

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

I.A. No. 478 of 2024
in
Company Appeal (AT) (Insolvency) No. 150 of 2024

IN THE MATTER OF:

State Bank of India

...Appellant(s)

Versus

Anish Niranjana Nanavaty & Anr.

...Respondent(s)

For Appellant: Mr. N. Venkataraman, ASG with Mr. Sanjay Kapur, Mr. Devesh Dubey, Mr. Arjun Bhatia, Advocates for SBI

Ms. Nishi Bhankaria, Advocate for impleader China Development Bank

Mr. Ribhu Garg, Advocate for intervenor (China Exim Bank)

For Respondents: Mr. Saurav Panda, Ms. Mohana Nijahawan, Mr. Gaurav Arora, Advocates for R1

Mr. Arun Kathpalia, Sr. Advocate with Ms. Sonali Jain, Mr. Kshitij Wadhwa, Advocates

Ms. Nafisa Khandeparkar, Advocate for intervenor IA 1608/2024

J U D G M E N T

ASHOK BHUSHAN, J.

1. I.A. No. 478 of 2024 is an Application praying for condonation of 18 days delay in filing the Appeal.
2. The Order impugned was passed on 10th November, 2023 and this Appeal has been e-filed on 29.12.2023.

Cont'd.../

3. In the Delay Condonation Application, the Appellant has submitted that Impugned Order was not available prior to 12.12.2023 and Impugned Order was made available on website of NCLT on 12.12.2023. In paragraph 3 and 4, following reasons have been given for condonation of delay:

“3. That the impugned order is dated 10.11.2023. The period of 30 days, thus starts from 11.11.2023 which expires on 11.12.2023. It is a matter of fact that the impugned order was not available prior to 12.12.2023. The impugned order was made available on the official website of NCLT on 12.12.2023 thereafter the Bank internally discussed the matter& took both internal and external legal opinion on the issue of filing an appeal which took some time and caused delay which was neither intentional nor mala fide. Hence, the appellant is seeking condonation of additional 15 days period as provided under the statute which expires on 26.12.2023.

4. It is humbly submitted that this Hon’ble Appellate Tribunal was closed for Christmas holidays from 24.12.2023 to 01.02.2024. Thus, the period of limitation was available till 02.02.2024. The Appeal was e-filed on 29.12.2023, during the period when this Hon’ble Appellate Tribunal was on holidays.”

4. An Additional Affidavit in support of delay condonation application has been filed by the Appellant where it was pleaded that on 10.11.2023, I.A. No. 127 of 22 was listed under the category of ‘ordinary list’. At the time of hearing, NCLT indicated that I.A. would be disposed of however order was not pronounced in the open court and when the Order was

uploaded on the website of NCLT between 09.12.2023 to 12.12.2023 it was further pleaded that Advocate representing the Bank made an attempt on 20th November, 2023 to file a Precipe for obtaining certified copy of the Order with the Registry of NCLT however counsel for the Applicant was informed by the Registry that SBI was not a party to the I.A. hence they cannot apply for certified copy of the Order. In the Additional Affidavit in support of Delay Condonation Application, following has been stated in Para 3 to 4:

“3. The Advocates representing the Applicant bank before the Hon'ble NCLT have advised the bank regarding sequence of events which happened during the course of hearing on 10.11.2023. The Applicant Bank has been apprised that on 10.11.2023 the IA no. 127 of 22 was listed under the category of 'ordinary list'. At the time of hearing, the Hon'ble NCLT indicated that the said IA would be disposed of, however, the impugned order was not pronounced in open court. It is a matter of fact that the impugned order was uploaded on the website of the Hon'ble NCLT between 09.12.2023 and 12.12.2023. The Advocates representing the Applicant Bank before the NCLT made an attempt on 20.11.2023 to file a precipe for obtaining certified copy of the Impugned Order dated 10.11.2023, with the Registry of the NCLT. However, the Advocates representing Applicant Bank were informed by the Registry of NCL T, that since SBI was not a formal party to the said IA, their Advocates cannot apply for a certified copy of the impugned order and the same cannot be provided.

4. It has humbly submitted that the said IA was not listed for pronouncement of orders on 10.11.2023 and was only listed under the caption 'ordinary list'. Further, the impugned order was not pronounced in open court. In the premises it was not possible for the Applicant Bank to file the present Company Appeal.”

5. The Respondent No. 2 Bank of Baroda has filed an Affidavit in reply to the Delay Condonation Application where it has been pleaded that Application I.A. No. 127 of 22 was heard on 10.11.2023 in the presence of counsel for the Appellant. It is submitted that impugned order was pronounced in the open court. Learned Counsel for the Appellant was present and raised objection which was also noted in the impugned order and Impugned Order was passed in presence of counsel for the Appellant hence Appellant cannot plead that Appellant was not aware of the Order. It was further stated that Order was uploaded in the official website on 05.12.2023, there being delay of 18 days in filing the Appeal, which delay is uncondonable. It is further stated that Appellant never made an application to obtain certified copy of the Order.

6. We have considered the submissions of Learned Counsel for the parties and have perused the record.

7. The Impugned Order dated 10.11.2023 which is passed in I.A. No. 127 of 22 is as follows:

“IA 127/2022

Ld. Counsel for the Applicant submits that prayer in IA 127/2022 pertains to convening of the CoC meeting, which has already been held in view of the directions of this Bench and appropriate resolution has been

passed. However, the Counsel for SBI intervening in the application, submits that CoC ought not to have passed a resolution setting out the distribution mechanism amongst the class of creditors in terms of the earlier plan approved by the CoC and if the voting was to take place it ought to have been on the whole plan. In view of above, the IA 127/2022 is disposed of as infructuous.”

8. The Order Impugned Itself indicates that counsel on behalf of the Appellant who is referred as intervening in application was present and order was passed in presence of counsel for the Appellant. The order having pronounced in the presence of the counsel for the Appellant, he cannot be heard in claiming that Appellant was not aware of the order and he came to know only when order was uploaded in website of the NCLT.

9. Learned Counsel for the Appellant has also placed reliance on Judgment of Hon’ble Supreme Court in **Sanjay Panjurang Kalate Vs. Vistra ITCL (India) Limited and Ors. C.A. No. 7567-7568 OF 2023**. In the above Judgment, case of the parties before the Court was that no substantive order was pronounced on 17.05.2023. The facts have been noticed in para 5 of the Order which is as follows:

*“5. On 17 May 2023, the NCLT heard the application filed by the appellant. From the submissions and on a specific query of the Court, it appears that it is not in dispute between the counsel for the appellant and the respondent that on 17 May 2023, the order of the NCLT was not **pronounced** and no substantive order was passed. The order was uploaded by the Registry of the*

NCLT on 30 May 2023 though the order carries the date of 17 May 2023. By the order, the NCLT dismissed the appellant's application on the grounds that the application was filed without authorization from the Board of Directors of the Corporate Debtor and was prima facie frivolous, to delay the proceedings in the Section 7 application. The appellant applied for a certified copy on 30 May 2023, which was received on 1 June 2023. The appeal against the order was e-filed before the NCLAT on 10 July 2023."

10. The submission of the parties have been noted by the Hon'ble Supreme Court in para 19 and 20 where following was laid down:

"19. The above provisions of the NCLT Rules, 2016 make a clear distinction between the 'hearing' of an appeal and the 'pronouncement' of the order. Rule 150(1) provides that after hearing the parties, the order may be pronounced either at once or soon thereafter, as may be practicable, but not later than thirty days from the final hearing. Further, Rule 151 indicates that a member of the bench may pronounce the order for and on behalf of the Bench. When the order is pronounced, the court master shall make a note in the order sheet to that effect. The language of the above rules indicates that the pronouncement of the order is necessary and cannot be dispensed with.

20. In the present case, the cause list for 17 May 2023 placed on record by the appellant indicates that the case was listed for admission and not for pronouncement. Further, on a specific query of the Court, it is not in dispute between counsel for the appellant and the respondent, that no substantive order was passed on 17 May 2023 by the NCLT. In these circumstances,

limitation would not begin to run on 17 May 2023 which was the date on which hearings concluded. As no order was passed before 30 May 2023, there was no occasion for the appellant to lodge an application for a certified copy on 17 May 2023. Time for filing an appeal would commence only when the order appealed from was uploaded since prior to that date no order was pronounced.”

11. In the above case, from the Judgment it is clear that Hon’ble Supreme Court held that on the date 17.05.2023, no substantive order was pronounced. Hon’ble Supreme Court in para 20 has observed *“Further, on a specific query of the Court, it is not in dispute between counsel for the appellant and the respondent, that no substantive order was passed on 17 May 2023 by the NCLT”*. In the above circumstances, Court held that limitation shall not begin to run from 17.05.2023 which was a date when hearing was concluded. There is a clear difference in the present case from the case of the Hon’ble Supreme Court decided in Sanjay Pandurang Kalate. In the present case, order itself noticed that order was passed in presence of counsel for the Appellant and it is specific pleading by the Respondent that order was pronounced on the same date i.e. 10.11.2023 by the Court.

12. Mr. N. Venkataraman, Ld. ASG appearing for the Appellant further has during submission not pressed the submission that Order was not pronounced on 10.11.2023 and further submitted that on 20.11.2023, counsel appearing for the appellant submitted a precipe to the Registry for obtaining certified copy of the order however the Advocate

representing the Bank was informed that since SBI was not a formal party to the said I.A. the advocate cannot apply for certified copy of the impugned order and the same cannot be uploaded. The above submission of the Appellant has been refuted by Mr. Arun Kathpalia, Sr. Advocate appearing for Respondent and submits that there is no proof of making any application for certified copy of the Order. It is submitted that no application was filed and the benefit under Section 12 of the Limitation Act for exclusion of period available with regard to time taken in preparing the certified copy of the order and the certified copy admittedly has not been applied, there is no occasion for grant of any exclusion.

13. Learned Counsel for the Appellant submits that counsel for the Appellant was informed by the registry that he being not a party they cannot be apply for certified copy of the Order.

14. One of the submissions raised by the Appellant is that they could not apply for certified copy of the order since they were not formal party of the order; We need to notice rules and regulations of NCLT to find out as to whether Appellant can made an application for certified copy of the Order passed in proceeding before the Adjudicating Authority.

15. The present is a proceeding before the Adjudicating Authority commenced on an application filed by State Bank of India. The Appellant filed the application under Section 7 which application was admitted on 25.05.2029. Thus the very company petition has been filed by the Appellant itself out of which he proceeding in question including the I.A. No. 127 of 2022 arose.

16. We need to notice certain rule of the NCLT 2016 to find out the relevant provision and procedure with regard to certified copy of the Order.

17. Rule 2 which is a definition clause, relevant of Rules 9, 12,14,16 and 17 are as follows:

(9) “certified” means in relation to a copy of a document as hereunder;-

(a) certified as provided in section 76 of the Indian Evidence Act, 1872; or

(b) certified as provided in section 6 of Information Technology Act, 2000; or

(c) certified copy issued by the Registrar of Companies under the Act;

(d) copy of document as may be a downloaded from any online portal prescribed under section 398 of the Act or a photo copy of the original pertaining to any company registered with the Office of the Registrar of Companies of the concerned State duly certified by a legal practitioner or a chartered accountant or a cost accountant or a company secretary;

(12) “fee” means the amount payable in pursuance of the provisions of the Act and these rules for any petition or application or interlocutory application or a document or for certified copy of document or order of the Tribunal or such other paper as may be specified in Schedule of Fees to these rules and includes any modifications as may be made thereto or any fee as prescribed for filing of documents to the Tribunal by these rules;

(14) “filed” means filed in the office of the Registry of the Tribunal;

(16) “party” means a person who prefers an appeal or application or petition before the Tribunal and includes respondent or any person interested in the said appeal or application or petition including the Registrar of Companies or the Regional Director or Central Government or State Government or official liquidator and any person who has a right under the Act, or the Reserve Bank of India Act 1934 (2 of 1934) to make suggestions or submissions or objections or reply;

(17) “petition” means a petition or an application or an appeal or a complaint in pursuance of which any proceeding is commenced before the Tribunal;”

18. Rule 50 requires Registry to send certified copy of the Order to the parties concerned. Rule 50 is as follows:

“50. Registry to send certified copy.- The Registry shall send a certified copy of final order passed to the parties concerned free of cost and the certified copies may be made available with cost as per Schedule of fees, in all other cases.”

19. There is a schedule of fee provided in the Rule under heading 31, following has been stated:

SCHEDULE OF FEES		
31.	<i>Fee for obtaining certified true copy of final order passed to parties other than the concerned parties under Rule 50</i>	<i>5/- per page.</i>

20. There are two questions firstly as to whether the Appellant has filed any application for obtaining certified copy and secondly as to whether

Appellant was entitled to file an application for obtaining certified copy of the order passed on 10.11.2023 in I.A. No. 127 of 2022.

21. Coming to the question as to whether the Appellant has made an application for obtaining certified copy, there is no material on record or affidavit or additional affidavit to indicate that any Application has been filed. Rule 2(14) as extracted above defines “filed” means filed in the office of the registry of the Tribunal. There is not even pleading that any application was filed for certified copy of the Order.

22. Now coming to the second question as to whether the Appellant can be treated to be a party so as to file an application for certified copy. “Parties” have been defined in Rule 2(16) as extracted above. A party means a person who prefers an appeal or application or petition. The present is a case where Section 7 Application was filed by the Appellant-State Bank of India on which CP(IB) No. 3025/2019 was registered. When Appellant is a party to the main company petition, it does not appear to be reason that he cannot make an application for certified copy of the order in I.A. passed in the same company petition which was filed by the Appellant. All I.As filed in the same company petition by different parties are I.As in the Company Petition and when main Company Petition has been filed by the Appellant, it cannot be said that Appellant was not entitled to apply for certified copy of the Order passed in Company Petition or in I.A.s including I.A. No. 127 of 2022. Further the definition of party under Rule 2(16) is an inclusive definition. Appellant is very well covered and he being person interested on any order passed in I.A. No.

127 of 2022 filed in the Company Petition, we thus hold that Appellant was fully entitled to apply for certified copy of the order and the rules in no manner prohibit the Appellant to make an application.

23. As observed above, Appellant having not filed any application for obtaining certified copy of the order, there is no occasion for extending the benefit of Section 12 of the Limitation Act.

24. Learned Counsel for the Appellant lastly contended that order having been uploaded on 05.12.2023, Appellant is entitled to compute the limitation from 05.12.2023.

25. When order has been passed in presence of Learned Counsel for the Appellant, which fact is recorded in the Impugned Order itself and the Order having been pronounced on 10.11.2023, Appellant cannot take any benefit of date of the uploading. Hon'ble Supreme Court in **V. Nagarajan Vs. SKS Ispat and Power Limited & Ors, 2022 2 SCC 244** laid down following in para 30 to 32:

“30. Section 12 of the Limitation Act provides guidance on reckoning the period of limitation and excludes the time taken by a party for obtaining a certified copy of the order it seeks to appeal. However, the Explanation clarifies that the time taken by the court in preparing the order before an application for a copy is filed by the aggrieved party, is not excluded from the computation of limitation:

“12. Exclusion of time in legal proceedings.—(1) In computing the period of limitation for any suit, appeal or

application, the day from which such period is to be reckoned, shall be excluded.

(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.

(3) Where a decree or order is appealed from or sought to be revised or reviewed, or where an application is made for leave to appeal from a decree or order, the time requisite for obtaining a copy of the judgment shall also be excluded.

(4) In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

Explanation.—In computing under this section the time requisite for obtaining a copy of a decree or an order, any time taken by the court to prepare the decree or order before an application for a copy thereof is made shall not be excluded.”

(emphasis supplied)

31. *The import of Section 12 of the Limitation Act and its Explanation is to assign the responsibility of applying for a certified copy of the order on a party. A person wishing to file an appeal is expected to file an application for a certified copy before the expiry of the limitation period, upon which the “time requisite” for obtaining a copy is to be excluded. However, the time taken by the court to prepare the decree or order before an application for a copy is made cannot be excluded. If*

*no application for a certified copy has been made, no exclusion can ensue. In fact, the Explanation to the provision is a clear indicator of the legal position that the time which is taken by the court to prepare the decree or order cannot be excluded before the application to obtain a copy is made. It cannot be said that the right to receive a free copy under Section 420(3) of the Companies Act obviated the obligation on the appellant to seek a certified copy through an application. The appellant has urged that Rule 14 [“**14. Power to exempt.**—The Appellate Tribunal may on sufficient cause being shown, exempt the parties from compliance with any requirement of these rules and may give such directions in matters of practice and procedure, as it may consider just and expedient on the application moved in this behalf to render substantial justice.”] of the Nclat Rules empowers Nclat to exempt parties from compliance with the requirement of any of the rules in the interests of substantial justice, which has been typically exercised in favour of allowing a downloaded copy in lieu of a certified copy. While it may well be true that waivers on filing an appeal with a certified copy are often granted for the purposes of judicial determination, they do not confer an automatic right on an applicant to dispense with compliance and render Rule 22(2) of the Nclat Rules nugatory. The act of filing an application for a certified copy is not just a technical requirement for computation of limitation but also an indication of the diligence of the aggrieved party in pursuing the litigation in a timely fashion. In a similar factual scenario, Nclat had dismissed an appeal [Prowess International (P) Ltd. v. Action Ispat & Power*

(P) Ltd., 2018 SCC OnLine NCLAT 644] as time-barred under Section 61(2) IBC since the appellant therein was present in court, and yet chose to file for a certified copy after five months of the pronouncement of the order.

32. *The appellant had argued that the order of Nclat notes that NCLT Registry had objected to the appeal in regard to limitation, to which the appellant had filed a reply stating that the limitation period would begin from the date of the uploading of the order, which was 12-3-2020. The appellant submitted that the suo motu order of this Court dated 23-3-2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801 (“suo motu order”)] , taking retrospective effect from 15-3-2020, made under Article 142 of the Constitution, extended the limitation until further orders, which renders the appeal filed on 8-6-2020 within limitation. However it is important to note that this Court had only extended the period of limitation applicable in the proceedings, only in cases where such period had not ended before 15-3-2020. In this case, owing to the specific language of Sections 61(1) and 61(2), it is evident that limitation commenced once the order was pronounced and the time taken by the court to provide the appellant with a certified copy would have been excluded, as clarified in Section 12(2) of the Limitation Act, if the appellant had applied for a certified copy within the prescribed period of limitation under Section 61(2) IBC. The construction of the law does not import the absurdity the appellant alleges of an impossible act of filing an appeal against an order which was uploaded on 12-3-2020. However, the mandate of the law is to impose an obligation on the*

appellant to apply for a certified copy once the order was pronounced by NCLT on 31-12-2019 [Cethar Ltd. (Resolution Professional) v. SKS Ispat & Power Ltd., MA No. 906/IB/2019 in CA No. 38/IB/2018, order dated 31-12-2019 (NCLT)] , by virtue of Section 61(2) IBC read with Rule 22(2) of the Nclat Rules. In the event the appellant was correct in his assertion that a correct copy of the order was not available until 20-3-2020, the appellant would not have received a certified copy in spite of the application till such date and accordingly received the benefit of the suo motu order [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801 (“suo motu order”)] of this Court which came into effect on 15-3-2020. However, in the absence of an application for a certified copy, the appeal was barred by limitation much prior to the suo motu direction of this Court, even after factoring in a permissible fifteen days of condonation under Section 61(2). The Court is not empowered to condone delays beyond statutory prescriptions in special statutes containing a provision for limitation [Union of India v. Popular Construction Co., (2001) 8 SCC 470; Singh Enterprises v. CCE, (2008) 3 SCC 70; Chhattisgarh SEB v. CERC, (2010) 5 SCC 23; Bengal Chemists & Druggists Assn. v. Kalyan Chowdhury, (2018) 3 SCC 41 : (2018) 2 SCC (Civ) 30].”

26. The above pronouncement makes it clear that limitation commences when order is pronounced and only the time taken by the Court to provide certified copy shall be excluded. The commencement of limitation thus is not suspended till the order is uploaded in the website

of the NCLT. Hon'ble Supreme Court in the said Judgment noted the conscious omission "order is made available to the aggrieved party which was occurring in Section 421(3) in Section 61 of IBC".

27. We having found that order was pronounced on 10th November, 2023 in the presence of counsel for the Appellant, period for limitation shall commence from the next date i.e. 11.11.2023 and the Appeal having been filed with delay of 18 days on 29th December, 2023 was beyond condonable period. Our jurisdiction to condone the delay is limited to 15 days only hence delay of 18 days cannot be condoned. Delay Condonation Application is dismissed. Consequently, the Memo of Appeal is rejected.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

NEW DELHI
22nd March, 2024

Basant