



भारतीय दिवाला और शोधन अक्षमता बोर्ड
Insolvency and Bankruptcy Board of India

7th Floor, Mayur Bhawan, Connaught Place, New Delhi – 110 001

16th Oct, 2023

Subject: Judgment¹ dated 11th October 2023 of National Company Law Appellate Tribunal, New Delhi in the matters of Raiyan Hotels and Resorts Pvt. Ltd. Vs. Unrivalled Projects Pvt. Ltd. [I.A. No. 3694 of 2023 & CA (AT) (Ins) No. 1071 of 2023] and Aryan Mining & Trading Corpn Pvt. Ltd. Vs. Kail Limited and Anr. [I.A. No. 1956 of 2023 & CA (AT) (Ins) No. 588 of 2023]

Brief Facts-

Applications for condonation of delay in filing appeal under section 61 of Code, were filed before the NCLAT. In the first case, the appeal was filed by the aggrieved party on 04.07.2023, challenging the order dated 08.05.2023. Application for condonation of delay was filed stating that the order was pronounced by the AA on 08.05.2023 but copy of the order was neither provided nor uploaded on the website. The impugned order came to the knowledge of the appellant on 02.06.2023 only and therefore, limitation period under section 61 for filing of appeal be calculated from 02.06.2023.

In the second matter, the aggrieved party filed the appeal on 11.03.2023 against order dated 12.01.2023 of AA. The reasons seeking condonation of delay was that despite application for certified copy on 06.02.2023, it was provided on 08.02.2023. Thereafter, the finalization of draft took some time resulting in filing of appeal on 11.03.2023. Thus, it was pleaded that such delay be calculated from 08.02.2023 i.e., the date of receiving the copy.

Issues Before Hon'ble NCLAT:

Whether limitation for filing an appeal under section 61 of the Code shall commence from the date of the order or from the date when contents of the order are known to the aggrieved party i.e., the date when copy of the order is received by the aggrieved party?

Findings & Observations of the Hon'ble NCLAT:

NCLAT *vide* common order has *inter alia* dismissed the applications in the appeals with the following observations:

- The present is a case where order is pronounced by the AA in accordance with the National Company Law Tribunal Rules, 2016. In the facts of both the cases, the orders were pronounced by the AA in presence of counsel for the Appellant, thus, the knowledge of the order has to be constructively communicated on the Appellant and it is not open for the Appellant that they were not aware of the contents of the order.

¹ Prepared by Legal Affairs Division for the sole purpose of creating awareness and must not be used as a guide for taking or recommending any action or decision, commercial or otherwise. One must do its own research or read the original text of the judgment or seek professional advice, if it intends to take any action or decision using the material covered here.

- The period of limitation under section 61 of the Code for filing of the appeal does not commence on the date when the appellant became aware of content, but it shall commence when the order was pronounced.
- In Section 421(3) of the Companies Act, 2013, the Appeal was to be filed from the date when copy of the order of the Tribunal is made available to the person aggrieved which expression is omitted in Section 61 of the IBC. Under Section 61 of the IBC an appeal will have to be preferred within a period of 30 days from the date on which the order was passed by the NCLT.
- NCLAT relying on judgment of Hon'ble Supreme Court in *V. Nagarajan vs. SKS Ispat and Power Limited and Ors.* wherein it was held that for appeal, the party has to be pro-active and has to apply for certified copy of the order. Section 61 of Code is to be interpreted keeping in view the purpose and object of the Code which provides timelines for various acts. The expression "the date of that order", in Section 61, mean and must be construed as meaning the date of communication or knowledge, actual or constructive, of the order sought to be reviewed.
- The AA pronounces orders in the open court in the presence of the counsel for the appellant(s). In the present cases, orders passed by the Adjudicating Authority were pronounced in the open Court in the presence of the Counsel for the Appellant. In any view of the matter, they cannot contend that they do not have even constructive knowledge of the order on the said date. Knowledge of the order has to be actual or constructive knowledge and when the orders are pronounced, it can very well be said that the constructive knowledge has to be imputed to the contents of the order to an aggrieved party.
- It has been observed that: *"In any view of the matter, they cannot contend that they do not have even constructive knowledge of the order on the said date. Knowledge of the order has to be actual or constructive knowledge and when the orders are pronounced, it can very well be said that the constructive knowledge has to be imputed to the contents of the order to an aggrieved party. In event the submissions of the Appellant is accepted that unless the contents of the order are known to an aggrieved party, he cannot exercise the right of appeal and period of limitation for filing an Appeal shall not commence till he is aware of the contents of the order, it may lead to uncertainty and delay in resolution process which are not in accordance with the scheme of the IBC. IBC is a statute which provide for timely resolution/ liquidation of the Corporate Debtor. Timelines for various acts are prescribed."*
- NCLAT jurisdiction to condone the delay is limited to only 15 days under Section 61(2) of the Code. The delay condonation application for more than stipulated period cannot be allowed.