

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**

**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 300 of 2024**  
**& I.A. No. 1009 of 2024**

**[Arising out of order dated 22.11.2023 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai-Bench-VI in CP (IB) No. 277/MB/2022]**

**IN THE MATTER OF:**

**Deepak Dahyalal**

**(Ex-Director of M/s Pritdip Impex (India)  
Private Limited)**

**Residing At: A/11, Mayur Aptsdadabhai**

**Cross Road No. 3, Ville Parle Mymbai-400056**

**...Appellant**

**Versus**

**1. M/s Steel Resources**

**Registered Office: B-305,**

**Byculla Service Industries Premises,**

**D K Cross Road Byculla East, Mumbai 400027.**

**2. Mr. Rajesh Ramesh Kamath**

**Interim Resolution Professional**

**of Pritdip Impex (India) Private Limited,**

**Having Office At: 301A Wing Green Gagan**

**Near Lokhandwala, Akurli Road Kandivali**

**East, Mumbai Suburban, Maharashtra 400101. ...Respondents**

**Present:**

**Appellant:** Mr. Akhil Shankhwar, Mr. Raunak Satpathy,  
Advocates.  
**For Respondents:** Mr. Dipesh U. Siyoya, Mr. Swapan Pradhan,  
Advocates for R-1.

### **J U D G M E N T**

**[Per: Barun Mitra, Member (Technical)]**

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 (**'IBC'** in short) by the Appellant arises out of the Order dated 22.11.2023 (hereinafter referred to as **'Impugned Order'**) passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench-VI) in Company Petition (IB) No. 277/MB/2022. By the Impugned Order, the Adjudicating Authority admitted the Section 9 petition filed by the Operational Creditor admitting M/s Pritdip Impex Pvt Ltd – Corporate Debtor into the rigours of Corporate Insolvency Resolution Process (**'CIRP'** in short). Aggrieved by this impugned order, the present appeal has been preferred by the suspended director. A delay condonation application has been filed vide I.A. No.1009 of 2024 seeking condonation delay of 41 days in filing the present appeal.

**2.** The Learned Counsel for the Appellant submitted that since the Adjudicating Authority had passed ex-parte order in the main company petition CP-IB/277(MB)/2023 on 27.06.2023, the Appellant had no knowledge of the proceedings. The Appellant became aware of the proceedings only when the interim resolution professional informed the Appellant on 06.12.2023 about the impugned order through email. It is the case of the Appellant that an appeal can be filed by an aggrieved person only when he becomes aware of the order and in the present circumstances when

the Appellant became aware of the orders only on 06.12.2023, the limitation period should be counted from that date. Further it was submitted that some time needs to be excluded while calculating the limitation period in the present case. Explaining further, it was pointed out that as the Appellate Tribunal was having Winter/Christmas holidays from 23.12.2023 till 01.01.2024, this holiday period of 9 days needs to be excluded. Basis this calculation, the period of 30 days for filing the appeal would have expired on 13.01.2024 which date being a Saturday and a nonworking day followed by Sunday being yet another holiday, the last date for the purpose of filing the appeal would be 15.01.2024. It was further submitted that during this period a close cousin of the Appellant had passed away which necessitated his presence for the related rituals for 13 days. That apart, the other reasons for delay were that the Appellant was suffering from chronic depression and illness and some delay was on account of logistical delay in sending relevant documents to the Advocate. Further taking into account 15 permissible days as the extended period of limitation in terms of proviso to Section 61(2) of the IBC, starting from 16.01.2024 the 15 days period ended on 31.01.2024 after factoring in one day of public holiday on account of 26<sup>th</sup> January. Admitting that the appeal was filed on 01.02.2024, it was claimed that it meant effectively only 16 days delay beyond the permitted 30 days limitation time. In sum it was pointed out that keeping in view the ill health of the Appellant and bereavement in the family coupled with intervening holiday/vacations, the delay deserves to be condoned.

3. In support of their contention, the Learned Counsel for the Appellant has relied on the judgment of this Tribunal in the case of ***M/s Embee Software Private Limited vs M/s Solicon Private Limited*** in ***CA (AT) (INS) No. 780 of 2019*** which had allowed condonation of delay in similar circumstances of bereavement in the family and summer vacations which is to the effect:

*“4. Taking into consideration the fact that the Applicant/Appellant has come out with the reasons in the Interlocutory Application that due to intervention of summer vacation and bereavement in the family of its Learned Counsel that the copy of the impugned order was collected in July, 2019 and after indulging in internal deliberations it took some time to approach this Tribunal, after the prescribed period of 30 days w/s 61(2) of the 1&B Code for filing of an Appeal had lapsed and that apart the present Appeal having been filed within the period of 15 days as prescribed under the Proviso to Section 61(2) of 1&B Code'; this Appellate Tribunal by taking a lenient, liberal, meaningful and purposeful view and also after being successfully satisfied with the reasons ascribed for the delay in question, allows the Interlocutory Application without costs, in furtherance of substantial cause of justice”*

4. The Learned Counsel for the Respondent No. 1 refuting the submissions of the Appellant stated that the Appellant was raising a frivolous contention of being unaware of the company petition proceedings before the Adjudicating Authority. In the exhibits attached to their Reply Affidavit, it is stated that the Appellant was intimated by the counsel for the Respondent No.1 of the interim orders passed by the Adjudicating Authority on 31.03.2023 (Exhibit-A of Reply affidavit). It is also submitted that the Appellant had sent an email on

18.04.2023 to the Advocate of the Respondent No.1 seeking help in the matter (Exhibit-A of Reply affidavit). The Appellant was in fact represented by his advocate before the Adjudicating Authority on 26.04.2023 (Exhibit-B of Reply affidavit). Furthermore, a free copy of the impugned order dated 22.11.2023 had also been served upon the Appellant by email on 29.11.2023 by the Registry of the NCLT, Mumbai (Exhibit-D of Reply affidavit) and therefore it is not open for the Appellant to take the plea that he was not aware of the impugned order. It was also submitted that the Appellant had attended the first COC meeting on 28.12.2023 (Exhibit-E of Reply affidavit). Hence, it was vehemently contended that the plea raised by the Appellant of not having knowledge of the proceedings before the Adjudicating Authority and/or of the impugned order passed by the Adjudicating Authority is entirely unfounded and false and therefore deserves to be disregarded while considering the condonation of delay application.

**5.** Advancing their arguments further, the Learned Counsel for the Respondent No.1 submitted that the jurisdiction of the Appellate Tribunal to condone delay is limited to 15 days only subject to sufficient cause having been shown to the satisfaction of the Appellate Tribunal as laid down in the proviso to Section 61(2) of the IBC. In the present case, the delay in filing the appeal admittedly being beyond the condonable period of 15 days, the delay condonation application deserves to be outrightly dismissed. It is also submitted that the ground taken by the Appellant that the appeal could not have been filed due to intervening holidays on account of Christmas and winter vacations is misconceived since no litigant is precluded from filing such

appeal applications during such holidays. Furthermore, the benefit of public holiday claimed in respect of 26<sup>th</sup> January could not have been taken during the extended period of limitation of 15 days under proviso to Section 61(2) of the IBC. Hence the above grounds cited for exclusion of time by the Appellant while calculating the period of limitation is erroneous and untenable and therefore deserves to be rejected. The Learned Counsel for the Respondent No. 1 has also place reliance on several judgements of the Hon'ble Apex Court including **V. Nagarajan vs SKS Ispat and Power Ltd & ors** and **National Spot Exchange Ltd vs Mr. Anil Kohli, Resolution Professional for Dunar Foods Ltd** in support of their standpoint which we propose to refer to in the course of recording our findings in the present case.

**6.** We have duly considered the arguments advanced by the Learned Counsels for both parties and perused the records carefully including the judgements cited.

**7.** Before we dwell into the facts of the case and the rival submissions made thereto, it will be useful to have a look at the statutory provisions of IBC dealing with appeals as enshrined in Section 61 of the IBC which is as reproduced below:

***“61. Appeal 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 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.”*

**8.** From a plain reading of the above provision, it can be safely inferred that any person aggrieved by any order of the Adjudicating Authority is vested with the statutory right of filing an appeal. However, the statutory right to file the appeal is required to be exercised within a period of 30 days of the impugned order before this Tribunal. If for certain reasons the right to file appeal is not exercised within the prescribed 30 days, the proviso to Section 61 (2) can be invoked which proviso provides that the appeal can still be filed subject to such appeal being filed up to a further period of 15 days only. The statutory construct is absolutely clear and unambiguous that the limitation period provided under Section 61(2) of IBC is 30 days which is extendable by a maximum of 15 days. Thus, no appeal can be filed after the expiry of the extended period of 15 days and that any appeal filed within the extended limitation period can be admitted only after satisfying the Appellate Tribunal that there was sufficient cause justifying the delay of 15 days.

**9.** Before we proceed further, firstly, we need to keep in mind the thumb-rule that any appeal is a creature of statute. Following therefrom, the right to file appeal in IBC proceedings is circumscribed by the provisions contained in Section 61 of the IBC. Secondly, it is settled law that IBC is a complete code in itself with Sections 238 and 238-A of IBC providing for overriding effect on the provisions contained in the Limitation Act.

**10.** IBC by virtue of being a special statute, this Tribunal is not empowered to condone any delay beyond the statutory prescriptions in IBC containing a provision for limitation. This legal precept has been squarely laid down by the Hon'ble Supreme Court and for this purpose we may refer to the judgement of the Hon'ble Supreme Court in ***“Kalpraj Dharamshi vs Kotak Investment Advisors Ltd (2021) 10 SCC 401”*** wherein it has been noticed that IBC being a special statute, for purposes of calculating the period of limitation to file an appeal, the governing section shall be Section 61 of the IBC. The relevant excerpts of this order is as extracted below:

*“53. Since there is a period different from the one which is prescribed by the Schedule to the Limitation Act, the limitation for an appeal would be governed by Section 43 61 of the I&B Code, which is a special statute. As such, an appeal will have to be preferred within a period of thirty days from the date on which the order was passed by NCLT. However, if NCLAT is satisfied, that there was sufficient cause for not filing the appeal within a period of thirty days, it may allow an appeal to be filed within a further period of fifteen days. As such, the normal period of limitation prescribed under the I&B Code is thirty days, with a provision for allowing the filing of an appeal within a further period of fifteen days, if NCLAT is satisfied, that there was a sufficient cause for not filing the appeal within thirty days.”*

**11.** The same guiding principle has been further expounded by the Hon'ble Supreme Court in ***V. Nagarajan vs SKS Ispat and Power Ltd & ors*** in **Civil Appeal No. 3327 of 2020** wherein the need to bear in mind the stringent time-frame of IBC and the need to avoid delays in taking the insolvency



proceedings to their logical culmination has also been squarely emphasised.

The relevant portions of the judgment are to the effect:

*“15. The IBC is a complete code in itself and over-rides any inconsistencies that may arise in the application of other laws. Section 61 of the IBC, begins with a non-obstante provision "notwithstanding anything to the contrary contained under the Companies Act, 2013" when prescribing the right of an aggrieved party to file an appeal before the NCLAT along within the stipulated period of limitation. The notable difference between Section 421(3) of the Companies Act and Section 61(2) of the IBC is in the absence of the words "from the date on which a copy of the order of the Tribunal is made available to the person aggrieved" in the latter. The absence of these words cannot be construed as a mere omission which can be supplemented with a right to a free copy under Section 420(3) of the Companies Act read with Rule 50 of the NCLT Rules for the purposes of reckoning limitation. This would ignore the context of the IBC's provisions and the purpose of the legislation.*

*“16. The law on limitation with respect to the IBC is settled and emphatic in its denunciation of delays. The power of condone delay is tightly circumscribed and conditional upon showing sufficient cause, even within the period of delay which is capable of being condoned. The IBC is a watershed legislation which seeks to overhaul the previous bankruptcy regime which was afflicted by delays and indefinite legal proceedings. The IBC sought to structure and streamline the entire process of insolvency, right from the initiation of insolvency to liquidation, as a one-stop mechanism...”*

**12.** Elucidating further on the various aspects of limitation for filing an appeal under Section 61 and clarifying in particular as to when the clock for calculating the limitation period runs for appeals filed under the IBC, Hon'ble Supreme Court has held in the **Nagarajan supra** as follows:

*“21..... Sections 61(1) and (2) of the IBC consciously omit the requirement of limitation being computed from when the order is made available to the aggrieved party”, in contradistinction to Section 421(3) of the Companies Act. Owing to the special nature of the IBC, the aggrieved party is expected to exercise due diligence and apply for a certified copy upon pronouncement of the order it seeks to assail, in consonance with the requirements of Rule 22(2) of the NCLAT Rules. Section 12(2) of the Limitation Act allows for an exclusion of the time requisite for obtaining a copy of the decree or order appealed against. It is not open to a person aggrieved by an order under the IBC to await the receipt of a free certified copy under Section 420(3) of the Companies Act 2013 read with Rule 50 of the NCLT and prevent limitation from running. Accepting such a construction will upset the timely framework of the IBC. The litigant has to file its appeal within thirty days, which can be extended up to a period of fifteen days, and no more, upon showing sufficient cause. A sleight of interpretation of procedural rules cannot be used to defeat the substantive objective of a legislation that has an impact on the economic health of a nation.”*

**13.** Similar view was reiterated by the Hon'ble Supreme Court in “**Safire Technologies Private Limited v. Regional Provident Fund Commissioner**” in **Civil Appeal No. 2212 of 2021** wherein after making reference to **Kalpraj Dharamshi supra**, it was held that an appeal against the order of the NCLT shall be preferred within a period of 30 days from the date on which the order

was passed by the NCLT. It was also held therein that the Appellate Tribunal has the power to extend the period of limitation by another 15 days. The Hon'ble Supreme Court in the said order clearly rejected the submission that time for filing the appeal shall begin from the date of knowledge.

**14.** This brings us to the judgement of the Hon'ble Supreme Court in ***National Spot Exchange Ltd v Mr. Anil Kohli, Resolution Professional for Dunar Foods Ltd*** in ***Civil Appeal No. 6187 of 2019*** which has been relied upon by the Respondent No. 1. We notice that in this judgement it was held that since the statutory provisions provide that delay beyond 15 days in preferring the appeal is uncondonable, then what cannot be done directly considering the statutory provisions cannot be permitted to be done indirectly even in exercise of powers under Article 142 of the Constitution.

**15.** It needs no emphasis that judgments of the Hon'ble Apex Court reign supreme and therefore binding on us. The ratio contained in the above-cited four seminal judgements of the Hon'ble Supreme Court, is crystal clear that the statutory provisions of IBC have to be followed when it comes to counting the period of limitation in matters of appeal. It is also clear that it has been well settled that limitation for filing of the appeal in respect of IBC matters does not commence on the date when any Appellant becomes aware of the order but shall commence from the date of the order.

**16.** A clear distinction has been drawn in the ***Nagarajan judgement supra*** that unlike Section 421(3) of the Companies Act which provides that the appeal is to be filed "*from the date on which a copy of the order of the Tribunal is made available to the person aggrieved*", there is a conscious omission of

these words from IBC. This makes it strait-jacketed and explicitly clear that no such benefit as available in Section 421(3) of the Companies Act is available to any Appellant in IBC proceedings. Relying on this judgement it is rightly contended by the Learned Counsel for Respondent No.1 that it is therefore not open for the Appellant to take the defence that they were not aware of the order and hence not able to adhere to the time-lines prescribed for filing an appeal under the IBC. We are also not convinced by the contention of the Appellant that the ***Nagarajan judgement supra*** does not apply in the present case since in that case the impugned order had not been passed ex parte. The Hon'ble Supreme Court having held that limitation is to be counted from the date of the order and not date of knowledge of the order, it is irrelevant whether the impugned order was issued ex parte or in the presence of the parties.

**17.** At this stage, even if for arguments sake, we accept the contention of the Appellant that they were not present before the Adjudicating Authority when the impugned order was passed ex parte, from the material made available on record by the Respondent No. 1, it is clear that the NCLT Registry had sent the impugned order by email. Therefore, it becomes all the more questionable on the part of the Appellant to raise the plea that he was not aware of the impugned order. That a free copy of the impugned order dated 22.11.2023 had been served upon the Appellant on 29.11.2023 by the Registry of the NCLT, Mumbai has been placed on record by the Respondent. This makes it amply clear that the Appellant was well aware that the Adjudicating Authority had passed the impugned order but for reasons better

known to themselves they did not show due diligence in filing the appeal in a timely fashion.

**18.** Another ground taken for the delay is that due to Christmas vacations, the Tribunal was closed and hence the Appellant was restrained from filing the appeal. This explanation lacks merit since the Registry of this Tribunal was operational during this period and the facility of e-filing was available 24 by 7. The Appellate Registry where the appeals are lodged was actually e-functional during this period. Thus, the Appellant cannot rightfully claim that it was precluded from filing the appeal during this period and seek exclusion of time on the lame and facile pretext that this Tribunal was closed.

**19.** This now brings us to the judgement of this Tribunal in ***M/s Embee Software supra*** which has been relied upon by the Appellant. We notice that the facts in both the cases are distinguishable since in that case it was claimed that delay in obtaining the certified copy of the impugned order was occasioned by the intervention of summer vacation and death in the family, while in the present case the Appellant had already been sent a copy of the impugned order by the Registry of NCLT within 30 days of the passing of the impugned order.

**20.** In any case, the IBC being a special statute which does not make it obligatory that the order of the Adjudicating Authority is required to be send to the interested parties, the same cannot be insisted upon by the Appellant in their defence. Therefore, the grounds of denial of fair play and natural justice cannot be reasoned out by the Appellant to explain the laches. Neither are we in a position to accept such an explanation since it goes against the

grains of the IBC which provides for timely resolution/liquidation of the Corporate Debtor. Needless to add, at the cost of repetition, we stand guided by the precepts and principles laid down in the four judgments of the Hon'ble Supreme Court which we have copiously referred to in the foregoing paragraphs.

**21.** We are of the firm opinion that Section 61 of the IBC has to be interpreted keeping in mind the overall purpose and object of the IBC which inter-alia includes timely resolution of the CIRP. That being an avowed objective of this legislation and it being settled law that for purposes of calculating the period of limitation to file an appeal in any IBC proceeding, the governing Section shall be Section 61 of the IBC, we are of the considered view that the submission of the Appellant that the period of limitation shall commence for filing the appeal when the Appellant became aware of the order is untenable. Accepting any such defence will induce an element of unpredictability, uncertainty and delay in the resolution process which cannot be countenanced as it is likely to turn the timely framework of the IBC upside down.

**22.** Undisputedly, the present impugned order was pronounced on 22.11.2023. Thus, limitation for filing the appeal starts from 22.11.2023 and does not depend upon when the Appellant becomes aware of the order. The date on which the order is pronounced is to be excluded from the calculation of limitation in terms of Section 12(1) of the Limitation Act. The 30 days period comes to an end on 22.12.2023 and further period of 15 days comes to an end on 07.01.2024. The Appeal having been filed on 01.02.2024, the appeal

has clearly been filed with a delay of more than 15 days from the date of expiry of limitation. Our jurisdiction to condone the delay is limited to only 15 days under Section 61(2) of IBC, hence, the delay condonation application cannot be entertained.

**23.** In view of the foregoing discussions, we are of the view that the delay condonation application deserves to be dismissed. In result, the delay condonation application is dismissed and the Memo of Appeal is rejected.

**[Justice Ashok Bhushan]**  
**Chairperson**

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

**[Arun Baroka]**  
**Member (Technical)**

**Place: New Delhi**

**Date: 12.03.2024**

Ram N.