called upon, to discard the cardinal rule of interpretation for the purpose of mitigating such hardship. If the language of an Act is sufficiently clear, the Court has to give effect to it, however, inequitable or unjust the result may be. The words, 'dura lex sed lex' which mean "the law is hard but it is the law." may be used to sum up the situation. Therefore, even if a statutory provision causes hardship to some people, it is not for the Court to amend the law. A legal enactment must be interpreted in its plain and literal sense, as that is the first principle of interpretation.

25. In Mysore State Electricity Board v. Bangalore Woolen, Cotton & Silk Mills Ltd. & Ors., AIR 1963 SC 1128, a Constitution Bench of this Court held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. In Martin Burn Ltd. v. The Corporation of Calcutta, AIR 1966 SC 529, this Court, while dealing with the same issue observed as under:– "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. A statute must of course be given effect to whether a Court likes the result or not." (See also:

The Commissioner of Income Tax, West Bengal I, Calcutta v. M/s Vegetables Products Ltd., (1973) 1 SCC 442; and Tata Power Company Ltd. v. Reliance Energy Limited & Ors., (2009) 16 SCC

659).

26. Therefore, it is evident that the hardship caused to an individual, cannot be a ground for not giving effective and grammatical meaning to every word of the provision, if the language used therein, is unequivocal." 10.1 In the case of Mishri Lal & Others (supra), it is observed that the law prevails over equity if there is a conflict. It is observed further that equity can only supplement the law and not supplant it. 10.2 In the case of Raghunath Rai Bareja (supra), in paras 30 to 37, this Court observed and held as under :-

30. Thus, in Madamanchi Ramappa & Anr. vs. Muthaluru Bojjappa, AIR 1963 SC 1633 (vide para 12) this Court observed:

"[W] what is administered in Courts is justice according to law, and considerations of fair play and equity however important they may be, must yield to clear and express provisions of the law"

31. In Council for Indian School Certificate Examination vs. Isha Mittal & Anr., 2000 (7) SCC 521 (vide para 4) this Court observed:

"Considerations of equity cannot prevail and do not permit a High Court to pass an order contrary to the law."

32. Similarly in P.M. Latha & Anr. vs. State of Kerala & Ors. 2003(3) SCC 541 (vide para 13) this Court observed:

"13. Equity and law are twin brothers and law should be applied and interpreted equitably, but equity cannot override written or settled law." (Emphasis supplied)

33. In Laxminarayan R. Bhattad & Ors. vs. State of Maharashtra & Anr.

2003(5) SCC 413 (vide para 73) this Court observed:

"73. It is now well settled that when there is a conflict between law and equity the former shall prevail."

34. Similarly in Nasiruddin & Ors. vs. Sita Ram Agarwal, 2003(2) SCC 577 (vide para 35) this Court observed:

"35. In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom."

35. Similarly in E. Palanisamy vs. Palanisamy (Dead) by Lrs. & Ors., 2003(1) SCC 123 (vide para 5) this Court observed:

"Equitable considerations have no place where the statute contained express provisions".

36. In India House vs. Kishan N. Lalwani, 2003(9) SCC 393 (vide para 7) this Court held that:

"The period of limitation statutorily prescribed has to be strictly adhered to and cannot be relaxed or departed from by equitable considerations." (Emphasis supplied)

37. In the present case, while equity is in favour of the respondent-Bank, the law is in favour of the appellant, since we are of the opinion that the impugned order of the High Court is clearly in violation of Section 31 of the RDB Act, and moreover the claim is time-barred in view of Article 136 of the Limitation Act read with Section 24 of the RDB Act. We cannot but comment that it is the Bank itself which is to blame

because after its first Execution Petition was dismissed on 23.8.1990 it should have immediately thereafter filed a second Execution Petition, but instead it filed the second Execution Petition only in 1994 which was dismissed on 18.8.1994. Thereafter, again, the Bank waited for 5 years and it was only on 1.4.1999 that it filed its third Execution Petition. We fail to understand why the Bank waited from 1990 to 1994 and again from 1994 to 1999 in filing its Execution Petitions. Hence, it is the Bank which is responsible for not getting the decree executed well in time." In the case before this Court, the claim made by the Bank was found to be time barred and to that this Court observed that while the equity is in favour of the Bank, the law is not in favour of the borrower, however, since the claim is time barred, as the execution petition was barred by the limitation, this court set-aside as such the execution petition.

10.3 In the case of Popat Bahiru Govardhane & Others (supra), this Court has observed and held that it is a settled legal position that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the Statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. It is further observed that the statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it by giving full effect to the same.

11. It is also required to be noted that even Shri Maninder Singh, learned senior counsel appearing on behalf of the appellant has, as such, fairly conceded that considering Section 61(2) of the IB Code, the Appellate Tribunal has jurisdiction or power to condone the delay not exceeding 15 days from the completion of 30 days, the statutory period of limitation. However, has requested and prayed to condone the delay in exercise of powers under Article 142 of the Constitution of India, in the facts and circumstances of the case and submitted that the amount involved is a very huge amount and that the appellant is a public body.

We are afraid what cannot be done directly considering the statutory provisions cannot be permitted to be done indirectly, while exercising the powers under Article 142 of the Constitution of India. 11.1 At this stage, decision of this Court in the case of Oil & Natural Gas Corporation Limited (supra) is required to be referred to. Before this Court, the question was with respect to delay beyond 120 days in preferring the appeal under Section 125 of the Electricity Act and the question arose whether the delay beyond 120 days in preferring the appeal is condonable or not. After considering various earlier decisions of this Court on the point and considering the language used in Section 125 [2] of the Electricity Act which provided that delay beyond 120 days is not condonable, this Court has observed and held that it is not condonable and it cannot be condoned, even taking recourse to Article 142 of the Constitution. While observing and holding so in para-16, this Court has observed and held as under:-

"16. From the aforesaid decisions, it is clear as crystal that the Constitution Bench in Supreme Court Bar Association [AIR 1988 SC 1895] [Supra] has ruled that there is no

conflict of opinion in Antulay's case [AIR 1988 SC 1531] or in Union Carbide Corporation's case with the principle set-down in Prem Chand Garg & Anr. v. Excise Commissioner, AIR 1963 SC 996. Be it noted, when there is a statutory command by the legislation as regards limitation and there is the postulate that delay can be condoned for a further period not exceeding sixty days, needless to say, it is based on certain underlined, fundamental, general issues of public policy as has been held in Union Carbide Corporation's case. As the pronouncement om Chhattisgarh State Electricity Board [AIR 2010 SC 2061] (Supra) lays down quite clearly that the policy behind the Act emphasizing on the constitution of a special adjudicatory forum, is meant to expeditiously decide the grievances of a person who may be aggrieved by an order of the adjudicatory officer or by an appropriate Commission. The Act is a special legislation within the meaning of Section 29 (2) of the Limitation Act and, therefore, the prescription with regard to the limitation has to be the binding effect and the same has to be followed regard being had to its mandatory nature. To put it in a different way, the prescription of limitation in a case of present nature, when the statute commands that this Court may condone the further delay not beyond 60 days, it would come within the ambit and sweep of the provisions and policy of legislation. It is equivalent to Section 3 of the Limitation Act. Therefore, it is uncondonable and it cannot be condoned taking recourse to Article 142 of the Constitution." 11.2 In the case of Teri Oat Estates (P) Ltd. v. U.T. Chandigarh, reported in (2004) 2 SCC 130, in paragraphs 36 & 37, it is observed as under:

"36. We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right. It is further trite that despite an extraordinary constitutional jurisdiction contained in Article 142 of the Constitution of India, this Court ordinarily would not pass an order which would be contravention of a statutory provision.

37. As early as in 1911, Farwell, L.J. In Latham v. Richard Johnson & Nephew Ltd. (1911-12) All ER Rep 117 observed: (All ER p. 123E) "We must be very careful not to allow our sympathy with the infant plaintiff to affect our judgment. Sentiment is a dangerous will o' the wisp to take as a guide in the search for legal principles" Thus, considering the statutory provisions which provide that delay beyond 15 days in preferring the appeal is uncondonable, the same cannot be condoned even in exercise of powers under Article 142 of the Constitution.

12. In view of the afore-stated settled proposition of law and even considering the fact that even the certified copy of the order passed by the adjudicating authority was applied beyond the period of 30 days and as observed hereinabove there was a delay of 44 days in preferring the appeal which was beyond the period of 15 days which maximum could have been condoned and in view of specific statutory provision contained in Section 61(2) of the IB Code, it cannot be said that the NCLAT has committed any error in dismissing the appeal on the ground of limitation by observing that it has no jurisdiction and/or power to condone the delay exceeding 15

days.

13. In view of the above and for the reasons stated above, no interference of this Court is called for. The present appeal fails and deserves to be dismissed and is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

.....J. [M.R. Shah] New Delhi; .....J. September 14, 2021. [Aniruddha Bose]