

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,**  
**PRINCIPAL BENCH, NEW DELHI**

**I.A. No. 5067 of 2023**

**in**

**Company Appeal (AT) (Insolvency) No. 1354 of 2023**

**IN THE MATTER OF:**

**State Bank of India**

**...Appellant**

**Versus**

**Darwin Platform Infrastructure Ltd. & Ors.**

**...Respondent**

**Present:**

**For Appellant:** Mr. N. Venkataraman, ASG with Mr. Sanjay Kapur, Mr. Surya Prakash, Ms. Isha Virmani, Advocates.

**For Respondents:** Ms. Anannya Ghosh, Ms. Mrinalini Mishra, Ms. Doel Bose, Advocates for R2

Mr. Sandesh R Shukla, Mr. Krishan Kumar, Advocates for intervenors.

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

**ASHOK BHUSHAN, J.**

1. We have heard Mr. N. Venkataraman, Ld. ASG for the Applicant/Appellant, Ms. Anannya Ghosh, Learned Counsel for the Respondent No. 2, Resolution Professional, on the Application filed by the Appellant for condonation of delay in filing the Appeal.

2. Brief facts of the case and relevant dates necessary to be noticed for deciding this Application are:-

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- The Appeal has been filed against an Order dated 21<sup>st</sup> July, 2023 delivered by National Company Law Tribunal, Mumbai Bench, Court-II in I.A. No. 1007/2023 by which order the Adjudicating Authority has approved the Resolution Plan of the Corporate Debtor.
- The present Appeal has been e-filed by the Appellant on 11<sup>th</sup> September, 2023. I.A. No. 5067 of 2023 is the Application by which revised amended application seeking condonation of delay has been filed which is taken on record.
- The Appellant has applied for certified copy of the Order on 24<sup>th</sup> July, 2023 which was made available to the Appellant on 25<sup>th</sup> July, 2023. The Application prays for condonation of delay of 14 days in filing the Appeal.

**3.** Shree Venkataraman, Ld. ASG in support of the Delay Condonation Application submits that order was delivered on 21<sup>st</sup> July, 2023 which was Friday, the Appellant applied for certified copy on next working day i.e. 24<sup>th</sup> July, 2023 which was made available on 25<sup>th</sup> July, 2023. It is contended that period of 30 days of the limitation for filing the Appeal shall commence from 25<sup>th</sup> July, 2023 and expired on 24<sup>th</sup> August, 2023. It is submitted that further 15 days' time which is condonable as per Section 61(2) proviso expires on 07<sup>th</sup> September, 2023 and the Hon'ble Appellate Tribunal being closed from 07<sup>th</sup> to 10<sup>th</sup> September, 2023, Appeal was e-filed on 07<sup>th</sup> September, 2023 being a

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day when Tribunal was closed, the Appeal is within condonable period of 15 days.

**4.** The ground taken for condonation of delay in the Application is that hearing in Review Petition in the case of Rainbow Papers before the Hon'ble Supreme Court commenced. On 24<sup>th</sup> July, 2023, Appellant bank discussed legal opinion and advised that in view of the change of law, Appellant has good case on merit. The delay is not intentional. The Appellant is public sector bank.

**5.** Learned Counsel for the Resolution Professional opposing the submission of the Appellant submits that 30 days' period for limitation shall commence from 22<sup>nd</sup> July, 2023 and shall come to an end on 20<sup>th</sup> August, 2023. It is submitted that Appellant being entitled for exclusion of two days during which certified copy was under preparation the last day for filing the limitation was 22<sup>nd</sup> August, 2023 after 22<sup>nd</sup> August, 2023, 15 days' condonable period also came to an end on 06<sup>th</sup> September, 2023 and 06<sup>th</sup> September, 2023 was not holiday and the present Appeal has been e-filed beyond 45<sup>th</sup> day. It is submitted that 07<sup>th</sup> September, 2023 to 10<sup>th</sup> September, 2023 being holiday for the Appellate Tribunal, the Appeal could have been filed after reopening of the Tribunal is misconceived. It is submitted that the benefit of Section 4 of the Limitation Act is extendable only with regard to period of limitation i.e. period of 30 days as prescribed under Section 61 of the Code. It is submitted that the Appeal was filed beyond 45 days and

secondly the fact that Appellate Tribunal was closed on 07.09.2023 to 10.09.2023 does not come to any aid to the Appellant. It is submitted that Appeal having filed beyond condonable period of delay, this Tribunal has no jurisdiction to condone the delay.

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

**7.** From the brief facts as noticed above, following dates are material for considering the period of limitation for filing the Appeal:-

<b>Sl. No.</b>	<b>Dates</b>	<b>Events</b>
1.	21.07.2023	Date of Delivery of Order Impugned.
2.	24.07.2023	Applied for Certified Copy of the Order.
3.	25.07.2023	Certified Copy of the Order was delivered.
4.	07.09.2023	Appeal was e-filed.

**8.** We need to first notice as to when the limitation for filing the Appeal came to an end and up to which date was the condonable period of 15 days as provided under Section 61(2) proviso.

**9.** The order having been delivered on 21<sup>st</sup> July, 2023, period of limitation shall commence on 22<sup>nd</sup> July, 2023 since the date on which the order is delivered is to be excluded under sub-section (2) of Section 12 of the Limitation Act, 1963. Ld. ASG has submitted that period of limitation shall commence on 24<sup>th</sup> July, 2023 which was a next working day from the date of delivery of the Order which was delivered on Friday

since the Appellant could not have applied for certified copy of the Order on 22<sup>nd</sup> and 23<sup>rd</sup> July, 2023 being Saturday and Sunday.

**10.** Section 12 of the Limitation Act is as follows:

***“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.”*

**11.** As per Section 12(2), the day on which judgment complained of was pronounced and the time requisite for obtaining a copy of the

certified copy of the order shall be excluded. Thus, 21<sup>st</sup> July, 2023 was to be excluded and two days was taken for obtaining certified copy of the order, hence Appellant shall be entitled for additional two days. The submissions of the Ld. ASG is that 22<sup>nd</sup> and 23<sup>rd</sup> which are Saturday and Sunday should also be excluded and limitation shall start running only on 24<sup>th</sup> July, 2023 has no legal foundation. The exclusion of period in obtaining certified copy of the Order is to be excluded but there is no basis for contention that till the certified copy of the order is applied, limitation shall not commence thus the limitation in the present appeal i.e. 30 days for filing the Appeal shall commence on 22<sup>nd</sup> July, 2023 after excluding the 21<sup>st</sup> July, 2023 which was date on which order was pronounced. When we compute 30 days' time from 21<sup>st</sup> July, 2023, 30 days period comes to an end on 20<sup>th</sup> August, 2023, by excluding further period of 2 days which was time taken in obtaining certified copy of the order, 30 days limitation for filing the Appeal was up to 22<sup>nd</sup> August, 2023. Now we compute the 15 days condonable period after 22<sup>nd</sup> August, 2023 which period could have been condoned in exercise of power under Section 61(2) proviso. After expiry of limitation on 22<sup>nd</sup> August, 2023, 15 days period also came to an end on 06<sup>th</sup> September, 2023. 45<sup>th</sup> day was the 06<sup>th</sup> September, 2023 and the present Appeal has been filed on 46<sup>th</sup> Day i.e. after expiry of 30 days and 15 days. The submission which has been pressed by Ld. ASG is that 07<sup>th</sup> to 10<sup>th</sup> September, 2023 being holiday for NCLAT appeal filed on 07<sup>th</sup> September, 2023 should be

treated within time by giving the benefit of Section 4 of the Limitation Act. It is submitted that when the period of limitation is expiring on the date when the court is closed the Appeal can very well be filed on the date when the court reopens. The above submission is on the premise that 15 days' time expires on 07.09.2023.

**12.** Thus, we need to answer two following questions: -

- i.** Whether the Appeal have been filed on 15<sup>th</sup> day after expiry of limitation or it was filed after expiry of 15 days of condonable period?
- ii.** Whether in event Appeal is filed on 15<sup>th</sup> day after expiry of the limitation and the day being holiday the appeal can be presented on the day when court reopens?

**Question No i**

**13.** We have noticed above that the Order was delivered on 21<sup>st</sup> July, 2023 and the limitation for computing the period shall commence from 22<sup>nd</sup> July, 2023. 21<sup>st</sup> July, 2023 is to be excluded being the date on which order was delivered as per Section 12(2) of the Limitation Act. It is further the fact that certified copy of order applied on 24<sup>th</sup> July, 2023 shall not arrest running of the limitation from 22<sup>nd</sup> July, 2023. Appellant having applied for certified copy of Order on 24<sup>th</sup> July, 2023 and received on 25<sup>th</sup> July, 2023, two days' time i.e. 24<sup>th</sup> and 25<sup>th</sup> July, 2023 was taken for delivering the certified copy of the order, Appellant is entitled for exclusion of two days. 30 days' limitation commencing from 22<sup>nd</sup>

July, 2023 comes to an end on 20<sup>th</sup> August, 2023 by excluding two days further which was taken in preparing certified copy, the last date for filing the Appeal was 22<sup>nd</sup> August, 2023. After 22<sup>nd</sup> August, 2023, 15 days condonable period under Section 61(2) proviso also came to an end on 06<sup>th</sup> September, 2023 thus 45<sup>th</sup> day for filing the Appeal was 06<sup>th</sup> September, 2023 and the present Appeal was e-filed on 07<sup>th</sup> September, 2023. Thus the present appeal was filed on 46<sup>th</sup> Day i.e. beyond 15 days period after expiry of the limitation period.

**14.** Thus, Question No. I is answered, accordingly.

**Question No. ii**

**15.** Learned Counsel for the Appellant has advanced submission on the premise that 45 days from the date of the order was falling on 07<sup>th</sup> September, 2023 which was declared Holiday for the Appellate Tribunal, Appeal could have been very well filed after reopening. 07<sup>th</sup> September, 2023 being the date when the Tribunal was closed. We have already noticed while considering 'question no. i' that 45<sup>th</sup> day came to an end on 06<sup>th</sup> September, 2023 hence the premise of the submission that Appeal was filed on the day when Appellate Tribunal was closed is unfounded.

**16.** We have also proceeded to examine the submission of the Appellant that if 45<sup>th</sup> day for filing the Appeal under Section 61 is a Holiday whether the Appeal can be treated to be within time when it is filed on the date when Court reopens.



**17.** Learned Counsel for the Appellant has placed reliance on the Judgment of the Hon'ble Supreme Court in (2021) 5 SCC 321, **Sridevi Datla Vs. Union of India & Ors.** He submits that by virtue of Section 10 of the General Clauses Act even for condonable period when last day falls on holiday the benefit of Section 10 of General Clauses Act is to be extended.

**18.** Before we come to the Judgment of Hon'ble Supreme Court in **Sridevi Datla** (supra) it is necessary to notice provisions of General Clauses Act and certain provisions of the Limitation Act and Insolvency and Bankruptcy Code, 2016.

**19.** Section 10 of the General Clauses Act provides for computation of time. Section 10 is as follows:

***"10. Computation of time***

*(1)Where, by any [Central Act] [Substituted by A.O.1937, for " Act of the Governor General-in-Council" .] or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:*

*Provided that nothing in this section shall apply to any act or proceeding to which the [Indian Limitation Act,*

1877] [Now see the limitation Act, 1963 ([36 of 1963](#))] applies.

(2) This section applies also to all [Central Acts] [Substituted by A.O.1937, for " Acts of the Governor General-in-Council" .] and Regulations made on or after the fourteenth day of January, 1887.”

**20.** Section 4 of the Limitation Act deals with expiry of prescribed period when Court is closed. Section 4 is as follows:

***“4. Expiry of prescribed period when court is closed.—***

*Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens.*

*Explanation.—A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day.”*

**21.** Section 2(j) of the Limitation Act defines period of limitation which is as follows:-

*“(j) “period of limitation” means the period of limitation prescribed for any suit, appeal or application by the Schedule, and “prescribed period” means the period of limitation computed in accordance with the provisions of this Act;”*

**22.** Section 29 of the Limitation Act deals with saving. Section 29(2) which is relevant for the present case is as follows:

*“(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule,*

*the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.”*

**23.** Section 61 of IBC provides for Appeals and Appellate Authority.

Section 61(2) which provides for period of limitation is as follows:

*“(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.”*

**24.** Section 238A of the Insolvency and Bankruptcy Code, 2016 provisions of limitation act has been made applicable to the proceedings of Appeals before the Adjudicating Authority. Section 238 A is as follows:

**“Section 238A: Limitation.-** *The provisions of the Limitation Act, 1963 shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be.”*

**25.** Now we need to notice the Judgment of **“Sridevi Datla”** (supra) case which has been relied by Learned Counsel for the Appellant. In

**Sridevi Datla**, Hon'ble Supreme Court has occasion to consider provision of Section 16 of NGT Act, 2010 as well as Section 10 of General Clauses Act. In the above case, by an order dated 14<sup>th</sup> August, 2017, approval was granted to the Project Applicant. As per Section 16 of the NGT Act, Appeal can be filed within 30 days. Proviso of Section 16 further provided that Tribunal if satisfied that Appellant is prevented by sufficient cause from filing the Appeal, Appeal from said period allowed to be filed within a further period not exceeding 60 days. In the above case the Appeal was filed on 13.11.2017. Submission was raised by the Appellant that 13.11.2017 being within condonable period of 60 days provided in proviso was treated to be within time and the order of NGT dismissing the Appeal as barred by time was set aside and delay in filing the Appeal was condoned. Section 16 of the NGT Act has been extracted in Paragraph 13 of Judgment which is as follows:

*“13. The relevant provision of the Act i.e. Section 16 [Of the NGT Act] reads as follows:*

*“16. Tribunal to have appellate jurisdiction.—Any person aggrieved by—*

*(a) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under Section 28 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);*

*(b) an order passed, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government under Section 29 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);*

*(c) directions issued, on or after the commencement of the National Green Tribunal Act, 2010, by a Board, under Section 33-A of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);*

*(d) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under Section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977 (36 of 1977);*

*(e) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government or other authority under Section 2 of the Forest (Conservation) Act, 1980 (69 of 1980);*

*(f) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under Section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);*

*(g) any direction issued, on or after the commencement of the National Green Tribunal Act,*

2010, under Section 5 of the Environment (Protection) Act, 1986 (29 of 1986);

(h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (29 of 1986);

(i) an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986 (29 of 1986);

(j) any determination of benefit sharing or order made, on or after the commencement of the National Green Tribunal Act, 2010, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002 (18 of 2003),

may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal:

Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be

*filed under this section within a further period not exceeding sixty days.”*

**26.** Hon’ble Supreme Court noticed the argument of the Appellant on Section 10 of the General Clauses Act. The Hon’ble Supreme Court held that there is no indication in the NGT Act that Section 10 of the General Clauses Act cannot be applied in the NGT Act. In paragraph 20 to 22, following was observed:

*“20. The appellant argues that since there is no indication to the contrary; the appeal is to be considered as having been filed within the extended period of 60 days, since the last (of the 60 days) was a Sunday (12-7-2020). The appellant relied on Section 10 of the General Clauses Act, for this purpose. The respondents, notably the Union, opposed this argument.*

**21.** *Section 10 of the General Clauses Act, 1897 [ “10. Computation of time.—(1) Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:*

*Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877, applies. (2) This section applies also to all*

*Central Acts and Regulations made on or after the fourteenth day of January, 1887.”] stipulates that when the last date for doing something falls on a public holiday, the act “shall be considered as done”.. if it “is done or taken on the next day afterwards on which the Court or office is open”. This provision applies to all Central Acts enacted after the said Act was brought into force. The scope of this provision was considered by this Court in *Harinder Singh v. S. Karnail Singh* [*Harinder Singh v. S. Karnail Singh*, 1957 SCR 208 : AIR 1957 SC 271] by a four-Judge Bench, which explained the object of Section 10 and held as under : (AIR p. 273, para 5)*

“5. ... Where, therefore, a period is prescribed for the performance of an act in a court or office, and that period expires on a holiday, then according to the section the act should be considered to have been done within that period, if it is done on the next day on which the court or office is open. For that section to apply, therefore, all that is requisite is that there should be a period prescribed, and that period should expire on a holiday.

**22.** Other decisions [*Manohar Joshi v. Nitin Bhaurao Patil*, (1996) 1 SCC 169; *Mohd. Ayub v. State of U.P.*, (2009) 17 SCC 70 : (2011) 1 SCC (L&S) 580] have followed the same reasoning. It is also noticeable that there is no indication in the NGT Act that Section 10 of the General Clauses Act cannot be applied. It is, therefore, held that the provision applies *proprio vigore* to all appeals filed under the NGT Act.”



**27.** Hon'ble Supreme Court ultimately accepted the argument of the Appellant, delay in filing the Appeal was condoned. Following was held in paragraph 31:

*“31. In view of the foregoing findings, this Court is of the opinion that the impugned order [Sridevi Datla v. Union of India, 2020 SCC OnLine NGT 870] of NGT has to be and is, therefore set aside. The delay in filing the appeal before NGT is hereby condoned; the parties shall now appear and proceed to argue the appeal on its merit, which shall then be disposed in accordance with law. The appeal is allowed. There shall be no order on costs.”*

**28.** The above Judgment relied on by Learned Counsel for the Appellant to support his proposition that in the above case also the Appeal was filed on the last date of 60 days period as provided under Section 16 of the NGT Act which was a Sunday hence by giving benefit of Section 10 of the General Clauses Act Appeal was to be treated within 60 days period.

**29.** In response to the above submission of the Appellant based on Judgment of Hon'ble Supreme Court in **Sridevi Datla Case** Learned Counsel for the Respondent has placed reliance on two Judgments of the Hon'ble Supreme Court i.e. (2012) 2 SCC 624, **“Assam Urban Water Supply and Sewerage Board Vs. Subhash Projects and Marketing Ltd.”** and (2023) 8 SCC 453, **“Bhimashankar Sahakari Sakkare Karkhane Niyamita Vs. Walchandnagar Industries Limited (WIL)”**. In **Assam Urban Water Supply**, Hon'ble Supreme Court has occasion to

consider the provisions of Section 2(j) and 4 of the Limitation Act, 1963 as well as Section 34(3) and proviso of the Arbitration and Conciliation Act, 1996. Section 34 of the Arbitration and Conciliation Act 1996 provided a limitation for filing an application for setting aside an award which was three months from date on which period making the Application is received and under the proviso Court was empowered to entertain the application within further period of 30 days not thereafter. Section 34(3) is as follows:

***“34. Application for setting aside arbitral award.—***

.....

*(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the Arbitral Tribunal:*

*Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.”*

**30.** The limitation as provided under Section 61(2) also contains the provisions of same line that is period of limitation i.e. 30 days for filing the Appeal and the Appellate Tribunal can condone the delay of 15 days being sufficient cause is shown. In the **Assam Urban Water Supply** case, the Award was received by Appellant on 26<sup>th</sup> August, 2003 and an

application for setting aside of the Award was made on 02.01.2004 under Section 34 of the 1996 Act, The District Judge has rejected the Application on the ground of limitation. The High Court also affirmed the said decision in the Appeal which was filed. Contention on the basis of Section 4 of the Limitation Act was advanced that since District Court was closed for Christmas Vacation for the period from 25.12.2003 to 01.01.2004 hence on reopening of the Court when Appeal was filed on 02.01.2004 this should be treated within time. The facts of the case have been noticed in paragraph 2 of the Judgment which is as follows:

*“2. Thereafter, the sole arbitrator proceeded with the arbitration and passed two awards in relation to the above contracts in favour of the respondents on 22-8-2003. The awards were received by the appellants on 26-8-2003. On 2-1-2004, the appellants made two applications for setting aside the awards dated 22-8-2003 under Section 34 of the 1996 Act. These applications were accompanied by two separate applications for extension of time under Section 34(3) of the 1996 Act. The District Judge, Kamrup, Guwahati, dismissed the appellants' applications under Section 34 of the 1996 Act on 1-6-2004 and 5-6-2004 on the ground of limitation.”*

**31.** Hon'ble Supreme Court in paragraph 10 held that three months' period for filing an application for setting aside the award came to an end on 26<sup>th</sup> November, 2003 and the extended period of one month under which the delay in filing the application should be condoned is not

the period of limitation. It is relevant to notice paragraph 10 to 14 of the Judgment which is to the following effect:

*“10. The facts in the present case are peculiar. The arbitral awards were received by the appellants on 26-8-2003. No application for setting aside the arbitral awards was made by the appellants before elapse of three months from the receipt thereof. As a matter of fact, three months from the date of the receipt of the arbitral award by the appellants expired on 26-11-2003. The District Court had Christmas vacation for the period from 25-12-2003 to 1-1-2004. On reopening of the court i.e. on 2-1-2004, admittedly, the appellants made applications for setting aside those awards under Section 34 of the 1996 Act. If the period during which the District Court, Kamrup, Guwahati, remained closed during Christmas vacation, 2003 is extended and the appellants get the benefit of that period over and above the cap of thirty days as provided in Section 34(3), then the view of the High Court and the District Judge cannot be sustained. But this would depend on the applicability of Section 4 of the 1963 Act.*

*11. The question, therefore, that falls for our determination is whether the appellants are entitled to extension of time under Section 4 of the 1963 Act in the above facts?*

*12. Section 4 of the 1963 Act reads as under:*

**“4.Expiry of prescribed period when court is closed.**—Where the prescribed period for any suit,

*appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens.*

*Explanation.—A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day.”*

*The above section enables a party to institute a suit, prefer an appeal or make an application on the day the court reopens where the prescribed period for any suit, appeal or application expires on the day when the court is closed.*

**13.** *The crucial words in Section 4 of the 1963 Act are “prescribed period”. What is the meaning of these words?*

**14.** *Section 2(j) of the 1963 Act defines:*

*“2.(j) ‘period of limitation’ [which] means the period of limitation prescribed for any suit, appeal or application by the Schedule, and ‘prescribed period’ means the period of limitation computed in accordance with the provisions of this Act;”*

*Section 2(j) of the 1963 Act when read in the context of Section 34(3) of the 1996 Act, it becomes amply clear that the prescribed period for making an application for setting aside an arbitral award is three months. The period of 30 days mentioned in the proviso that follows sub-section (3) of Section 34 of*

*the 1996 Act is not the “period of limitation” and, therefore, not the “prescribed period” for the purposes of making the application for setting aside the arbitral award. The period of 30 days beyond three months which the court may extend on sufficient cause being shown under the proviso appended to sub-section (3) of Section 34 of the 1996 Act being not the “period of limitation” or, in other words, the “prescribed period”, in our opinion, Section 4 of the 1963 Act is not, at all, attracted to the facts of the present case.”*

**32.** The ratio of the above judgment is categorical that the period of 30 days which the Court may extend on sufficient cause is not the period of limitation hence the benefit of Section 4 is applicable only with regard to period of limitation prescribed for filing an application.

**33.** Learned Counsel for the Respondent has also placed reliance on recent Judgment of Hon’ble Supreme Court in **“Bhimashankar Sahakari Sakkare Karkhane Niyamita”** (supra) where Hon’ble Supreme Court has occasion to consider both the Judgment i.e. **Assam Urban Water Supply** and **Sridevi Datla**. In **“Bhimashankar Sahakari Sakkare Karkhane Niyamita** case also the Hon’ble Supreme Court considered Section 34(3) of the Arbitration and Conciliation Act, Section 2(j) and Section 4 of the Limitation Act. In the facts of the said case, award was passed on 24<sup>th</sup> August, 2016 and period of 90 days expired on 24<sup>th</sup> November, 2016, Court was closed for Christmas Vacation from 19.12.2016 to 01.01.2017 and the Application under Section 34 was

filed on 02<sup>nd</sup> January, 2017. The facts of the case have been noticed in paragraph 3 and 4 of the Judgment which are as follows:

*“3. That, an arbitral award was passed against the appellant under the provisions of the Arbitration Act on 24-8-2016. As per Section 34(3) of the Arbitration Act, 90 days are prescribed for preferring an application under Section 34 of the Arbitration Act against the arbitral award. However, the said period was extendable by a further period of 30 days in terms of the proviso to Section 34(3) of the Act, 2016. In the present case, the period of 90 days prescribed under Section 34(3) of the Arbitration Act expired on 24-11-2016. The appellant was entitled to a further extended period of 30 days from 23-11-2016 onwards in terms of the proviso to Section 34(3) which was up to 24-12-2016.*

*4. The trial courts were closed on account of winter/Christmas vacations from 19-12-2016 to 1-1-2017. However, it so happened that extendable/condonable period of 30 days as contemplated in the proviso to Section 34(3) expired on 24-12-2016 on which day the trial court was closed on account of winter/Christmas vacation. The appellant herein filed the application under Section 34 of the Arbitration Act, challenging the award passed by the Arbitral Tribunal. The appellant also filed IA No. 1 for condonation of delay. Both, Section 34 application as well as the application for*

*condonation of delay were filed on the reopening day i.e. on 2-1-2017. As the application under Section 34 of the Arbitration Act was beyond the prescribed period of provided under Section 34 of the Arbitration Act as well as beyond the condonable period of 30 days, the learned trial court dismissed IA No. 1 and refused to condone the delay by observing that the period beyond 120 days is not condonable as under the Arbitration Act, maximum period provided for preferring an application under Section 34 is 120 days.”*

**34.** The submission was pressed before the Hon’ble Supreme Court that Appeal having been filed within 30 days condonable period as contemplated in proviso of Section 34(3) and the said period expired on day when court was closed for Summer Vacation Appeal could have been filed on the reopening day i.e. 02.01.2017. The said submission was not accepted. The question which came for consideration was noticed by Hon’ble Supreme Court in paragraph 31 of the Judgment which is as follows:

*“**31.** It is submitted that therefore the following questions arise for consideration in the present case:*

***31.1.** Whether the benefit of Section 4 of the Limitation Act, 1963 is available to a party when the “prescribed period” of 3 months for filing a petition under Section 34(3) of the Arbitration Act has already expired and the discretionary period of 30*



*days under the proviso to Section 34(3) falls on a day when the Court is closed?*

**31.2.** *Whether the benefit of Section 10 of the General Clauses Act, 1897 is separately available to a party in such circumstances?”*

**35.** In paragraph 46 to 50, Hon’ble Supreme Court laid down following:

**“46.** *Therefore, the central question in the present appeal is whether when the last day of condonable period of 30 days [under Section 34(3) of the Arbitration Act] falls on a holiday or during the court vacation, would the benefit of Section 10 of the General Clauses Act, 1897 be available?*

**47.** *While considering the aforesaid issues/questions, Section 34 of the Arbitration Act is required to be referred to, which reads as under:*

**“34. Application for setting aside arbitral award.—(1)-(2)**

.....

*(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the Arbitral Tribunal:*

*Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of*

three months it may entertain the application within a further period of thirty days, but not thereafter.”

**48.** The relevant provisions of the Limitation Act and the General Clauses Act, 1897 are also required to be referred to which are as under:

**“2. (j) “period of limitation”** [which] means the period of limitation prescribed for any suit, appeal or application by the Schedule, and “prescribed period” means the period of limitation computed in accordance with the provisions of this Act;

\*\*\*

**4. Expiry of prescribed period when court is closed.**—Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens.

*Explanation.*—A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day.”

**49.** Section 10 of the General Clauses Act, 1897:

**“10. Computation of time.**—(1) Where, by any [Subs. for “Act of the G.G. in C.” by the A.O. 1937.] [Central Act] or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a

*prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:*

*Provided that nothing in this section shall apply to any act or proceeding to which the Limitation Act, 1877, [ See now the Limitation Act, 1963 (36 of 1963).] applies.*

*(2) This section applies also to all [Subs. for “Acts of the G.G. in C” by the A.O. 1937.] [Central Acts] and Regulations made on or after the fourteenth day of January, 1887.”*

**50.** *Section 34(3) of the Arbitration Act and Sections 2(j) and 4 of the Limitation Act, 1963 fell for consideration before this Court in Assam Urban [Assam Urban Water Supply & Sewerage Board v. Subash Projects & Mktg. Ltd., (2012) 2 SCC 624 : (2012) 1 SCC (Civ) 831] . Even the very issue raised in the present appeal fell for consideration before this Court in Assam Urban [Assam Urban Water Supply & Sewerage Board v. Subash Projects & Mktg. Ltd., (2012) 2 SCC 624 : (2012) 1 SCC (Civ) 831] . In the aforesaid decision, this Court interpreted the aforesaid provisions and has specifically observed and held that the benefit of exclusion of period during which Court is closed is available only when application for setting aside the award is filed within “prescribed period of limitation” and it is not*

*available in respect of period extendable by the Court in exercise of its discretion.”*

**36.** Hon’ble Supreme Court referred to and relied on its judgments in Assam Urban Water Supply and held that the question is fully covered by Judgment of Hon’ble Supreme Court in Assam Urban Water Supply. Hon’ble Supreme Court further held that provisions of Limitation Act shall be applicable on the Arbitration and Conciliation Act and Section 10 of the General Clauses Act shall not be applicable by virtue of Section 10(1). In paragraph 57 to 58, following has been laid down:

*“57. Now, so far as reliance placed upon Section 10 of the General Clauses Act, 1897 on behalf of the appellant is concerned, at the outset it is required to be noted that such a contention is untenable in light of the proviso to Section 10 of the General Clauses Act, 1897, which specifically excludes the application of Section 10 of the General Clauses Act, 1897 to any act or proceeding to which the Limitation Act, 1877 applies. Reference to the 1877 Act will now have to be read as reference to the Limitation Act, 1963 in view of Section 8 of the General Clauses Act, 1897.*

*58. Therefore, in light of the application of the Limitation Act, 1963 to the proceedings under the Arbitration Act and when Section 10 of the General Clauses Act, 1897 specifically excludes the applicability of Section 10 to any act or proceeding to which Limitation Act, 1963 applies and in light of the definition of “period of*

*limitation” as defined under Section 2(j) read with Section 4 of the Limitation Act and as observed and held by this Court in Assam Urban [Assam Urban Water Supply & Sewerage Board v. Subash Projects & Mktg. Ltd., (2012) 2 SCC 624 : (2012) 1 SCC (Civ) 831] , benefit of exclusion of period during which the Court is closed shall be available when the application for setting aside award is filed within “prescribed period of limitation” and shall not be available in respect of period extendable by Court in exercise of its discretion.”*

**37.** It is relevant to notice that Judgment of Sridevi Datla was also noticed and considered. In paragraph 59, Hon’ble Supreme Court laid down following:

*“59. Now, so far as the reliance placed upon the decision of this Court in Sridevi Datla v. Union of India [Sridevi Datla v. Union of India, (2021) 5 SCC 321] relied upon on behalf of the appellant is concerned, at the outset it is required to be noted that in the said decision, this Court has not noticed the decision in Assam Urban [Assam Urban Water Supply & Sewerage Board v. Subash Projects & Mktg. Ltd., (2012) 2 SCC 624 : (2012) 1 SCC (Civ) 831] and there is no discussion on distinction between “prescribed period” and the “discretionary condonable period”. On the other hand, the binding decision of this Court in Assam Urban [Assam Urban Water Supply & Sewerage Board v. Subash Projects & Mktg. Ltd., (2012) 2*

*SCC 624: (2012) 1 SCC (Civ) 831] is directly on point.”*

**38.** We have already noticed that provisions of Limitation Act are applicable to the Insolvency and Bankruptcy Code, 2016 hence there is no applicability of Section 10 of the General Clauses Act which was relied on by Hon’ble Supreme Court in Sridevi Datla Case.

**39.** The ratio of the Judgments of the Hon’ble Supreme Court in Assam Urban Water Supply and Bhimashankar Sahakari Sakkare Karkhane Niyamita are fully applicable in the present case and relying on the said judgment we can safely hold that the extended period of 15 days as provided in Section 61(2) proviso of the Code is not the prescribed period for limitation and the benefit of Section 4 is attracted only when last date of the limitation falls on Holiday.

**40.** Learned Counsel for the Respondent has also relied on Judgment of this Tribunal in “**Company Appeal (AT) Ins. No. 767 of 2023, Sandeep Anand Vs. Gopal Lal Baser, Resolution Professional Wianxx Impex Pvt. Ltd.**” where similar contention was raised by the Appellant for the benefit of holiday and we held that benefit as claimed is not available which benefit can be availed only with respect to the period of limitation provided with regard to period of 30 days. The Order is as follows:

*“03.07.2023: I.A. No. 2587 – This is an application praying for condonation of delay. Under Section 61 sub-section (2) proviso, the jurisdiction to condone the delay conferred to this*

*Tribunal is only 15 days. The ground taken in paragraph 5 of the affidavit is that 7th April was declared as a 'Public Holiday' and 8th and 9th being holiday, the appeal is treated to be filed within 45 days.*

*2. We are of the view that the benefit as claimed in paragraph 5 is not available which benefit can be availed only with respect to the period of limitation provided with regard to period of 30 days.*

*3. We, thus, are of the view that the delay in filing the appeal being beyond 15 days, the application praying for condonation of delay has to be dismissed. Consequently, the memo of appeal is rejected."*

**41.** We may also refer to a Judgment of this Tribunal in I.A. No. 3349 of 2022 in C.A.(At) Ins. No. 1124 of 2022, **Isolux Corsan India Engineering & Constructions Pvt. Ltd. through its Liquidator, CA Rajeev Bansal Vs. Shailesh Verma, Erstwhile Resolution Professional of South East UP Power Transmission Company Ltd. & Ors.** where the contention raised claiming benefit of 45<sup>th</sup> day being public holiday. The Appeal could have been filed after the court reopened and the same was rejected. The facts of the case have been noticed in paragraph 3 to 8. Relevant facts have been noticed in paragraph 8. This tribunal considered and rejected the above submission and held that prescribed period of limitation being 30 days and not the 45 days. In paragraph 10, following was laid down:

*I.A. No. 5067 of 2023*

*In Company Appeal (AT) (Insolvency) No. 1354 of 2023*

*“10. The Limitation as prescribed by Section 61(2) is 30 days. Under proviso, the Appellate Tribunal may allow an Appeal to be filed after said period of 30 days if it is satisfied that there is sufficient cause for not filing the Appeal but such period shall not exceed 15 days. When we look into Section 4 of the Limitation Act, 1963, the prescribed period for filing an Appeal when expires on a day when the Court is closed, the Appeal can be instituted when the Court reopens. Thirty-Days period for filing the present Appeal against the Order dated 15th June, 2022 expired on 15th July, 2022. It is not the case that Court was closed on 15th July, 2022. According to the Appellant 46th and 47th Day i.e. 30th and 31st July were holidays. For purposes of extending the benefit of Section 4 of the Limitation Act, the Limitation has to be expired on the date when Court is closed, present is not a case where the Limitation expired on a date when the Court was closed since limitation is of 30 days and not 45 days. The power to condone the delay of 15 days is exercised by this Tribunal under proviso to Section 61(2) of the Code but it cannot be said that period for limitation is 45 days. Thus the present is not a case where benefit of Section 4 can be extended.”*

**42.** In view of the above discussion, we are of the view that the submission advanced by Ld. ASG that 07<sup>th</sup> September, 2023 being public holiday, appeal filed on 07<sup>th</sup> September, 2023 is within 45 day



cannot be accepted. As observed above the Judgments of the Hon'ble Supreme Courts in Assam Urban Water Supply and Bhimashankar Sahakari Sakkare Karkhane Niyamita are fully attracted and we are bound by the Judgment of the Hon'ble Supreme Court and following the Judgment, we reject the submission of the Appellant that benefit of holiday on 07<sup>th</sup> September, 2023 should be extended to the Appellant and the Appeal has to be treated within time.

**43.** In view of the fore-going discussion and conclusion, we are of the view that the Appeal was filed beyond condonable period of 15 days. Our jurisdiction to condone the delay being limited to 15 days, we are unable to condone the delay in filing the Appeal. The Delay Condonation Application (I.A. No. 5067 of 2023) is dismissed. Consequently, Memo of Appeal is rejected.

**[Justice Ashok Bhushan]  
Chairperson**

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

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

**NEW DELHI  
13<sup>th</sup> February, 2024**

*Basant*

*I.A. No. 5067 of 2023  
In Company Appeal (AT) (Insolvency) No. 1354 of 2023*