

A Rajendra vs Gonugunta Madhusudhan Rao on 4 April, 2025

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Bench: Abhay S. Oka

2025 INSC 447

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS.11070 - 11071 OF 2024
(@ DIARY NO. 10029 OF 2024)

A RAJENDRA

... AP

VERSUS

GONUGUNTA MADHUSUDHAN RAO
& ORS ... RESPONDENT (S)

J U D G M E N T

AUGUSTINE GEORGE MASIH, J.

1. These appeals have been preferred against the Order dated 18.01.2024 passed by the National Company Law Appellate Tribunal (hereinafter referred to as “NCLAT”) where appeals preferred by the appellant herein stand dismissed as a consequence of dismissal of the applications of condonation of delay on the even date.

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2. Two appeals were preferred before the NCLAT against two separate orders passed on 20.07.2023 by the National Company Law Tribunal (hereinafter referred to as “NCLT”) where an application filed by the appellant herein who is the shareholder and suspended Managing Director of Dharti Dredging and Infrastructure Limited (Corporate Debtor) under Section 60(5) read with Section 35(1)(N) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “IBC”) seeking a direction to the respondent(s) to place the Resolution Plans submitted by him before the Committee of Creditors (CoC) for consideration along with the other Resolution Plan and for staying the voting

results on the Resolution Plan which was dismissed and another application preferred by Respondent No. 1, Resolution Professional of the Corporate Debtor (hereinafter referred to as “RP”) under Section 30(6) and 31(1) of the IBC read with regulation 39(4) of the Insolvency and Bankruptcy Board of India (IBBI) (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in short regulations for approval of the Resolution Plan dated 10.01.2023 of CIVIL APPEAL NO(S). 11070 – 11071 OF 2024 consortium Respondent No. 5 herein had been allowed.

3. It needs to be noted here at this stage that the appeals were preferred without any application for condonation of delay by the appellant herein with a declaration in Paragraph 6 of the grounds of appeal that the same is within the period specified in Section 61 of the IBC. Upon notice having been issued to the respondents in the appeals, objection was raised by the respondents to the effect that the appeals were beyond the period of limitation, applications for condonation of delay were preferred in both the appeals.

4. Since the first appeal had been filed along with free certified copy, which, on being ready and became available on 01.08.2023 was made the basis to assert in the application that the appeal was within limitation whereas in the application in the other appeal, it was asserted that the period of limitation would begin from the date of knowledge of the contents of the Order which was made available to the appellant by the ‘RP’ on 07.08.2023, therefore the appeal was within limitation. Although it was CIVIL APPEAL NO(S). 11070 – 11071 OF 2024 mentioned that the copies have been applied for by instructing the counsel, but no proofs thereof have been submitted rather at a subsequent stage it is admitted as a matter of fact that the appellant has not applied for the certified copy of any of the Orders.

5. The NCLAT, Chennai proceeded to decide the question with regard to the period of limitation and the justification which is sought to have been given by the appellant for the delay in filing the appeals as also the mis-statement made in the ground of appeal and dismissed the same. The reasons for the same were that the appellant is guilty of suppression of correct facts and making wrong averments in para 6 and 17 of the grounds of appeal where it is asserted that the appeals have been preferred within the time as specified under the statute. The factum with regard to the certified copy having been applied for by the appellant has also been informed to be not correct and therefore the application preferred in the second appeal for dispensing with the certified copy has also been stated to be a mis-statement apart from the fact that CIVIL APPEAL NO(S). 11070 – 11071 OF 2024 the appellant had taken a totally new stand in the application for condonation of delay which is contrary to the stand taken in the grounds of appeal. The applications for condonation of delay were therefore dismissed leading to the dismissal of the appeals.

6. Learned senior counsel for the appellant, although on facts, could not dispute the findings as returned by the NCLAT but had however sought to assert that, the appeals as have been filed being within the permissible period where the delay could be condoned by the NCLAT as provided for under Section 12(3) of the Limitation Act. The Appellate Tribunal could not dismiss the application or the appeal. Reliance has also been placed on Section 61 of the IBC especially proviso to sub-section (2) thereto. The said proviso allows an additional period of 15 days to file an appeal

beyond the initial period of 30 days. It is on this basis asserted that since 45 days had not passed on the date of filing the appeal from the date of pronouncement of the Order i.e. 20th of July, 2023 by the NCLAT, the delay in filing the appeal should have been condoned.

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7. It is submitted that the appellant instructed his Counsel to obtain a certified copy of the order on the date the order was pronounced by the NCLT. The free certified copy thereof was made ready and given to the appellant on 01.08.2023. The limitation, if taken from the date of pronouncement of the Order would end on 19th August 2023 whereas the appeal has been filed on 28th August 2023. Therefore, the delay is of ten days. He, however, submits that unless the contents of the order are known, no effective appeal can be filed by the party and thus, the limitation is to be counted from the date of the knowledge of the contents of the Order. The appeal, in any case, could not have been filed as the Order was not available to the appellant prior to the receipt thereof and the appeal would, in such circumstances, be within limitation. In any case, it is asserted that even if the limitation is to be seen from the initial date of pronouncement, the delay being of only ten days, the same was condonable by NCLAT as the extended period would come to an end much thereafter, it is on this basis submitted that the NCLAT should have accepted the prayer in the CIVIL APPEAL NO(S). 11070 – 11071 OF 2024 application for condonation of delay and heard the matter on merits.

8. Counsel, in any case contended, that the non-filing of the application for condonation of delay along with the appeal would not be fatal as it is a curable defect. Assertion has also been made that the period of ten days has been consumed in seeking the legal opinion and preparing the appeal which should have been taken into consideration by NCLAT for condoning the delay as this could be a sufficient cause to the satisfaction of the Appellate Tribunal.

9. In the other appeal, it has been asserted that the same was filed without the certified copy and an application has been preferred seeking dispensation of the filing of the certified copy on the plea that the copy has been lost in transit. Reliance has been placed upon the judgment of this Court in Sesh Nath Singh & Anr. V. Baidyabati Sheoraphuli Co-operative Bank Ltd and Anr¹ to contend that application for the purpose of condonation of delay is not required to be filed. On this basis, prayer has 2021 (7) SCC 313 CIVIL APPEAL NO(S). 11070 – 11071 OF 2024 been made for setting aside the impugned order, allow the present appeal, to condone the delay in filing the appeals and remand them to the NCLAT for fresh decision on merits.

10. Learned counsel for the respondents on the other hand has opposed the prayer as has been made by the counsel for the appellant and has supported the Order passed by the NCLAT on the same grounds as has been put forth in the impugned order. Since the facts are borne out from the pleadings itself, it is asserted by the senior counsel for the respondents that no certified copy had been applied for by the appellant. The appeal was filed on 28.08.2023 whereas the impugned Order was pronounced by NCLT on 20th July 2023. The period expired on 19.08.2023 i.e. 30 days as provided under Section 61(2) of IBC that the counsel has stressed upon the fact that the appellant had not come to the Court with clean hands and is guilty of suppressing facts. Reference has been made to para 6 and 17 of the grounds of appeal wherein para 6 it was declared that the appeal had

been filed within the period of limitation while in para 17, assertion has been made CIVIL APPEAL NO(S). 11070 – 11071 OF 2024 that the appellant had applied for the certified copy of the Order on 01.08.2023 and received the same on 10.08.2023 seeking exclusion of this period of ten days under Section 12(3) of the Limitation Act, 1963. Non-filing of the application for condonation of delay along with the appeal has also been asserted to be unacceptable when under the proviso it is so permissible. However, he asserts that the said application was filed on 06.12.2023 which is much beyond the permissible period. Further, a new stand has been taken in the application for condonation of delay contrary to the appeal. Whereas, as a matter of fact, it is admitted in both cases that certified copy was never applied for supporting the findings. For the reason given by NCLAT in the impugned order, Counsel has prayed for dismissal of the appeals.

11. Having considered the submissions made by the Counsel for the parties and going through the pleadings and the law, as has been settled by this Court, we are unable to accept the prayer of the appellant and find the reasons as assigned by the Appellate Tribunal while passing the impugned CIVIL APPEAL NO(S). 11070 – 11071 OF 2024 order to be justified and in accordance with law for declining the prayer for condonation of delay. Thus, rightly dismissing the appeals as barred by limitation.

12. The facts are not in dispute and therefore are not being repeated. As is apparent, first appeal was preferred along with the free certified copy which was made ready and available after the pronouncement of the Order of 20th July 2023 on 01.08.2023. It is an admitted position on facts that in the second appeal, no certified copy was appended. Rather, an application for exemption from filing of the certified copy was filed with an assertion that the certified copy had been applied for. In the absence of any certified copy having been applied for, the period of limitation would start from the very next day of pronouncement of the order i.e., 21.07.2023 as the date of pronouncement of the Order stands excluded as per Section 61 of the IBC. Section 61 of the IBC reads as follows:-

61. Appeals and Appellate Authority. — (1) Notwithstanding anything to the contrary contained under the Companies Act, 2013 (18 of 2013) any person aggrieved by the order of the Adjudicating Authority under this part may CIVIL APPEAL NO(S). 11070 – 11071 OF 2024 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.

(3) An appeal against an order approving a resolution plan under section 31 may be filed on the following grounds, namely:—

(i) the approved resolution plan is in contravention of the provisions of any law for the time being in force;

(ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;

(iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;

(iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or

(v) the resolution plan does not comply with any other criteria specified by the Board.

(4) An appeal against a liquidation order passed under section 33, or sub-section (4) of Section 54L, or sub-section (4) of Section 54N, may be filed on grounds of material irregularity or fraud committed in relation to such a liquidation order. (5) An appeal against an order for initiation of corporate insolvency resolution process passed under sub-section (2) of Section 54-O, may be filed on grounds of material irregularity or fraud committed in relation to such an order.

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13. A perusal of the above Section would show that any party which is aggrieved by decision of the NCLT can file an appeal before the NCLAT. A feature which needs to be highlighted here is that this provision begins with a non obstante clause signifying an overriding effect of this provision in case of some contradistinction with the contents contemplated in the Companies Act, 2013.

14. Statutory time limit of 30 days within which an appeal can be preferred has been provided for in sub-section (2) of Section 61 of IBC. Proviso thereto allows an additional period of 15 days to file an appeal only on the satisfaction of NCLAT that there was sufficient cause for not filing the appeal earlier within the initial period of 30 days. The restrictions with regard to allowing extension in the provisions stipulated is cloaked in such a manner that the provisions have to be strictly followed. The first aspect is that the period is extendable by 15 days and not beyond that. The limit, therefore, has been prescribed as regards the period within which the discretion has to be applied by NCLAT. That apart, this period cannot be claimed as a matter of right CIVIL APPEAL NO(S). 11070 – 11071 OF 2024 for extension of the limitation rather it is laced with the satisfaction at the end of the NCLAT upon having shown sufficient cause. The discretion, therefore, has further been circumscribed and not merely left at the whims and fancy of NCLAT. The cumulative reading of the proviso would therefore entail that the extension of period so provided for has to be strictly construed and has not to be exercised in a liberal manner which highlights the legislative intent which has to be given effect to.

15. With these principles in mind, the applicability of the provisions as provided for under the Limitation Act, 1963 has to be entailed.

16. Rule 50 of the NCLAT Rules makes it mandatory for the Registry to send the certified copy of the final Order passed by NCLT to the concerned parties free of cost and the certified copies may be

made available with costs as per the schedule of fees in all other cases. Rule 22 of the NCLAT Rules deals with the presentation of the appeal in form NCLAT-1. Sub-rule 2 thereof mandates that an appeal shall be accompanied by the certified copy of the impugned order.

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17. This Court had an occasion to deal with a question regarding the primacy of the provisions of IBC vis-à-vis the Companies Act, 2013 in V Nagarajan Vs. SKS Ispat and Power Limited². The primary contention raised by the appellants therein was the non-availability of the certified copies of the Order and exclusion of their period of non-availability from the period of limitation for filing appeal under Section 61(2) of the IBC, 2016. This Court while dealing with Section 421(3) of the Companies Act, 2013 and Section 61(2) of IBC adopted a purposive interpretation and observed that the use of phrase “from the date on which a copy of the Order of the Tribunal is made available to the person aggrieved” in Section 421(3) of the Companies Act, 2013 is indicative of the overt intention of the legislature to commence the period of limitation only upon the receipt of certified copies of the order by the aggrieved party. However, the scheme of Section 61 of the IBC, 2016 does not contain the condition for commencement of period of limitation only after obtaining a certified copy of the Order. Thereby [2021] 14 SCR 736 CIVIL APPEAL NO(S). 11070 – 11071 OF 2024 refuting the justification of non-availability of certified copy of the Order offered for delay in filing the appeal. While harmoniously approaching and reading the Code and the provisions of the Companies Act, 2013, primacy of Code was said to be established being the intent of the legislature. This Court did not allow the litigants to await the receipt of certified copies as it would upset the time bound framework of IBC if Section 421 of the Companies Act, 2013 is allowed to operate. The limitation thus, starts from the date of pronouncement of the Order and not from the date the Order is made available to the parties.

18. It can, thus, be concluded that the litigant has to file its appeal under Section 61(2) within 30 days which can be extended up to a period of 15 days, and no more, upon showing sufficient cause. A slate of interpretation of procedural rules cannot be used to defeat the substantive objective of legislation which is prescribed in a time frame. As a result, thereof, the period of limitation for filing the appeal having been laid down and proviso thereto limiting CIVIL APPEAL NO(S). 11070 – 11071 OF 2024 the exercise up to a distance for condoning the delay mandatorily has to be adhered to.

19. Referring to Rule 22 of the NCLAT Rules the Court concluded that the parties cannot be automatically dispensed with the obligation to apply for and obtain a certified copy of the impugned order for filing an appeal. However, the time taken by the Court to prepare the decree or Order cannot be excluded under Section 12 of the Limitation Act before the application to obtain a certified copy thereof is made. The right to receive a free copy under Section 420(3) of the Companies Act, 2013 does not obviate the obligation of the appellant to seek a certified copy through an application. The Court further went on to observe that the frequent grant of waivers in filing the certified copy of the impugned order do not confer an automatic right on an applicant for dispensing with compliance of the requirement as laid down under Rule 22(2) of the NCLAT Rules negatory.

20. Mandate of Rule 22(2) of NCLAT Rules has to be complied with which requires certified copy to be annexed along with appeal which binds a litigant CIVIL APPEAL NO(S). 11070 – 11071 OF 2024 under the IBC. The appellant having failed to apply for certified copy renders appeal filed before the NCLAT as clearly barred by limitation.

21. This Court in Cethar Limited (Resolution Professional) Vs. SKS Ispat & Power Ltd.³ held that the appellant did not even attempt to secure a certified copy and only relied on the date of uploading the Order on the website that is 12.03.2020 whereas the pronouncement in open Court was on 31.12.2019 and that too in the presence of the appellant before NCLT. This Court denied the benefit of condonation of delay on account of absence of any effort on the part of the appellant within the statutory period of limitation to obtain the certified copy of the impugned Order therein.

22. In National Spot Exchange Limited vs. Anil Kohli, Resolution Professional for Dunar Foods Limited⁴, this Court reaffirmed the position of law that an appeal must be filed within 30 days and in any case, delay beyond 15 days cannot be condoned (2002) 2 SCC 244 (2022) 11 SCC 761 CIVIL APPEAL NO(S). 11070 – 11071 OF 2024 in terms of Section 61(2) of the IBC. This Court further refused to exercise its extraordinary power under Article 142 of Constitution of India to condone the delay holding that such power could not be exercised against the express provisions of the statute upholding the Order of the NCLAT that the Appellate Tribunal had no jurisdiction at all to condone the delay exceeding 15 days beyond the period of 30 days as contemplated under Section 61(2) of the IBC.

23. In Sanjay Pandurang Kalate Vs. Vistra ITCL India Pvt. Ltd.⁵, this Court had an occasion to deal with the case where an application was heard by NCLT on 17.05.2023 but no order was pronounced. The Order came to be uploaded by the Registry on 30th April 2023 directly carrying the date of the Order as 17.05.2023. The appellant applied for the certified copy on 30th May 2023 which was received on 01.06.2023 and the appeal was filed in NCLAT on 10.07.2023 along with the application for condonation of delay. The issue which was dealt by this Court in this case was as to which date triggers (2024) 3 SCC 27 CIVIL APPEAL NO(S). 11070 – 11071 OF 2024 limitation to commence when the matter is conclusively heard on one day and the Order is directly uploaded on the website on another. It was held that the period to compute limitation to file an appeal under Section 61 IBC from the Order of NCLT commences from the date of uploading of the Order by the Registry as the commencement of the period of Limitation is intrinsically linked to the date of pronouncement.

24. Therefore, the incident which triggers limitation to commence is the date of pronouncement of the Order and in case of non-pronouncement of the Order when the hearing concludes, the date on which the Order is pronounced or uploaded on the website.

25. However, where the judgment was pronounced in open Court, the period of limitation starts running from that very day. The appellant is however entitled to seek relief under Section 12(2) of the Limitation Act for excluding the period during which the certified copy was under preparation on an application preferred by that party.

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26. In light of the above legally settled position, when the facts of the present case is seen, the first thing which is apparent is that in the absence of any certified copy having been applied by the appellant of the impugned orders dated 20th July 2023 passed by the NCLT on which it was admittedly pronounced, with Rule 22 of the NCLAT Rules mandating filing of the appeal along with the certified copy. The appeals as preferred by the appellant need to be dismissed as they were filed beyond 30 days and no steps have been taken by the appellant to seek certified copy of the order.

27. That apart, the second appeal, on this score alone is to be dismissed as there is no question of moving an application for condonation of delay when no application for obtaining a certified copy of the order has been filed. Exemption from filing of certified copy, as has been referred to above, cannot be claimed as a matter of right in terms of the statutory requirements of the Rules. As regards the first appeal, which was accompanied with the certified copy supplied free by NCLT the same also being beyond the period of limitation and the time of ten CIVIL APPEAL NO(S). 11070 – 11071 OF 2024 days as sought to be exempted for the preparation and making available the certified copy cannot be credited to the benefit of the appellant as the period of limitation commences from the date of pronouncement of the order and the benefit of Section 12(2) of the Limitation Act is available only on an application for grant of certified copy of the Order having been filed till the date of preparation of the said certified copy. Since no such steps have been taken by the appellant for applying the certified copy, the appeal was beyond limitation.

28. The application of condonation of delay in the first appeal, disclosing no reasons whatsoever in filing the appeal, the Appellate Tribunal was justified in dismissing the application for condonation of delay. The satisfaction has to be of the Appellate Tribunal and that too on justifiable grounds, which, as is apparent, from the perusal of the application there is none pleaded which can be said to be projecting sufficient cause for not approaching the Appellate Tribunal within the time stipulated under Section 61(2) of the IBC.

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29. The other reasons as has been assigned by the Appellate Tribunal for rejecting the application for condonation is clearly borne out from the pleading and the facts which do not call for any interference in the present appeals.

30. In view of the above, we uphold the impugned order dated 18.01.2024 passed by the NCLAT and dismiss the present appeals.

31. There shall be no orders on costs.

32. Pending application(s), if any, shall stand disposed of.

..... J.

[ABHAY S. OKA] J.

[AHSANUDDIN AMANULLAH]J. [AUGUSTINE GEORGE MASIH]
NEW DELHI;

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