

NATIONAL COMPANY LAW APPELLATE TRIBUNAL. PRINCIPAL BENCH,

NEW DELHI

Comp. App (AT) (Ins) No. 1450-1406 of 2022

&

I.A. No. 4388, 4389 of 2022

IN THE MATTER OF:

Power Infrastructure India

...Appellant

Versus

Power Finance Corporation Ltd. & Anr.

...Respondents

Present:

For Appellant : Ms. Fereshte Sethna, Mr. Abhishek Chaushan, Adv.

For Respondent : Mr. Ramji Srinivasan, Sr. Adv. with Mr. Deepak Khurana, Adv. for R1

Ms. Namrata Saraogi, Mr. Kartik Pandey, Advocates

Mr. Aakarshan Sahay, Mr. Sagar Arora, Mr. Shivam Rajpal, Advocates for RP/R2

O R D E R

Per: Justice Rakesh Kumar Jain (Oral)

07.11.2023: This order shall dispose of two applications bearing I.A. No. 4388 and 4389 of 2022, purported to have been filed under Rule 11 of the NCLAT Rules, 2016 (in short 'Rules'), for condonation of delay of 14 days in filing of the appeal bearing CA (AT) (Ins) No. 1405-1406 of 2022.

2. Brief facts of this case are that the appeal has been filed against the order dated 27.09.2022, passed by the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench, Referral Bench, Kolkata), on an application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (in short 'Rules, 2016') by Power Finance Corporation Limited (Financial Creditor) against Shree

Maheshwar Hydel Power Corporation Limited (Corporate Debtor) for resolution of an amount of Rs. 2789,42,00,000/- which has been admitted.

3. It is pertinent to mention that the present Appellant, namely, Power Infrastructure India, filed the application before the Adjudicating Authority as proposed intervenor which was dismissed as having no locus to intervene.

4. Since we are not dealing with the main appeal as yet and are dealing with the application for condonation of delay, therefore, we would now revert back to the facts of the said application. The impugned order was passed on 27.09.2022. According to the Appellant, it was uploaded on 28.09.2022 and the period of limitation has been counted by the Appellant from the said date. The appeal was filed through e-filing on 11.11.2022. 12.11.2022 was the Saturday (Holiday) and 13.11.2022 was the Sunday (Holiday), therefore, the hard copy was filed on 14.11.2022.

5. Rule 22 of the Rules deals with the presentation of the appeal. Rule 22 is reproduced as under:-

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

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

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

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

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

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

6. As per Rule 22(1) every appeal is to be presented at the counter.
7. The Tribunal passed an administrative order in terms of Rule 103 of the Rules on 21.10.2022 which read as under:-

“NATIONAL COMPANY LAW APPELLATE TRIBUNAL
F.No.10/37/2018-NCLAT Dated : 21 st October, 2022
ORDER

National Company Law Appellate Tribunal Rules, 2016 (NCLAT Rules, 2016), Rule 22 provides for “Presentation of appeal”, which is to be made at the filing counter of the Appellate Tribunal.

As per Rule 103 of the NCLAT Rules, 2016, Appellate Tribunal has also permitted filing of the Appeal or proceedings through electronic mode (e-filing). SOPs have also been issued with regard to e-filing. SOP dated 3rd January, 2021 further provides:

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“It may be noted that it is mandatory that Ld. Advocates/ Authorised Representatives/ Parties-in-Person shall file the Appeal/Interlocutory Application/Reply/ Rejoinder etc. in hard copy also as per the procedure prescribed in NCLAT Rules, 2016 along with the e-filing receipt. The online filing & hard copies must match with proper pagination. The Court Fee shall be paid through Bharat Kosh (<https://bharatkosh.gov.in>) and the payment receipt should be attached.”

The SOPs and directions issued by the Appellate Tribunal do not contain any direction with regard to computation of limitation as to whether limitation is to be computed from the date of e-filing of the Appeals or from the date when Appeals are presented before the Appellate Tribunal as per Rule 22 of the NCLAT Rules, 2016. The Competent Authority has, therefore, decided to issue directions in exercise of power conferred by Rule 104 of the NCLAT Rules, 2016 with regard to computation of limitation for the purposes of filing an Appeal in the Appellate Tribunal.

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

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

All concerned shall ensure that Appeals are presented as per Rule 22 of the NCLAT Rules, 2016 within the period of limitation at the filing counter.

By Order of the Hon'ble Chairperson

Sd/-

(Peeush Pandey)

Registrar”

8. The aforesaid order dated 21.10.2022 was challenged by the present Appellant by way of a writ petition no. 16676 of 2022 before the Hon'ble Delhi High Court which was disposed of on 05.12.2022 with the following order:-

“1. This hearing has been done through hybrid mode.

2. The Petitioner has preferred this petition seeking quashing of the impugned order bearing order No. F.No.10/37/2018-NCLAT, dated 21 st October, 2022 issued by the National Company Law Appellate Tribunal (NCLAT). According to ld. Counsel for Petitioner, the said order requires physical filing of documents before the NCLAT, for the purpose of computation of limitation.

3. Pursuant to a reference under Section 419(5) of the Companies Act, 2013, due to disagreement between two members, order dated 27th September, 2022 of the National Company Law Tribunal (NCLT) was pronounced by a third member. The said section reads as:

“(5) If the Members of a Bench differ in opinion on any point or points, it shall be decided according to the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President for hearing on such point or points by one or more of the other Members of the Tribunal and such point

or points shall be decided according to the opinion of the majority of Members who have heard the case, including those who first heard it.”

4. An appeal was filed before the NCLAT challenging the said order. As per Section 61 of the Insolvency and Bankruptcy Code, 2016, (hereinafter ‘IBC’) an appeal against an order passed under Section 419(5) of the Companies Act, 2013 can be filed before the NCLAT within a period of thirty days. However, the said thirty-day period can be extended by another 15 days, if there is sufficient cause. The relevant portion of Section 61 of the IBC is extracted as under:

“61. (1) Notwithstanding anything to the contrary contained under the Companies Act 2013, any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal. (2) Every appeal under sub-section (1) shall be filed within thirty days before the National Company Law Appellate Tribunal: Provided that the National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed fifteen days.”

The Petitioner has filed the appeal and the same is stated to be listed before the NCLAT on 9th December, 2022.

5. According to ld. Counsel for the Petitioner, the maximum limitation period of 45 days expired on 12th November, 2022 which was a Saturday. The case of the Petitioner is that the e-filing of the appeal was done on 11th November, 2022, which was a Friday and the physical filing was done on Monday i.e., on 14th November, 2022. The issue being raised by the ld. Counsel is that, since the 45 days limitation period expired on 12th November, 2022, which is a Saturday, the delay in filing the appeal would be liable to be condoned.

6. The Court has considered the matter. It has been observed that the computation of time period under the National Company Law Appellate Tribunal Rules, 2016 is set out in Rule 3. The said rule reads as:

“3. Computation of time period.- Where a period is prescribed by the Act and these rules or under any other law or is fixed by the Appellate Tribunal for doing any act, in computing the time, the day from which the said period is to be reckoned shall be excluded, and if the last day expires on a day when the office of the Appellate Tribunal is closed, that day and any succeeding day

on which the Appellate Tribunal remains closed shall also be excluded”

7. Further, it has been observed that Rule 103 of the National Company Law Appellate Tribunal Rules, 2016 specifically permits electronic filing. The said rule reads as:

“103. Filing through electronic media.- The Appellate Tribunal may allow filing of appeal or proceedings through electronic mode such as online filing and provide for rectification of defects by e-mail or internet and in such filing, these rules shall be adopted as nearly as possible on and from a date to be notified separately and the Central Government may issue instructions in this behalf from time to time.”

8. However, the Id. Counsel for the Petitioner submits that an order bearing order No. F.No.10/37/2018-NCLAT has been issued by the NCLAT on 21st October, 2022 that the date of physical filing alone shall be considered as the date of filing. The said order reads:

“F.No.10/37/2018-NCLAT Dated: 21 st October, 2022

ORDER

National Company Law Appellate Tribunal Rules, 2016 (NCLAT Rules, 2016), Rule 22 provides for "Presentation of appeal", which is to be made at the filing counter of the Appellate Tribunal.

As per Rule 103 of the NCLAT Rules, 2016, Appellate Tribunal has also permitted filing of the Appeal or proceedings through electronic mode (e-filing). SOPs have also been issued with regard to e-filing. SOP dated 3 rd January, 2021 further provides: -

"It may be noted that it is mandatory that Ld. Advocates/Authorised Representatives/ Parties-in-Person shall file the Appeal/ Interlocutory Application/ Reply/ Rejoinder etc. in hard copy also as per the procedure prescribed in NCLAT Rules, 2016 along with the e-filing receipt. The online filing & hard copies must match with proper pagination. The Court Fee shall be paid through Bharat Kosh (<https://bharatkosh.gov.in>) and the payment receipt should be attached."

The SOPs and directions issued by the Appellate Tribunal do not contain any direction with regard to computation of limitation as to whether limitation is to be computed from the date of e-filing of the Appeals or from the date when Appeals are presented before the Appellate Tribunal as per Rule 22 of the NCLAT Rules, 2016. The Competent Authority has, therefore, decided to issue directions in exercise of power conferred by Rule 104 of the NCLAT Rules, 2016 with regard to computation of limitation for the purposes of filing an Appeal in the Appellate Tribunal.

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

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

All concerned shall ensure that Appeals are presented as per Rule 22 of the NCLAT Rules, 2016 within the period of limitation at the filing counter.

By Order of the Hon 'ble Chairperson

Sd/- (Peeush Pandey)

Registrar”

9. Rule 22 of the NCLAT Rules, 2016 reads as:

“22. Presentation of appeal.- (1) Every appeal shall be presented in Form NCLAT-1 in triplicate by the appellant or petitioner or applicant or respondent, as the case may be, in person or by his duly authorised representative duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same. (2) Every appeal shall be accompanied by a certified copy of the impugned order. (3) All documents filed in the Appellate Tribunal shall be accompanied by an index in triplicate containing their details and the amount of fee paid thereon. (4) Sufficient number of copies of the appeal or petition or application shall also be filed for service on the opposite party as prescribed. (5) In the pending matters, all other applications shall be presented after serving copies thereof in advance on the opposite side or his advocate or authorised representative. (6) The processing fee prescribed by the rules, with required number of envelopes of sufficient size and notice forms as prescribed shall be filled along with memorandum of appeal.”

10. The apprehension expressed by the Petitioner is that in view of the above order dated 21st October, 2022 and given that the e-filing was done within limitation, but the physical filing was done on the following Monday, the Appeal may be dismissed

11. Heard. Since the matter is pending adjudication before the NCLAT, which is a duly constituted Tribunal under Section 410 of the Companies Act, 2013, this Court does not wish to give any opinion on the factual issue i.e., whether the appeal was within

limitation period or not. Suffice it to observe that the prevalent position with regards to e-filing of documents across Courts and Tribunals in the country, encouraging e-filing, which may become the norm in the future, would duly be taken into consideration by the Tribunal.

12. With these observations, the petition, and all pending applications, is disposed of leaving the Petitioner's remedies open, in accordance with law, upon the decision being taken by the NCLAT."

9. On 24.12.2022, Office Order F.No.23/04/2022-Estt./NCLAT was issued as per which the limitation was to be computed from the date of e-filing. The hard copy was required to be filed within 7 days of the e-filing. However, it was made clear that in case where hard copy is filed after 7 days, the appeal shall be placed before the Tribunal for appropriate orders. The said circular dated 24.12.2022 is reproduced as under:-

"NATIONAL COMPANY LAW APPELLATE TRIBUNAL
F.No. 23/4/2022-Estt./NCLAT Dated: 24 th December, 2022
ORDER

National Company Law Appellate Tribunal Rules, 2016 (NCLAT Rules, 2016), Rule 22 provides for "Presentation of appeal", which is to be made at the filing counter of the Appellate Tribunal.

As per Rule 103 of the NCLAT Rules, 2016, Appellate Tribunal has also permitted filing of the Appeal or proceedings through electronic mode (e-filing). SOPs have also been issued with regard to e-filing. SOP dated 3rd January, 2021 further provides: -

"It may be noted that it is mandatory that Ld. Advocates/ Authorised Representatives / Parties-in- Person shall file the Appeal/ Interlocutory Application/ Reply/ Rejoinder etc. in hard copy also as per the procedure prescribed in NCLAT Rules, 2016 along with the e-filing receipt. The online filing & hard copies must match with proper pagination. The Court Fee shall be paid through Bharat Kosh (<https://bharatkosh.gov.in>) and the payment receipt should be attached."

The SOPs and directions issued by the Appellate Tribunal do not contain any direction with regard to computation of limitation as to whether limitation is to be computed from the date of e-filing of the Appeals or from the date when Appeals are presented before

the Appellate Tribunal as per Rule 22 of the NCLAT Rules, 2016. The Competent Authority decided to issue directions in exercise of power conferred by Rule 104 of the NCLAT Rules, 2016 with regard to computation of limitation for the purposes of filing an Appeal in the Appellate Tribunal on 21.10.2022.

It is seen that appeals are e-filed from different parts of the country where the appellant in some cases is located in far away places and time is taken to file physical copy. It is further seen that physical copy is filed within seven days of e-filing.

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

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

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

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

(4) This order will be effective with immediate effect.

All concerned shall ensure that Appeals are presented as per Rule 22 of the NCLAT Rules, 2016 within the period of limitation at the filing counter.

By Order of the Hon'ble Chairperson
(Peeush Pandey)
Registrar"

10. Thereafter on 21.02.2023, the following order was passed by the Tribunal:-

"NATIONAL COMPANY LAW APPELLATE TRIBUNAL
F.No. 23/4/2022-Estt./NCLAT Dated: 21st February, 2023
ORDER

In continuation of the order F. No. 23/4/2022-Estt./NCLAT dated 24.12.2022, with the approval of the Competent Authority, it is hereby directed that the appeals filed before the NCLAT in the duration between 01.11.2022 to 23.12.2022 shall also get the

benefit of the order dated 24.12.2022 with regard to computation of limitation in Appeals.

The other conditions of the order dated 24.12.2022 shall remain unchanged.

By Order of the Hon'ble Chairperson

Sd/-

(Peeush Pandey)

Registrar”

11. On the basis of the last order dated 21.02.2023, it is sought to be argued that since the appeal was filed through e-filing on 11.11.2022, therefore, it is covered by the order dated 21.02.2023 and therefore, it is not filed beyond the period of 15 days as provided in Section 61(2) of proviso.

12. Counsel for the Appellant has then referred to the application which has been filed for seeking condonation of delay. In this application, the Appellant has averred that a delay of 14 days has occurred in filing of the appeal which is solely attributable to the circumstances beyond the reasonable control of the Appellant. In Para 6 of the said application, the Appellant has assigned the reason for not filing the appeal within the period of 30 days which read as under:-

“The Applicant is a foreign company based in Mauritius. In view of matters of foreign law whereon legal advice was required, including as to available remedies in (Indian) law, following which decision-making and grant of necessary approvals was required to be initiated, and in turn instructing the attorneys in regard to the filing of the appeal, whereafter the Applicant's attorneys who are Mumbai based were unavailable during the vacation of the Bombay High Court from 22.10.2022 to 08.11.2022, in the circumstances, the present appeal is being filed on 11.11.2022.”

13. This application is supported by an affidavit of Rajeev Dak, authorised signatory of the Appellant. Counsel for the Appellant has submitted that the appeal has been filed within the extended period of 15 days and since the

Appellant Company is a foreign company located at Mauritius it had to seek legal advice, took time in decision making and grant of necessary approvals because of which the limitation has expired otherwise there is nothing deliberate on the part of the Appellant. She has requested that the delay may be condoned and the appeal may be heard on merit. In support of her arguments, she has relied upon a decision of the Hon'ble Supreme Court in the case of Collector Land Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Ors., 1987 SCC (2) 107.

14. On the other hand, Counsel for the Respondent has argued that the Appellant has not come to the Court with the clean hands and has made false averments both in the application as well as in the affidavit filed by Rajeev Dak. In this regard, he has submitted that the whole case build up by the Appellant in the application is that the appeal is filed by a foreign company and therefore, it took sometime to seek necessary guidance/approvals. It is submitted that the board resolution was passed as far back as on 28.12.2017 resolving that Mr. Rajeev Dak resident of 1405, Kent Gardens, Near Veer Savarkar Garden, TPS III, Borivali (West), Mumbai 400 092 is to act as an authorised representative and shall appear before the NCLT, Ahmadabad where this matter was going on etc. It is further submitted that even the affidavit which has been filed in support of the application for condonation of delay is most casually drafted because it is mentioned therein that "I, Rajeev Dak, Authorised Representative of the Appellant, having its registered office at Fifth Floor, Ebene Esplanade, 24 Cybercity, Ebene, Mauritius, presently in Delhi do hereby solemnly affirm and state as under" and the verification of the affidavit is Mumbai which

says that “verified at Mumbai on this 10th day of November, 2022”. He has also pointed out that the verification has been done before the Notary at Mumbai as per the stamp available on the affidavit. He has further submitted that even the application for condonation of delay by a foreign company is highly casually drafted and drew our attention to Pg. 893 where the place is mentioned as Mumbai as well as New Delhi. Besides pointing out these formal defects in the application as well as in affidavit, he submitted that there is delay of 15 days instead of 14 days in filing of the appeal. He submitted that the impugned order was passed on 27.09.2022. If the limitation is counted from the date of uploading on 28.09.2022 onwards then three days of September, 31 days of October and the appeal having been filed on 11.11.2022 through e-filing would make it 45 days, therefore, it is submitted that there is delay of 15 days instead of 14 days. He has further submitted that the Appellant has wrongly mentioned that the circumstances were beyond the control of the Appellant for not filling the appeal in time because the decision was to be taken by the company itself and was not to be taken by somebody else for this purpose. It is submitted that the Code has prescribed timelines at various places in it and the period of 30 days is prescribed under Section 61 of the Code for the purpose of filing of an appeal against which any person is aggrieved. The Appellant has not given a single reason as to why 30 days was found short for not taking even a decision to file the appeal before the Appellate Tribunal. It is further argued that the Hon’ble Supreme Court has been very strict in the matter of condonation of delay beyond the period of 30 days and in this regard, he has relied upon a decision in the case of National Spot Exchange Limited Vs.

Anil Kohli, Civil Appeal No. 6187 of 2019 in which the Hon'ble Supreme Court has held that the Tribunal does not have the jurisdiction to condone the limitation beyond the period of 15 days which even cannot be condoned under Article 142 of the Constitution of India. He has also referred to a decision of this Tribunal in the case of Shridhar Cherukuri Vs. Dr. G.V. Narasimha Rao & Anr., I.A. No. 34 of 2023 in CA (AT) (Ins.) No. 13 of 2023 decided on 27.01.2023 in which this Court has dealt with the circulars and made the following observations:-

“48. Added further, the aforesaid ‘Order’ of this ‘Tribunal’ dated 21.10.2022, had clearly mandated that ‘All concerned shall ensure that Appeals are presented as per Rule 22 of the NCLAT Rules, 2016, within the period of Limitation at the Filing Counter’. 50. From the above, it is latently and patently quite clear that the period of Limitation as per ‘Order’ of this Tribunal dated 21.10.2022, shall be ‘calculated’ from the presentation of the ‘Appeal’, in the instant case, the ‘Appeal’, having been presented by the ‘Appellant’, (submission of ‘Appeal papers’, through physical mode (on 12.12.2022), on the ‘47th day’, which is beyond the ‘45 days’ (30 + 15 days), clearly ‘barred’ by ‘Limitation’.

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

15. He has submitted that a right is vested in the Respondent with the expiry of limitation which cannot be taken away by issuance of circulars later on and in this regard, he has relied upon a decision of the Hon'ble Supreme Court in the case of Balwant Singh (Dead) and Jagdish Singh & Ors., (2010) 8 SCC 685 in which it has been held that:-

“26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right, as accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.”

16. We have heard Counsel for the parties and perused the record with their able assistance.

17. Section 61 of the Code deals with the right of appeal. Section 61 of the Code is reproduced as under:-

“Section 61: Appeals and Appellate Authority.

***61.** (1) Notwithstanding anything to the contrary contained under the Companies Act 2013, any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.

(2) Every appeal under sub-section (1) shall be filed within thirty days¹ 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.

²[(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.]”

18. Section 61(1) of the Code provides that any person who is aggrieved against the order of the Adjudicating Authority has a right of appeal before the Appellate Tribunal. Section 61(2) further provides that every appeal which is to be filed under section 61(1) before the Appellate Tribunal has to be within 30 days. However, proviso to Section 61(2) says that in case the appeal is not filed within 30 days as prescribed in Section 61(2) it can still be filed up to the period of 15 days by assigning a sufficient cause to the

satisfaction of the Appellate Authority. However, in no case, the limitation can be condoned beyond the period of 15 days.

19. In the present case, the application for condonation of delay has been filed alleging that there is a delay of 14 days whereas Counsel for the Respondent submitted that the delay is beyond 15 days on the ground that the hard copy is filed on 14.11.2022 and the limitation cannot be counted from the date of uploading of judgment. Otherwise, if the appeal is treated to have been filed through e-filing then it is filed on 15th day.

20. Be that as it may, the Court is only concerned to examine as to whether the Applicant/Appellant has assigned sufficient cause for the purpose of seeking condonation of delay?

21. The reason given by the Appellant/Applicant in para 6 of the application is that the Appellant being a foreign company located at Mauritius could not get the due approvals and therefore, could not file the appeal within the time prescribed and therefore, the delay has occurred. It is the case of the Appellant that the Court should take liberal approach and reliance has been placed on a decision of the Hon'ble Supreme Court rendered in the case of Collector Land Acquisition, Anantnag & Anr. (Supra).

22. On the other hand, we have found that the Appellant being a company, has indulged in this litigation from the last five years when the board resolution was passed in favour of Rajeev Dak to pursue its litigation as an intervenor which is evident from the fact that the intervention application was filed before the Adjudicating Authority and after obtaining an order, in that intervention application that it was not maintainable, the present appeal has been filed.

23. In such circumstances, it does not lie in the mouth of the Appellant to urge that the Appellant being a foreign company could not get the necessary approval and legal opinion for the purpose of filing the appeal especially when Rajeev Dak is the resident of Mumbai and has been pursuing this litigation since long and the decision, approval and opinion to file the appeal was entirely within the domain of the Appellant Company which was not required to seek the approval etc. from somebody else. Therefore, the reason given is just a lame excuse and unbelievable.

24. In view of the aforesaid discussion, we are of the considered opinion that there is no reason much less sufficient assigned by the Appellant on the basis of which the delay caused in filing of the appeal on the 15th day could be condoned and consequently, the present application is hereby dismissed though without any order as to costs.

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Since, we have dismissed the application for condonation of delay by an order of even date, therefore, the present appeal is not found to be duly constituted and hence, the same is hereby dismissed. No costs.

**[Justice Rakesh Kumar Jain]
Member (Judicial)**

**[Mr. Barun Mitra]
Member (Technical)**

**[Mr. Naresh Salecha]
Member (Technical)**

Sheetal/Ravi