

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**AT CHENNAI**

**Company Appeal (AT) (CH) (Ins) No. 396/2023**  
**(IA No. 1212/2023)**

**In the matter of:**

**V. Ganesan**

**Erst. Liquidator of Kamachi Industries Ltd.**

**...Appellant**

**Vs.**

**Prudent ARC Limtied**

**...Respondent**

**Present :**

For Appellant	: Mr. BSV. Prakash Kumar, Advocate Erstwhile Liquidator For Mr. A. Venkatesh Kumar, Advocate
For Respondent	: Mr. N.L. Rajah, Sr. Advocate For Mr. G. Mani Prabhu, Advocate

**O R D E R**

**Per: Justice Rakesh Kumar Jain:**

This appeal is directed against the order dated 20.09.2023, passed by the Adjudicating Authority (National Company Law Tribunal, Division Bench – 1, Chennai) by which IA (IBC)/705/CHE/2023 filed in IBA/883/2019 by Prudent ARC Limited under Regulation 31A(6) of the IBBI (Liquidation Process) Regulations, 2016 (in short ‘Regulations’) read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (in short ‘Code’), seeking prayers that ‘(a) direct the Liquidator herein to convene a meeting of the stakeholders consultation committee in the Corporate Debtor in furtherance to the request emails dated 19.04.2023 and 25.04.2023 to consider the agenda of replacement of the liquidator; and (b) pass such other orders as this Hon’ble

Tribunal may deem fit and thus render justice' have been allowed and the following order has been passed:-

“5.13. In the present case, it is seen that due to non-consensus between the Secured Financial Creditor, the Liquidation Process in respect of the Corporate Debtor could not move forward. Also, it is observed in the paragraphs supra that the Liquidator has been vacillating with the appointment of the Authorized Representative for the class of creditors. Hence, the Liquidation process of the Corporate Debtor could not move forward. The stalemate in the conduct of all the concerned is causing detriment to the Liquidation estate. The objective of the code is lost. There is waste of time of this Adjudicating Authority due to inter se discord. The Liquidator is not able to bring parties to consensus.

5.14. Thus, in view of the same, we are of the view that the Liquidator in respect of the Corporate Debtor is required to be changed for effective completion of the Liquidation process of the Corporate Debtor.

5.15. In view of the same, from the latest list provided by IBBI we hereby appoint "SPP Insolvency Professionals LLP" with Reg. No. IBBI/IPE-0143/IPA-1/2022- 23/50033 (email id:- ipeadmin@sppgroups.com), the Insolvency Professional Entity (IPE) to carry out the Liquidation process in respect of the Corporate Debtor. The Authorization for Assignment (AFA) for the said IPE is valid till 14.02.2024.

5.16. The newly appointed IPE shall complete the Liquidation process in a time bound manner. All the stakeholders in respect of the Corporate Debtor are directed to co-operate with the IPE for completion of the Liquidation process. Keeping in view of the peculiar circumstances of the present case, we direct the Liquidator of the Corporate Debtor, to file progress report every month on a periodic basis, clearly stipulating the progress made in the Liquidation Process.”

2. Although, the order dated 20.09.2023 is amenable to a statutory appeal provided under Section 61 of the Code yet the Appellant, erstwhile liquidator of M/s Kamachi Industries Limited (Corporate Debtor), filed a writ petition no. 28516 of 2023 before the Hon'ble Madras High Court for the issuance of writ of certiorari for quashing the order dated 20.09.2023 passed by the

Adjudicating Authority in IA (IBC) No. 705 of 2023 and in the meantime prayed that operation of the said order be stayed so far it relates to the replacement of the Appellant as a liquidator of the CD.

3. In the said writ petition, the initial order was passed on 29.09.2023 which read as under:-

“The order passed by the National Company Law Tribunal is assailed in the present writ petition.

2. Mr.C.Monhar Gupta, learned Senior Counsel submits that though appellate remedy is available before the National Company Law Appellate Tribunal, the writ petition is filed as the order is passed without jurisdiction. According to the learned Senior Counsel, no application was filed for removal of the petitioner as a Liquidator. The application was only to convene a meeting for taking a decision to remove the Liquidator. Even in the earlier meeting, majority of the stakeholders did not agree for the removal of the petitioner as a Liquidator. It is further submitted that the Tribunal suo motu removed the petitioner as a Liquidator without an application and more over, the same is not contemplated under the Regulations.

3. Issue notice to the respondent, returnable on 16.10.2023.

4. List the matter on 16.10.2023.”

4. Since, there was some error of omission in the aforesaid order dated 29.09.2023, therefore, further order was passed in which status quo was granted which read as under:-

“On 29.09.2023, we had heard the present writ petition and passed an order.

Mr.S.Ravi, learned Senior Counsel for the petitioner, submits that on 29.09.2023, while dictating the order the Court had passed an order of status quo. However, the same is not incorporated in the order.

Mr.Mohanavel, P.A. to Hon'ble Judges, also confirms that status quo order was dictated and he had noted it down in the notes-book. However, the same was not transcribed while making the order. In the light of that, in the order dated 29.09.2023, the following words be added,

“Status quo, as on today be maintained”.

List on 16.10.2023.”

5. Thereafter, another order was passed on 16.10.2023 which read as under:-

“At the request of Mr.N.L.Rajah, learned Senior Counsel, place the matter on 01.11.2023.

The interim order passed earlier to continue till then. However, we also expect that the petitioner shall not take a major policy decision in respect of the liquidation till the next date.”

6. However, the writ petition was ultimately disposed of on 01.11.2023 with the following order:-

“We have heard Mr.Ravi, learned Senior Counsel for M/s. Gupta and Ravi for the petitioner, Mr.N.L.Rajah, learned Senior Counsel for M/s. G.Mani Prabhu for the respondent and Mr.A.G.Sathyanarayana, learned counsel for the new Liquidator.

2. The petitioner is assailing the order passed by the National Company Law Tribunal removing the petitioner as a Liquidator.

3. Learned Senior Counsel for the petitioner submitted that the petitioner is challenging the impugned order removing the petitioner as a Liquidator before this Court as the impugned order is passed without jurisdiction. The Tribunal does not possess the authority to remove the Liquidator suo motu. The Liquidator can be removed only under Section 31A(11) of the Insolvency and Bankruptcy Code. Learned Senior Counsel took us through the proceedings conducted before the National Company Law Tribunal.

4. According to learned Senior Counsel for the respondent, the Tribunal has suo motu powers to remove the Liquidator if the things are not moving. Reference is made to the provisions of Section 276 of the Companies Act and also to the judgments delivered by the National Company Law Tribunal.

5. According to learned Senior Counsel for the petitioner, the judgments of the National Company Law Tribunal, relied upon by the respondent, are delivered before the amended provisions of Section 31A(11) of the IBC.

6. The removal of the petitioner as a Liquidator was discussed by the National Company Law Tribunal. Rival contentions are made with regard to the authority of the National Company Law Tribunal to remove the Liquidator on its own motion.

7. The statutory appeal is provided under the Regulations itself. It would be appropriate if the petitioner avails the statutory remedy.

8. In view of the fact that alternative efficacious remedy is available, we are not inclined to entertain the writ petition under Article 226 of the Constitution of India.

9. In the light of the above, the writ petition is disposed of with liberty to the petitioner to avail the alternative remedy provided under the statute. In that event, all contentions are kept open. The interim protection is continued for a period of seven days from today so as to enable the petitioner to take appropriate steps before the National Company Law Appellate Tribunal.

10. Considering the exigency in the matter, the National Company Law Appellate Tribunal may endeavour to decide the matter expeditiously.

11. There will be no order as to costs. Consequently, W.M.P.No.28065 of 2023 is closed.”

7. The Hon’ble Madras High Court disposed of the aforesaid writ petition on the ground that the Appellant has an alternative efficacious remedy of appeal to which the Appellant was relegated to and the interim protection was granted for 7 days for filing the statutory appeal.

8. However, instead of filing the statutory appeal, the Appellant challenged the order dated 01.11.2023 of the Hon’ble Madras High Court by way of a Special Leave Petition (Civil) Diary No. 46342 of 2023, under Article 136 of the Constitution of India, in which the Appellant made the prayer to grant special leave to appeal against the final order dated 01.11.2023 passed by the Hon’ble Madras High Court in writ petition and also prayed for ad-interim ex-parte stay on the order dated 20.09.2023 passed by the Adjudicating Authority. The SLP was however dismissed and pending applications, if any, were disposed of by the Hon’ble Supreme Court vide its order dated 09.11.2023 which read as under:-

“Permission to file the Special Leave Petition without certified/plain copy of the impugned order is granted.

2 We are not inclined to entertain the Special Leave Petition under Article 136 of the Constitution of India.

3 The Special Leave Petition is accordingly dismissed. 4 Pending applications, if any, stand disposed of.”

9. Thereafter, the Appellant filed the present appeal i.e. CA (AT) (CH) (Ins) No. 396 of 2023 under Section 61 of the Code to challenge the order dated 20.09.2023.

10. The memo of appeal is divided in separate parts and under the heading ‘limitation’, the Appellant has urged that the period spent by the Appellant both before the Hon’ble Madras High Court and the Hon’ble Supreme Court may be excluded in terms of Section 14 of the Limitation Act, 1963 (in short ‘Act’) and the appeal be decided on merits. At the time of preliminary hearing of the appeal an order was passed on 17.11.2023 which read as under:-

“This appeal is directed against the order dated 20.09.2023. Counsel for the appellant has submitted that the order was uploaded on 22.09.2023. The appellant, instead of filing the appeal, challenged the order dated 20.09.2023 in Writ Petition No.2828516/2023 on 25.09.2023 before Hon’ble Madras High Court in which stay was granted. However, the said writ petition was dismissed on 1.11.2023. The appellant, instead of filing the appeal, filed a ‘petition’ under Article 136 of the Constitution of India on 05.11.2023 before Hon’ble Apex Court. The said petition was dismissed on 09.11.2023. The appellant filed the present appeal before this Tribunal on 14.11.2023 after expiry of 53 days. The appellant has taken support of Section 14 of the Limitation Act, 1963 to contend that the period spent before the Hon’ble High Court and Hon’ble Apex Court in prosecuting the writ petition and the SLP has to be excluded and in that eventuality the appellant has filed the appeal within the period of limitation.

After brief hearing, learned counsel for the appellant has prayed for adjournment to argue the matter further on 20.11.2023.

List the matter on 20.11.2023.”

11. After hearing both the parties on the issue of limitation as to whether the Appellant is entitled to the benefit of Section 14 of the Act or not.

Arguments were heard and order was reserved on 20.11.2023, which read as under:-

“This appeal is directed against the order dated 20.09.2023, passed by the Adjudicating Authority (National Company Law Tribunal, Chennai).

The Appeal has been filed after 53 days. The Appellant, under the caption ‘Limitation’ has averred that he has excluded the periods spent in pursuing the remedy against the impugned order before the Hon’ble High Court of Madras and the Hon’ble Apex Court, in terms of Section 14 of the Limitation Act, 1963 (in short ‘Act’) and thus the appeal is within the prescribed period of 30 days.

This assertion has been hotly contested by the Respondent on various grounds alleging that the appeal is clearly barred by limitation and the appellant is not entitled to exclude the periods allegedly spent before the aforesaid two Hon’ble Courts, in terms of Section 14 of the Act.

In view of the issue which has been contested, we have heard Counsel for the parties to decide as to whether the Appellant is justified in excluding the periods spent before the aforesaid two Hon’ble Courts, in terms of Section 14 of the Act or the present appeal is barred by limitation.

Arguments heard. Orders reserved. It is pertinent to mention that we have not dealt with the merits of the case at this stage which shall be taken into consideration only when this issue is decided regarding the limitation.”

12. Counsel for the Appellant has submitted that the Appellant is entitled to the benefit of Section 14 of the Act because the Appellant had been pursuing its remedy with due diligence and bonafidly, firstly, before the Hon’ble Madras High Court where the impugned order was challenged in a writ of certiorari, inter alia, on the ground that the order was passed by the

Adjudicating Authority without there being any prayer made by the Appellant for replacement of the Appellant as a liquidator of the CD and secondly without notice to the Appellant which is a violation of principle of natural justice. It is further submitted that filing of SLP before the Hon'ble Supreme Court against the order dated 01.11.2023 passed by the Hon'ble Madras High Court also fall within the ambit of due diligence and bonafide prosecution of the remedy. He has further submitted that in so far as the condonation of delay under Section 5 of the Act is concerned, the Court has a discretion to condone the delay by forming an opinion on the sufficient cause for not filing the appeal within the time prescribed whereas under Section 14 of the Act the exclusion of time is mandatory if the requisite conditions are satisfied. It is further submitted that Section 14 of the Act is applicable in the cases of IBC as well and in support of his submissions, he has relied upon two decisions of the Hon'ble Supreme Court rendered in the case of Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department and Ors. (2008) 7 SCC 169 and Kalpraj Dharamshi and Ors. Vs. Kotak Investment Advisors Ltd. & Ors. Manu/SC/0174/2021.

13. On the other hand, Counsel for the Respondent has submitted that the Appellant is not entitled to the benefit of Section 14 of the Act because he had been indulging in forum shopping despite knowing fully well, being the liquidator, that there is a statutory appeal provided under Section 61 of the Code for the redressal of his grievance, if any, arising out of the impugned order passed by the Adjudicating Authority. It is further submitted that Section 14 of the Act cannot be applied without satisfying the Court that the proceedings initiated by the Appellant was with due diligence and bonafidly.



It is further submitted that Section 61 of the Code confers a statutory right upon an aggrieved person to challenge the order of the Adjudicating Authority for which a period of 30 days for filing of such an appeal is prescribed and in case the period of 30 days expires, it opens a window of another 15 days during which the appeal may be filed but by assigning sufficient cause to the satisfaction of the Appellate Authority for the delay. The sufficient cause should be an explanation and not an excuse. It is submitted that the period of 15 days cannot be further extended in any manner by any court. It is further argued that if the period spent by the Appellant is not excluded then the appeal is clearly barred by limitation because it has been filed after 53 days whereas the total period provided is 30 + 15 i.e. 45 days. It is also submitted that the Appellant has not filed a formal application for seeking condonation of delay and himself condoned the delay while referring to the previous litigation in the memo of appeal under the heading of 'limitation' despite the fact that the Appellant was working as a liquidator who is presumed to have complete knowledge about not only the provisions of IBC but also about the relevant Regulations and Rules. It is further submitted that cause shown by the Appellant is that the Adjudicating Authority has granted a relief which has not been asked for by the Respondent in its application is patently incorrect because the Applicant/Respondent made two prayers in the application out of which prayer no. (b) was an omnibus prayer wherein the Appellant has requested the Adjudicating Authority to pass such other orders as this Hon'ble Tribunal may deem fit and thus render justice. It is further submitted that even otherwise the Liquidator has no personal right to continue as such and in this regard, he has relied upon the orders passed by

this Appellate Tribunal in the case of Subrata Maity Vs. Mr. Amit C. Poddar & Ors., CA (AT (Ins) No. 1234 of 2022 decided on 13.10.2022 and C.V. Venkata Sivakumar Vs. IDBI Bank Limited CA (AT) (CH) (Ins.) No. 269 of 2022 in which it has been held that the Liquidator does not have any personal right to continue with the liquidation process and it is within the inherent power of the NCLT to replace the liquidator. He has further referred to the decision of the Hon'ble Supreme Court in the case of Ketan V. Parekh Vs. Special Director, Directorate of Enforcement and Ors., Civil Appeal No. 10301 of 2011 decided on 29.11.2011 to contend that the liquidator knowing fully well about statutory provisions much less right to file the appeal is not entitled to the benefit of Section 14 of the Act if he had filed a writ petition before the Hon'ble Madras High Court and when the Hon'ble Madras High Court granted stay and relegated him to its remedy of filing the statutory appeal yet he filed the SLP before the Hon'ble Supreme Court even against the order of the Hon'ble Madras High Court which is not an action taken with due diligence and bonafidly.

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

15. Since, the issue involved in this appeal is regarding exclusion of the time spent by the Appellant in the earlier litigation by invoking Section 14 of the Act is concerned, therefore, it would be relevant to refer to Section 14 of the Act which is reproduced as under:-

“14 Exclusion of time of proceeding bona fide in court without jurisdiction. —

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another

civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation.— For the purposes of this section,—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.”

16. Section 14(1) of the Act deals with the suit, Section 14(2) deals with the application and Section 14(3) is in respect of filing a fresh suit instituted upon permission granted by the Court. In Section 14(1)&(2) the terms which are to be noticed and highlighted are ‘prosecuting with due diligence’ and ‘prosecuting in good faith’. In the case of Consolidated Engineering Enterprises (Supra), the Hon’ble Supreme Court has analysed Section 14 of the Act which read as under:-

“The analysis of Section 14 of the Limitation Act shows that the following conditions have to be satisfied before this section can be pressed into service; (1) Both the prior and subsequent proceedings

are civil proceedings prosecuted by the same party; (2) prior proceeding had been prosecuted with due diligence and in good faith; (3) failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature; (4) earlier proceeding and the latter proceeding must relate to the same matter in issue; and (5) both the proceedings are in a court.”

17. It has also been held that due diligence and caution are essential prerequisites for attracting Section 14 but due diligence cannot be measured by any absolute standards rather it is measured with prudence or activity expected from and ordinarily exercised by a reasonable and prudent person under the particular circumstances and in respect of good faith it has been observed that nothing shall be deemed to be done in good faith which is not done with due care and attention. It is further held that Section 14 will not help a party who is guilty of negligence, lapse or inaction. In so far as the case of Kalparaj Dharamshi & Ors. (Supra) is concerned, the Hon’ble Supreme Court has held that the Appellant therein approached the High Court of Bombay with a grievance that NCLT had adopted a procedure which was against the principle of natural justice and specifically mentioned in the writ petition that though alternate remedy was available, it approached the High Court since the issue was regarding the functioning of the NCLT. In that case, it was found that proceedings before the High court was hotly contested and by an elaborate judgment, the High Court dismissed the writ petition and relegated the petitioner therein to the alternate remedy available in law. In this background, it was held that the Appellant therein was bonafidly persecuting the remedy before the High Court in good faith and due diligence. There is no quarrel with the aforesaid two decisions of the Hon’ble Supreme Court which were decided on its peculiar facts but in the present case the

Appellant, being a liquidator, knew about the statutory appeal provided under Section 61 of the Code, which even could have been filed with exemption from filing the certified copy but the Appellant chose to file a writ petition before the Hon'ble Madras High Court in which though, it had been mentioned that there is an alternative remedy of appeal and was granted stay initially but later on it was found that there is a statutory appeal provided and it would be appropriate for the petitioner to avail the statutory remedy. While relegating the Appellant to avail its remedy it was also observed that it is not inclined to entertain the writ petition under Article 226 of the Constitution of India and disposed it with liberty to the petitioner to avail the alternative remedy provided under the statute keeping all the contentions open and the interim protection granted was allowed to be continued for a period of seven days for the purpose of filing the appeal. This order was passed on 01.11.2023. If the decision in the case of Kalpraj Dharamshi & Ors. (Supra) is to be applied, the Appellant should have filed the appeal thereafter before the Appellate Tribunal but despite the fact that the Appellant is a liquidator and as per the decision of the Hon'ble Supreme Court in the case of Ketan V. Parekh (Supra) is not entitled to the protection of Section 14 of the Act not only because he is well conversant with the various statutory provisions but also engaged lawyers, had the sagacity to approach the Hon'ble Supreme Court, under Article 136 of the Constitution of India, even against the order of the Hon'ble Madras High Court by which the Appellant was not only allowed to file the statutory appeal but was also granted a stay of 7 days for that purpose. It would thus be of anybody's guess as to whether it's an act of due diligence and bonafide prosecution of the remedy by the petitioner or the petitioner was shying away

from filing the appeal, for the reasons best known to him or is a stiff neck or stubborn person who otherwise has no personal right to continue as a liquidator in view of two decisions of this Appellate Tribunal rendered in the case of Subrata Maity (Supra) and CA V. Venkata Sivakumar (Supra) in which it has been held that the liquidator does not have any personal right to continue in a liquidation process and the NCLT has inherent powers to replace the liquidator.

18. It cannot be said that the order passed by the Adjudicating Authority was without jurisdiction. The Adjudicating Authority had the jurisdiction to pass the order on an application filed under Section 60(5) of the Code which provides that “(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—(a) any application or proceeding by or against the corporate debtor or corporate person; (b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and (c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.”

19. In the present case, the Applicant/Respondent invoked not only Regulation 31A(6) of the Regulations but also Section 60(5) of the Code and made two prayers out of which prayer (b) is for passing an order as the Tribunal may deem fit. The Tribunal has recorded the reasons while disposing of the application which cannot be said to be an order having been passed without jurisdiction and the contention of the Appellant in this regard is

totally incorrect. The order of the Adjudicating Authority may be, in the opinion of the Appellant, illegal but for that matter the Appellant has to prefer an appeal and not the writ petition and then a special leave petition before the Hon'ble Supreme Court even against the order of the Hon'ble High court by which the Appellant was relegated to avail his remedy of appeal and also granted stay till the appeal is filed. If this procedure is allowed to be followed then there would be no end to the filing of the writ petitions against the order of the Adjudicating Authority of the NCLT before the Hon'ble High Courts and thereafter the orders of the Hon'ble High Courts would be challenged before the Hon'ble Supreme Court.

20. The Hon'ble Supreme Court while dismissing the SLP did not grant the Appellant remedy to file appeal rather the SLP was simply dismissed with the observations "we are not inclined to entertain the SLP under Article 136. The SLP is accordingly dismissed".

21. Thus, in view of the aforesaid discussion and looking from any angle, we do not find merit in the submission of the Appellant for excluding the period under Section 14 of the Act and since the appeal has been filed after the period of 53 days from the date of passing of the impugned order, therefore, we would refer to the Hon'ble Supreme Court in the case of National Spot Exchange Limited Vs. Anil Kohli, Civil Appeal No. 6187 of 2019, in which it has been held that the Tribunal can condone the delay only of a period of 15 days beyond the prescribed period of 30 days i.e. 30+15 and not a day thereafter which cannot even be condoned by resorting to Article 142 of the Constitution of India, therefore, the present appeal is found to be barred by

limitation, having been filed on 53<sup>rd</sup> day and thus the appeal is hereby dismissed. No costs.

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

**[Shreesha Merla]**  
**Member (Technical)**

07<sup>th</sup> December, 2023

Sheetal