

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 811 of 2022 &
I.A. No. 5695 of 2023

IN THE MATTER OF:

Shree Ganapati Power and Transformers.

...Appellant

Versus

**Vijeta Projects And Infrastructure Ltd. &
Ors.**

...Respondents

Present:

For Appellant:

Mr. Anirban Ray, Sagnik Basu, Dilwakar Khan, Mr. Rahul Vashishth, Jatin Sapra, Vishal Vashishth, Advocates.

For Respondents:

Ms. Akanksha Kaushik, Mr. Shambo Nandy, Ms. Akanksha Kaushik, Adv. for R1

Mr. Abhirup Dasgupta, Advocate R-2.

ORDER
(04.10.2024)

Per: Justice Rakesh Kumar Jain:

This order shall dispose of an application bearing I.A. No. 5695 of 2023 filed by the Appellant in CA (AT) (Ins) No. 811 of 2022, seeking condonation of delay of 3 days in filing of the appeal.

2. In brief, CA (AT) (Ins.) No. 811 of 2022 is filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 (in short ‘Code’) against the impugned order dated 27.04.2022 by which the application filed by the Appellant under Section 9 of the Code

r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against Respondent No. 1 bearing CP (IB) No. 2082/KB/2019 has been dismissed by the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench).

3. Notice in the application for condonation of delay was issued to which reply has been filed by Respondent No. 1.

4. Impugned order was passed on 27.04.2022 by the Tribunal. Certified copy of the impugned order was prepared on 29.04.2022 which was received by the Appellant through registered post on 09.05.2022. The appeal was prepared on 27.05.2022 and e-filed on 30.05.2022. A delay of 3 days has occurred in filing the appeal.

5. Averments made by the Appellant in the application for condonation of delay are as under:-

“3. The instant Application is being filed by the Appellant seeking condonation of delay of 3 days in filing the accompanying appeal.

4. That the certified copy of the judgment and/or order that was passed by the Hon'ble National Company Law Tribunal, Kolkata Bench, Kolkata was made over by the department of the National Company law tribunal,

Kolkata Bench, Kolkata, on 9th May, 2022 to the Learned Advocate representing the appellant. The certified copy of the impugned judgement and order thought being made over on 9th May 2022, the period prescribed for preferring an appeal runs one day subsequent from the date of the order.

5.It is submitted that the certified copy of the impugned order was dispatched to the appellant on 06.05.2022 as per the postal receipt affixed on the envelope containing certified copy of the impugned order duly signed by the Dispatcher, National Company law tribunal 5, Esplanade Row (West) Kolkata- 700001 and was delivered on 09.05.2022 as per the tracking report of the postal receipt. After receiving the impugned order the appellant instructed its erst while advocate to provide him with all records of the case and in the mean while he contacted his present advocate for filing appeal against the impugned order. (Xerox Copy of the Postal envelope, postal receipt and tracking report is annexed herewith as ANEXURE-A (COLLY)).

6. On or after 16.05.2022 after holing conference with the present Learned Advocate, the appellant instructed him to prepare appropriate pleadings to file the instant appeal. The Memorandum of Appeal was drafted and made over to the appellant on 25.05.2022 for comments and approval on facts.

7.The appellant had approved the drafts and affirmed the same on 27.05.2022 in the evening hours, however,

due to the summer holidays in Calcutta High, Court the conducting advocate's office was closed and due which the staffs and advocates were on holidays on 28th and 29th May, 2022 i.e. Saturday and Sunday due to which the filling of the appeal could not be done.

8. it is submitted that the appellant has filed the present appeal on 30.05.2023 vide diary no. 36822. Accordingly, time for limitation stopped running on the e-filing of the appeal on 30th May 2023. It is to be noted that the appeal has been filed within the extendable period which lies with the discretion of this Hon'ble Tribunal. It is utmost necessary that the appeal be disposed of on merits and not on any technicality. The delay, if any, in preferring the present appeal is not on the basis of a negligence on the appellant and the appellant ought not to be punished for such delay.

9. In view of the foregoing, it is humbly prayed that 3 days delay in filing the accompanying Appeal may be condoned.”

6. The application has been opposed by Respondent No. 1 by filing reply to it in which following averments have been made:-

“3. The Impugned Order was passed by the Ld. National Company Law Tribunal, Kolkata in C.P. (IB) (KB) No. 2082 of 2019 on 27 April 2022 ("Impugned Order"). The present Appeal was e-filed by the Appellant on 30 May 2022 and thereafter, hard copy of the appeal was filed on 20 June 2022. It is pertinent to mention here that the Appeal was filed without an application seeking condonation of delay in filing the Appeal. I.A. No. 5695

of 2023 ("IA 5695") was filed belatedly by the Appellant on 29 November 2023 seeking condonation of delay in filing the Appeal.

4. The Appellant, in IA 5695, claims that due to summer holidays in Calcutta High Court, the advocate's office was closed on 28 May 2022 and 29 May 2022. Thereafter, the Appeal was e-filed on 30 May 2022. The Appellant purports that the clock of limitation stopped on 30 May 2022 when the Appeal was e-filed. However, admittedly, the hard copy of the Appeal was filed after an inordinate delay on 20 June 2022, despite the summer vacation of Calcutta High Court ending on 4 June 2022.

True copy of Calendar of High Court of Calcutta and List of Holidays of High Court of Calcutta for the year 2022 is annexed herewith and marked as Annexure A-1

5. On the date of filing of the Appeal, the Revised Standard Operating Procedure for Ld. Advocate/ Authorised Representative / Party-in Person for hearing/Mentioning the matter through virtual mode dated 3 January 2021 was applicable to filing of fresh Appeal. The SOP clearly mentioned that '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. ' True copy of Revised Standard Operating Procedure for Ld. Advocate/ Authorised Representative / Party-in-Person for hearing/Mentioning the matter through virtual mode dated 3 January 2021 issued by this Hon'ble Tribunal is annexed herewith and marked as Annexure A - 2.

6. The National Company Law Appellate Tribunal Rules, 2016 ("NCLAT Rules") stipulates that every appeal shall be presented in Form NCLAT-1 in triplicate by the appellant with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to

refuse to entertain the same. Therefore, for the purpose of calculating the period of limitation, the date on which the hard copy of the Appeal is filed at the filing counter is to be looked at. The Appellant in the present case filed the hard copy of the Appeal on 20 June 2022, i.e. after 54 days of passing of the Impugned Order.

7. Assuming, without admitting, that the submissions made by the Appellant in the Application for condonation of delay is true and correct, the Appeal is barred by limitation prescribed under Section 61 of the Insolvency and Bankruptcy Code, 2016 ("Code"). According to Sec 61(2) of the Code, the limitation period prescribed for filing an appeal before this Hon'ble Tribunal is 30 days.

8. Thereafter, as per the proviso to Sec 61(2) of the Code, this Hon'ble 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. In the present case, 30 days from the date of Impugned Order expired on 27 May 2022 and 45 days expired on 11 June 2022. The present Appeal was filed on 20 June 2022 after a delay of 9 days.

9. This Hon'ble Tribunal, vide order F.No.10/37/2018-NCLAT dated 21 October 2022, directed that the period of limitation, with regard to computation of limitation in Appeals, shall be computed from the date of presentation of Appeal as per Rule 22 of the NCLAT Rules, 2016. True copy of order F.No.10/37/2018-NCLAT dated 21 October 2022 issued by this Hon'ble Tribunal is annexed herewith and marked as Annexure A - 3. A copy of Rule 22 of the National Company Law Appellate Tribunal Rules, 2016 is annexed herewith and marked as Annexure A - 4.

10. The order F.No.10/37/2018-NCLAT dated 21 October 2022 was withdrawn by this Hon'ble Tribunal vide F. No. 23/4/2022- Estt./NCLAT dated 24

December 2022, wherein this Hon'ble Tribunal clarified that the limitation in filing of Appeals shall be computed from the date of e-filing. The order further clarified that hard copy has to be filed within 7 days of e-filing of the Appeal. True copy of order F.No. 23/4/2022-Estt./NCLAT dated 24 December 2022 issued by this Hon'ble Tribunal is annexed herewith and marked as Annexure A - 5.”

7. It is alleged by the Respondent that if the limitation is to be counted from the date of e-filing then there would be three days delay which is not seriously contested but since the hard copy has been filed on 20.06.2022, therefore, in view of Rule 22 of the NCLAT Rules, 2016 (NCLAT Rules) coupled with SOP dated 21.10.2022, the limitation is to be counted from the date of presentation of appeal at the counter and not from the date of e-filing.

8. It is further submitted that the limitation if counted from the date of presentation of appeal on 20.06.2022 then it would be 54 days of the passing of the impugned order whereas the appeal has to be filed within a period of 30 days which is statutorily provided under Section 61 and only a period of 15 days is further provided in proviso to Section 61(2) of the Code and no period of limitation can be further extended.

9. In reply, Counsel for the Appellant has submitted that by virtue of Rule 104 of the Rules, the Tribunal has issued SOPs from time to time. It is submitted that SOP dated 03.01.2021 was issued during the period of Covid-19 permitting e-filing while invoking Rule 103 of the Rules. It is further submitted that it was followed by SOP dated 21.10.2022 by which it was decided that the period of limitation shall be computed from the date of presentation of the appeal but the said SOP was made effective from 01.11.2022. Thereafter, another SOP was issued on 24.12.2022 which superseded the SOP dated 21.10.2022 and as a matter of fact the same was withdrawn and it was ordered that the limitation shall be computed from the date of e-filing. It is further submitted that at the time when the appeal was e-filed on 30.05.2022 or even the hard copy was filed on 20.06.2022, SOP dated 03.01.2021 was in operation because SOP dated 21.10.2022 became effective from 01.11.2022. It is also submitted that since the application has now been taken up after the SOP dated 24.12.2022 was issued and SOP dated 21.10.022 was withdrawn and superseded, therefore, the SOP dated 24.12.2022 shall be applicable. In this regard, he has relied upon a decision of the Hon'ble Supreme Court in the case of Sanket

Kumar Agarwal & Anr. Vs. APG Logistics Pvt. Ltd., 2023 LiveLaw (SC) 406, Innovators Cleantech Pvt. Ltd. Vs. Pasari Multi Projects Pvt. Ltd., CA (AT) (Ins) No. 115 of 2024 decided on 24.07.2024 and Somdev Kappor Vs. State of West Bengal & Ors. (2014) 14 SCC 486.

10. We have heard Counsel for the parties and perused the record.

11. There is no dispute that the impugned order was passed on 27.04.2022. Certified copy of the impugned order was prepared on 29.04.2022 and received on 09.05.2022. The appeal was verified on 27.05.2022 and e-filed on 30.05.2022. The hard copy of the appeal was however filed on 20.06.2022. It is also not to dispute that if the period of limitation is counted from the date of e-filing then there is a delay of three days only and if the limitation is to be counted from the date of the presentation of appeal then the appeal is beyond the period of limitation.

12. The issue is thus as to whether the date of limitation is to be counted from the date of e-filing or the date of presentation of appeal?

13. Since, the appeal has been filed under Section 61 of the Code, therefore, it will be useful to refer to the relevant part of Section 61 of the Code which is reproduced as under:-

“(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 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.”

14. As per the above provisions, any person who is aggrieved against the order passed by the Tribunal has a statutory right to file an appeal before the Appellate Tribunal. Section 61(2) provides statutory period of 30 days for filing such an appeal, however, if the proposed Appellant failed to file the appeal within a period of 30 days for some reason then Section 61(2) proviso gives another period of 15 days to file the appeal provided it satisfy the Appellate Tribunal that there was a sufficient cause for not filing the appeal in time. In no case, the period beyond 15 days can be extended.

15. Section 61 confers a right of appeal and the procedure to file the appeal is provided in part III of the Rules. Rule 22 of the Rules provides the procedure for the presentation of an appeal which is reproduced as under:-

“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.”

16. As per Rule 22(1) of the Rules the appeal is supposed to be filed at the filing counter which means that it has to be a hard copy.

17. Rule 103 of the Rules provides for filing through e-filing which is reproduced as under:-

“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”

18. Rule 104 deals with the removal of difficulties and issue of directions which is reproduced as under:-

“104. Removal of difficulties and issue of directions.- Notwithstanding anything contained in the rules, wherever the rules are silent or not provisions is made, the Chairperson may issue appropriate directions to remove difficulties and issue such orders or circulars to govern the situation or contingency that may arise in the working of the Appellate Tribunal.”

19. In exercise of its power in terms of Rule 104, the SOP is being issued from time to time by the Chairperson of this Tribunal and in this regard, it would be relevant to refer to SOP dated 03.01.2021 which is reproduced as under:-

“Dated: 03.01.2021

National Company Law Appellate Tribunal

Revised Standard Operating Procedure for Ld. Advocate/ Authorised Representative/ Party-in-Person for hearing/Mentioning the matter through virtual mode.

As directed, the following is the revised Standard Operating Procedure for hearing of cases through virtual mode (Cisco Webex Meeting Platform) using the e-filing portal (<https://efiling.nclat.gov.in>) from 04.01.2021.

NCLAT e-filing facility is now available for filing of Appeal/ Interlocutory Application/ Reply/ Rejoinder etc. Therefore, all concerned are requested to avail the same through NCLAT e-filing portal (<https://efiling.nclat.gov.in>) w.e.f. 04.01.2021. The URL for the same is available on NCLAT website (www.nclat.nic.in).

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.

MENTIONING

1. The mentioning application shall be submitted only by e-mail at the email address registrar-nclat@nic.in.
2. After curing the defects, the cases would be listed in the cause list to be published on the NCLAT website (www.nclat.nic.in).
3. The mentioning application must inter-alia clearly contain the case-details (e-filing no., diary No., date of filing, cause title, appeal details etc.) and contact details of the Learned Advocate/Authorised Representative/ Party-in-Person such as e-mail ID, mobile number with alternate number(s), full company/office address with pin code.
4. The mentioning application must contain a separate paragraph giving consent for taking up the matter through virtual mode.
5. In the mentioning application, the Learned Advocate/Authorised Representative/ Party-in-Person must specify as to how he/she would link to the Hon'ble Bench in video-conferencing mode, i.e. whether through desktop/laptop/mobile phone. In this regard, parties may kindly use desktop/laptop/tablet computers that will provide stable and smooth connectivity for video-conference. It may be noted that the speed of link should be more than 2 Mbps. It has been observed that signal drop/incoming call on mobile phones can delink such devices from an ongoing video-conference disrupting such VC and such devices may be avoided as far as possible.

GENERAL INSTRUCTIONS

6. The parties shall not be permitted to rely upon any document other than the documents duly filed along with the Appeal/Interlocutory application etc. in conformity with the NCLAT Rules, 2016.

7. Link to enable the Ld. Advocate/Representative/Party-in-Person to join the Video Conference shall be sent to the e-mail ID mentioned in their Appeal/Interlocutory application. Please note that a maximum of three appearance links will be provided per party (AOR, Junior Lawyer, Sr. Advocate / Arguing Counsel) and that it should not be shared with anyone.

8. The standard protocol about one person speaking at a time in VC shall be followed. All the parties shall be given chance, in turns, to present their case by the Hon'ble Bench. Any attempt to jump in during the presentation by another party may disrupt the proceedings. It may also invite 'muting' of the microphone of the disrupting party. In case a person wants to make a point she/he may raise her/his hand to invite the attention of the Hon'ble Bench. She/he can start speaking only after she/he has been allowed to do so. Cross talking or discussion could be done only after the mic has been put in 'mute' mode.

9. The directions of the Hon'ble Bench should be strictly followed at all times in VC to enable smooth hearing.

10. The decorum regarding dress of presenters and in verbal presentations should be maintained.

11. Any recording and use in any manner of the proceedings of the hearing through VC is strictly prohibited. Infringement may invite stringent action against the erring party.

INSTRUCTIONS FOR JOINING VIDEO CONFERENCING

The parties may note that, for the present, the matters shall be heard by the Hon'ble Bench through web-based video-conferencing system on the 'CISCO Webex Meeting' platform.

It may be further noted that the smooth functioning of the video-conference is squarely dependent upon and subject to the connectivity [signal strength/bandwidth] available at the end of the remote user(s), and hence it is expected that any party joining a hearing through video-conference shall ensure that robust connectivity and bandwidth are available at their end. In this regard, parties may use broadband connection of minimum 2 Mbps/dedicated 4G data connection.

The parties may also ensure that no other device or application is connected to or using the bandwidth when the hearing by video-conferencing is progressing on their CISCO Webex-enabled computer (preferable) or mobile.

For ease-of-use, parties may kindly note the following Standard Operating Procedure in respect of hearing of cases through video conferencing mode:

1. The Invitation Link for appearance and viewing, as the case may be, will be sent by the Registry to the given mobile no(s)/e-mail IDs by email/WhatsApp around half-an-hour before the scheduled hearing. Parties may also note that each of the links sent to any device is required to be unique and hence, parties may not share or forward such link(s) to any other person or device nor shall they enable others to join the hearing through video conference.
2. To join the Virtual Court Room through Cisco Webex Meeting using Desktop/Laptop/Tablet PC, please read the instructions provided in Annexure 'A'.
3. Upon clicking the "Join" button, the party would be prompted to enter the display name wherein the party is required to write his/her name with designation by prefixing item no. (of the cause list) in the space given i.e.: ITEM NO. 1 – Gajendra Singh - Appellant OR ITEM NO. 1 – Gaurav Rawat - Respondent OR ITEM NO. 1 – Chetan Rawat PARTY-IN-PERSON, as the case may be, and thereafter the party is required to click on the "JOIN" button.

4. Upon having joined the Courtroom in virtual mode, the arguing counsel shall introduce himself/herself to the Hon'ble Bench and thereafter, shall wait for the instructions from the Hon'ble Bench. On being asked, the party may make submissions and on completion of the submissions, shall at once 'mute' the MIC of the respective device. If the Hon'ble Bench requires the party to make further submission(s), the party may then 'unmute' the MIC of the device and again, on completion of the submission, put the MIC on 'mute' mode.

5. It is important for the parties to remember to keep their MIC on 'mute' at all times, except when the Hon'ble Bench requires them to make submission(s). Thus, when one party is making submissions, it is imperative that all other participants shall keep their respective MIC muted failing which the possibility of MIC catching audio feed from the speakers and creating 'echo/noise disturbance' would become very high and may disturb the video conference.

6. It may be noted that simultaneous submissions by more than one party at any given time should be avoided and each party may indicate their requirement to speak/submit by seeking permission from the Hon'ble Bench, by raising hand. Once permitted by the Hon'ble Bench, the party shall first 'unmute' the MIC and thereafter make submissions, as per clauses 4 and 5 above.

7. During the course of hearing through video-conferencing, the parties may kindly keep in mind that they are participating in COURT PROCEEDINGS, and hence it is expected that they would not resort to any indecorous conduct or dress or comment. Further, the parties are required to ensure that the proceedings by video conference are neither recorded/stored nor broadcasted, in any manner whatsoever, as recording/copying/storing and/or broadcasting, by any means of the hearings and proceedings before the.

Tribunal is expressly prohibited. A breach of this rule shall apart from entailing penal consequences, render such recording inadmissible in any court proceedings.

8. Parties are required to stay online (but in MUTE mode) till the Hon'ble Bench concludes the hearing of their matter, whereafter the parties may disconnect from video-conference.

9. After publication of cause list, a link for video conferencing will be provided to Learned Advocate/Authorised Representative/ Party-in-Person by the Registry through e-mail/SMS half an hour before the hearing of the matter.

10. The Competent Authority has been pleased to direct that the Ld. advocates could wear "plain white-shirt/white-salwar-kameez/ white saree, with a plain white neck band" during the hearings before the NCLAT through virtual mode.

Note: Link for video conferencing will be provided to Learned Advocate/Authorised Representative/Party-in-Person to the e-mail ID as mentioned in their Appeal/Interlocutory application.

For any technical support parties may contact the following officials during the office hours on working days:

VC Support -Mr. Sohrab Naqvi (9811226764), Mr. Gourav Mishra (8674951323), Mr. Ritu Raj Verma (9852642688) Mr. Mohan Sharma (9650969521), Mr. Anubhav Kumar (8920544917) VC Technical Issues-Mr. Gajendra Singh (9560014361), Mr. Satyanarayan (9871547911). e-mail ID: itsupport@nclat.nic.in (Technical Support)

20. By virtue of this SOP both modes of filing were made available to the Appellants.

21. On 21.10.2022, another SOP was issued bearing F.No. 10/37/2018-NCLAT which is also reproduced as under:-

“NATIONAL COMPANY LAW APPELLATE TRIBUNAL

F.No.10/37/2018-NCLAT

Dated : 21st 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: -

“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”

22. According to this SOP, it was decided that the period of limitation is to be computed from the date of presentation of appeal as per Rule 22 of the Rules but this was made effective from 01.11.2022.

23. SOP dated 21.10.2022 was withdrawn by another SOP dated 24.12.2022 which is also reproduced as under:-

“NATIONAL COMPANY LAW APPELLATE TRIBUNAL

F.No. 23/4/2022-Estt./NCLAT

Dated: 24th 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”

24. Thereafter, another SOP was issued on 21.02.2023 which is also reproduced as under:-

“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”

25. The Hon’ble Supreme Court in the case of Sanket Kumar Agarwal & Anr. (Supra) has noticed the aforesaid SOPs dated 03.01.2021, 21.10.2022 & 24.12.2022 and made the following observations:-

“17. On 3 January 2021, NCLAT notified a Revised SOP for the hearing of cases through the virtual mode, using its e-filing portal. The SOP notices that an e-filing facility was available for filing of appeals and related documents, and exhorts “all concerned” to “avail the same through NCLAT e-filing portal”. The circular provides as follows:

“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.”

18. Subsequently, on 21 October 2022, the Registrar of NCLAT issued another order⁹ with regard to computing limitation for the purpose of filing an appeal before the NCLAT, F.No. 10/37/2018-NCLAT, dt. 21 October 2022 Appellate Tribunal. The order notices that while Rule 22 of the NCLAT Rules 2016 provides for the presentation of an appeal at the filing counter of the NCLAT, Rule 103 permits the filing of appeals or proceedings through the electronic mode. After advertng to the SOP dated 3 January 2021, the order indicates as follows:

“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.”

19. The above order dated 21 October 2022 indicates that the SOPs and directions which were issued by the NCLAT did not contain any provision for the computation of limitation, more specifically on whether limitation has to be computed with reference to the date of e-filing or from the date on which the appeal is presented before the NCLAT, in terms of Rule 22. Hence, in exercise of the power conferred by Rule 104, it was notified that the period of limitation would be computed with reference to the date of the presentation of the appeal in terms of Rule 22. Moreover, the requirement of filing appeals by the electronic mode was directed to continue together with the mandatory filing of appeals under Rule 22. The order dated 21 October 2022 was to be effective from 1 November 2022.

20. Eventually, on 24 December 2022, another order was issued by the Registrar of NCLAT in the following terms:

“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.”

21. Hence, by the order dated 24 December 2022, it was clarified that limitation shall be computed with reference to the date of e-filing while the physical copy would have to be filed within seven days of e-filing. The order clarifies that the requirement of filing appeals by the electronic mode shall continue together with the mandatory filing of appeals in terms of Rule 22 of the NCLAT Rules 2016.

22. Having regard to the above sequence of Rules and administrative orders, it is evident that on the one hand, Rule 22 of the NCLAT Rules 2016 requires the presentation of an appeal at the filing counter in the prescribed mode, but on the other, NCLAT also envisages e-filing of appeals. This is made evident in the SOP dated 3 January 2021 which mandates the filing of a physical copy of an appeal as per the procedure prescribed in the NCLAT Rules 2016, while referring to the procedure for the hearing of cases through the virtual mode, using the e-filing portal. The subsequent order dated 21 October 2022 acknowledges that there was an absence of clarity in regard to the period with reference to which limitation would commence. Hence, the order purported to state that the period of limitation

shall be computed from the date of the presentation of an appeal under Rule 22. Significantly, the above order was to be effective from 1 November 2022. In the present case, admittedly, the appeal was e-filed on 10 October 2022 and even a physical copy was lodged on 31 October 2022 prior to the date on which the order of the Registrar dated 21 October 2022 was to come into effect. The order dated 21 October 2022 was subsequently withdrawn on 24 December 2022. The order dated 24 December 2022 now clarifies that limitation would be computed with effect from the date of e-filing but a physical copy would have to be filed within seven days of e-filing.”

26. This Tribunal in the case of Innovators Cleantech Pvt. Ltd. (Supra) has also relied upon the decision in the case of Sanket Kumar (Supra) and held that if the appeal is e-filed then it is within the period of limitation. The Hon’ble Supreme Court in the case of Somdev Kapoor (Supra) has further held that “13. It would also be significant to state that as per the law laid down by this Court, Rules which are prevalent on the date when the application is considered are to be applied and not the date when the application is made. This is so held in State of Kerala & Ors. Vs. Kandath Distilleries 2013 (2) SCALE 789 in the following words: “We have gone through the Government Order dated 11.10.2006 in extenso and we are not prepared to say that the application of the respondent was rejected solely on the ground

that the application dated 12.1.1987 could not be treated as an application put forward by a firm based on a partnership deed, which came into existence on 10.4.1991, as per Clause 3 of the Partnership Deed but on various other grounds as well. The State Government, in our view, has considered the respondent's application dated 12.1.1987 with regard to the conditions that existed in the year 1998. The Government letter dated 28.6.1994 would indicate that, apart from the respondent, few other applications were also pending prior to the year 1994. Over and above, the State Government during the year 1998, from 3.2.1998 to 21.11.1998, had received 52 applications for establishing compounding, blending and bottling units in IMFLs in various parts of the State. The Excise Commissioner vide his letter dated 25.11.1998 had reported that there was an unprecedented flow of applications, that was the situation prevailing in the year 1998, a factor which was taken note of in not entertaining the respondent's application, whether it was submitted on 12.1.1987 or on 22.11.1998. We cannot, in any way, activate an out-modeled, outdated, forgotten liquor policy of 1998, in the year 2013, by a Writ of Mandamus."

27. Since, the appeal has been filed by the Appellant on 30.05.2022 through e-filing and the hard copy was filed on 20.06.2022 though before coming into force the SOP dated 21.10.2022 which has been made effective from 01.11.2022, the SOP dated 21.10.2022 has been withdrawn by SOP dated 24.12.2022 and it has been ordered that limitation is to be counted from the date of e-filing, therefore, in view of the decision of the Hon'ble Supreme Court in the case of Somdev Kappor (Supra) where it has been held that the rules which are prevalent on the date when the application is considered are to be applied and not the date when the application is made, the application having been filed by the Appellant has to be considered in terms of SOP dated 24.12.2022 which is in operation at the time when the application for condonation of delay is being considered.

28. Thus, in view of the aforesaid discussion, we do not agree with the argument raised by Respondent No. 1 that limitation is to be counted from the date of presentation of appeal at the counter because the issue of computation of limitation was first determined by way of SOP dated 21.10.2022 whereas the appeal was filed much earlier in both ways i.e. e-filing as well as by way of hard copy and the SOP dated 21.10.2022 was

superseded/withdrawn by SOP dated 24.12.2022 as per which the limitation is to be counted from the date of e-filing.

29. In view of the aforesaid facts and circumstances, the objection raised by the Respondent is hereby overruled and since there is a delay of only three days in filing the appeal which has also been duly explained in detail in the application which is supported by an affidavit and the power to condone the said delay in terms of Section 61(2) proviso is with this Tribunal, therefore, the same is hereby condoned on being satisfied that sufficient reason has been assigned by the Appellant. The application is thus allowed.

Company Appeal (AT) (Ins.) No. 811 of 2022

List for hearing on **05th November, 2024.**

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indever Pandey]
Member (Technical)

Sheetal