

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

**I.A. No. 2971 of 2024**

**In**

**Company Appeal (AT) (Insolvency) No. 822 of 2024**

**IN THE MATTER OF:**

**Mr. Sanjay Jain**

Having Resident address at:

DDA Flat No. 6309 2st and 2nd Floor,

Sector- C, Pocket 6 and 7,

Vasant Kunj, New Delhi – 110070.

Email id- [Shankarimishra2511@gmail.com](mailto:Shankarimishra2511@gmail.com)

**...Appellant**

**Versus**

**1. State Bank of India**

Stressed Assets Management Branch

Having Address at: 11 Floor,

Jawahar Vyapaar Bhawan, 1 Tolstoy Marg,

Janpath, New Delhi – 110001.

**...Respondent No. 1**

**2. Mr. Ashish Singh**

Resolution Professional

Having Registration No. IBBI/IPA-002/IP-  
N00416/2017-2018/11230

**Having Office Address at:**

Flat No. 901, Tower -A,

Cleo County, Sector - 121,

Noida, Uttar Pradesh 201301

Email id- [ashishsinghcs@gmail.com](mailto:ashishsinghcs@gmail.com)

**...Respondent No. 2**

**Present:**

**For Appellant : Ms. Ranjana Gawai, Ms. Shankari Mishra, Ms. Jyoti Khurana, Mr. Pervinder and Mr. Shikher, Advocates.**

**For Respondents : Ms. Anika Bajpai, Advocate for R-1.**

**Mr. Anand M. Mishra, Advocate for R-2/ RP**

## **ORDER**

**ASHOK BHUSHAN, J.**

I.A. No. 2971/2024 has been filed by the Appellant praying for condonation of 26 days delay in filing the Appeal. The Adjudicating Authority by Impugned Order dated 26.02.2024 admitted the Section 95 Application filed by the State Bank of India (SBI) against the Appellant, Sanjay Jain filed under Section 95.

**2.** In Section 95 Application, Notices were issued to the Appellant on 06.01.2023, which returned unserved. Adjudicating Authority had passed an Order permitting substituted service by Publication in the Newspapers. Notices were published in the 2 Newspapers. Adjudicating Authority passed an Order on 23.11.2023 holding that despite service of Notice by substituted mode, no one has appeared, and the Personal Guarantor is set an Ex-Parte. After the said Order, Section 95 Application was admitted by Order dated 26.02.2024.

**3.** This Appeal has been e-filed by the Appellant on 22.04.2024 with delay of 26 days. Appellant in his I.A. No.2971/2024 has prayed for following prayers:

*“1) Pass an Order for condonation of delay of 26 days in filing the Captioned Appeal;*

*2) Pass any other further order as this Appellate Tribunal may deem appropriate in the facts and circumstances of the instant case.”*

**4.** Notices were issued on delay condonation Application by Order dated 22.05.2024. A Reply to the delay condonation Application was filed.

Rejoinder Affidavit has also been filed by the Appellant to the Reply filed by the Bank. Written Submissions has also been filed by the Parties.

5. We have heard Mrs. Ranjana Gavai, Learned Counsel for the Appellant and Ms. Ankita Bajpai for the SBI and Mr. Anand M. Mishra Counsel for the Resolution Professional (RP).

6. Learned Counsel for the Appellant submits that the Appellant came to know about the Impugned Order only on 30.03.2024 when Appellant had approached the Punjab National Bank (PNB) for One Time settlement (OTS). Appellant thereafter has filed the Appeal within 30 days of the knowledge. It is submitted that Appeal having been filed within 30 days from date of knowledge is not barred by time. Learned Counsel for the Appellant submits that Appellant was never served any Notice in Section 95 Application which was filed by the SBI. It is submitted that the Notices which were issued in Section 95 Application where notice sent on address of the Appellant which is 1-42, Phase-I, Ashok Vihar, New Delhi, which was address given in the Guarantee Deed executed in the Year 2011-12. Notice sent on the said address had received back unserved. Appellant has not resided on the said address, since the said Assets were sold in the Year 2012 itself, which has been noted by the Order dated 05.03.2019, passed by the Debt Recovery Tribunal (DRT) in the matter of '**Bank of Baroda' Vs. 'M/s. Allied Perfumers Pvt. Ltd.'**' reported in **RC/327/2015 in OA/203/2013**. It is submitted that Bank was well aware that said address is no more address of the Appellant, but Notices were sent at wrong address to suppress and oust the rights of the Appellant. In the proceeding before the DRT, Appellant has shown its address

which was different from Ashok Vihar's address. Appellant having never been served, service by any other substituted mode is invalid, since there was no basis to suggest that defendant was avoiding service. A fraud was played by the Bank and without serving the Appellant, the Ex-Parte Order has been passed.

**7.** Learned Counsel for the Bank refuting the submissions of the Counsel for the Appellant submits that Appellants have given its address i.e., I-42, Phase-I, Ashok Vihar, New Delhi to the Bank, which was mentioned in the Guarantee Deed executed by the Appellant. It was the responsibility of the Appellant to inform the Bank about the updated address and email ID. The Bank has served the Appellant through substituted service i.e., Publication of the 2 Newspapers i.e., the Statesman and Rashtriya Sahara Hindi, Delhi, which is sufficient service. Appellant has deliberately avoided to appear before the Adjudicating Authority. Adjudicating Authority being satisfied that Appellant has been served has decided to proceed Ex-Parte against the Appellant and admitted Section 95 Application.

**8.** We have considered the submissions of the Counsel for the Parties and perused the record.

**9.** In the present Application being I.A. No. 2971/2024 it has to determine as to whether the Appellant has made out the case for condonation of 26 days delay as prayed in the Application. The jurisdiction to condone the delay which is vested in this Tribunal is only 15 days as per Section 61(2) proviso, which is as follows:

**“61. Appeals and Appellate Authority.**

**(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.”*

**10.** Law is well settled that this Tribunal has no jurisdiction to condone delay beyond 15 days. The Hon’ble Supreme Court in the matter of **‘National Spot Exchange Limited.’ Vs. ‘Anil Kohli, Resolution Professional for Dunar Foods Limited’**, reported in **(2022) 11 SCC 761**, has held that Appellate Tribunal has no jurisdiction at all to condone the delay exceeding 15 days. In Para 8 of the Judgment following has been laid down:

*“8. At the outset, it is required to be noted that the appellant herein has challenged the order passed by the adjudicating authority dated 6-3-2019 affirming the decision of the resolution professional of rejection of the claim of the appellant before Nclat. The appeal preferred before Nclat was under Section 61(2) of the IB Code. As per Section 61(2) of the IB Code, the appeal was required to be preferred within a period of thirty days. Therefore, the limitation period prescribed to prefer an appeal was 30 days. However, as per the proviso to Section 61(2) of the Code, the Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of 30 days if it is satisfied that there was sufficient cause for not filing the appeal, but such period shall not exceed 15 days. Therefore, the Appellate Tribunal has no jurisdiction at all to condone the delay exceeding 15 days from the period of 30 days, as contemplated under Section 61(2) of the IB Code.”*

**11.** The submission of the Appellant for explaining the delay is on the basis that Appellant came to know about the Order only on 30.03.2024, hence from 30.03.2024, the Appeal filed on 22.04.2024 is within time. Limitation for

filing an Appeal begins from the date when the Order is pronounced by the Adjudicating Authority. In the present case, Order was delivered on 26.02.2024. The Hon'ble Supreme Court in the matter of '**V Nagarajan' Vs. 'SKS Ispat & Power Limited & Ors.'**', reported in **(2022) 2 SCC 244**, had laid down about commencement of limitation for filing the Appeal had noted the difference between the Statutory Scheme under Section 421 of the Companies Act, 2013, and Section 61 of the Insolvency and Bankruptcy Code, 2016. It was held by the Hon'ble Supreme Court that omission of the words "from the date on which a copy of the Order of the Tribunal is made available to the person aggrieved from Section 421(3) to Section 61(2)" are not mere omission and power to condone the delay is slightly circumscribed and conditioned upon showing sufficient cause. In Paragraphs 24 and 28, following has been laid down:

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

***28. In this background, when timelines are placed even on legal proceedings, reading in the requirement of an "order being made available" under a general***

*enactment (Companies Act) would do violence to the special provisions enacted under IBC where timing is critical for the workability of the mechanism, health of the economy, recovery rate of lenders and valuation of the corporate debtor. IBC, as a prescriptive mechanism, affecting rights of stakeholders who are not necessarily parties to the proceedings, mandates diligence on the part of applicants who are aggrieved by the outcome of their litigation. An appeal, if considered necessary and expedient by an aggrieved party, is expected to be filed forthwith without awaiting a free copy which may be received at an indefinite stage. Hence, the omission of the words “from the date on which the order is made available” for the purposes of computation of limitation in Section 61(2) IBC, is a consistent signal of the intention of the legislature to nudge the parties to be proactive and facilitate timely resolution.”*

**12.** The present is a case where Appellant’s contention is that address on which Notices were sent to the Appellant was address of Ashok Vihar’s Assets which was sold in 2012 and Appellant has not been residing on said address subsequent to that. It is submitted that even the RP has admitted before the Adjudicating Authority on 27.04.2019, that current address of the Appellant is not available. It is on the record that when the Notices sent to the Appellant at Ashok Vihar’s address returned back, Adjudicating Authority directed for substituted service, which service was affected by the SBI and Affidavit of Service was filed before the Adjudicating Authority. Adjudicating Authority in Paragraph 4 of the Order has noted the service by substituted modes and the Personal Guarantor was set Ex-Parte. Para 4 of the Impugned Order is as follows:

*“4. In terms of the Order dated 02.12.2022, Mr. Ashish Singh was appointed as RP qua the Personal Guarantor viz the Respondent. The RP filed IA-80/2023, recommending admission of IB-561/ND/2022. The notice in the application was*

*issued on 06.01.2023. Since no one appeared on behalf of the Respondent despite service of notice, in terms of the order dated 23.11.2023, the proceedings qua the Personal Guarantor were set ex parte. The order dated 23.11.2023 reads thus:*

**IA-80/2023:** *There is no appearance on behalf of PG despite service of notice by substituted modes. Thus, the PG is set as an ex parte. Let the petition be listed for hearing on 04.01.2024.”*

**13.** In any view of the matter, the prayer for condonation of delay made in the Application is condonation of 26 days delay in filing the Appeal. Our jurisdiction to condone the delay being only 15 days.

**14.** Learned Counsel for the Appellant has placed reliance on the Judgment of the Hon’ble Supreme Court in the matter of **‘Yallawwa (Smt.)’ Vs. ‘Shantvva (Smt.)’** reported in **(1997) 11 SCC 159**. In the above case, an Application under Order 9, Rule 13, Civil Procedure Code to set aside Ex-Parte decree obtained by husband was challenged, which decree was refused to be set aside by the Trial Court by dismissing Order 9 Rule 13 Application as time barred. The Hon’ble High Court on the revision allowed the Application holding that the above was fit case for condoning the delay in filing the Application under Order 9, Rule 13. The said Judgment of the High Court was challenged in the Appeal. Hon’ble Supreme Court in the above case in Paragraph 5 has laid down following:

**“5.** *We have carefully considered the aforesaid rival contentions. In order to appreciate the main grievance of the appellant against the impugned order of the High Court, it is necessary to note at the outset that the respondent was seeking to get the order of the trial court dismissing her application under Order IX Rule 13 CPC quashed by the High Court. It is true that she moved a revision application for that purpose but the order of the trial court refusing to set aside the ex parte*



decree was clearly appealable under Order XLIII Rule 1(d) CPC which provides that an appeal shall lie from the orders listed in the said provision and in clause (d) is mentioned an order under Rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed ex parte. It cannot be disputed that a decree granting divorce under Section 13(1)(i-b) whether ex parte or bipartite is a decree which is appealable under Section 28 of the Hindu Marriage Act, 1955. Consequently, the order of the trial court refusing to set aside such an ex parte decree and rejecting the application under Order IX Rule 13 CPC could have been validly made the subject-matter of an appeal under Order XLIII Rule 1(d). Therefore, the revision application filed by the respondent before the High Court should be treated in substance as one by way of miscellaneous appeal. Once the High Court has appellate jurisdiction over the impugned order of the learned trial Judge, it is obvious that the High Court was fully competent to interfere with the order by reappreciating the facts of the case. The learned Single Judge has found that the respondent being an illiterate lady living in a different town could not have known through the newspaper that her husband had filed a divorce petition against her and, therefore, she had no knowledge about the divorce petition. Consequently, the ex parte decree could be treated as one passed against the party which was not served and which had no knowledge about the said proceedings. The learned counsel for the respondent was also justified in submitting that the trial court could not have almost automatically granted the application for substituted service without taking steps for serving the respondent by ordinary procedure as laid down by Order V Rules 12, 15 and 17 CPC. It must be kept in view that substituted service has to be resorted to as the last resort when the defendant cannot be served in the ordinary way and the court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way. In the present case, it appears that almost automatically the procedure of substituted service was resorted to. It is also clear from the record of the case that the respondent being an illiterate lady would not have known about passing of the ex parte decree earlier otherwise she could have moved for setting aside the

*decree on any day prior to the day on which she filed this application. Sufficient cause was therefore, made out for condoning the delay in filing the application for setting aside the ex parte decree. The High Court, in our opinion, has rightly come to this conclusion which calls for no interference under Article 136 of the Constitution, when substantial justice has been done to the parties and opportunity has been given to the wife to contest the divorce petition which had terminated against her without giving any hearing to her.”*

**15.** Learned Counsel for the Appellant relied on the said Judgment to support her submission that substituted service has to be resorted to as a last resort when Defendant cannot be served in the ordinary way and Court is satisfied that there is reason to believe that Defendant is keeping out of the way for the purposes of avoiding service or providing the reason cannot be served summons in the ordinary way. From Paragraph 5 of the Judgment as extracted above, it is clear that Hon'ble Supreme Court has also taken note of the fact that Respondent being illiterate lady could not have known about passing of the Ex-Parte decree earlier. It was held that High Court has rightly allowed the Application and the case does not call for any interference under Article 136 of the Constitution and substantial justice has been done to the Parties and the opportunity has been given to wife to contest the Divorce Petition. The above Judgment is on the facts of its own case and was case of setting aside the Ex-Parte Divorce decree by the High Court by allowing the Application under Order 9, Rule 13, where Hon'ble Supreme Court refused to interfere.

**16.** Learned Counsel for the Appellant has also relied on the Judgment of Hon'ble Calcutta High Court in the matter of **'Aaryan Projects Private**

**Limited.’ Vs. ‘Klowin Infrastructure Private Limited’** reported in **G.A. No. 3/2021 In C.S. No. 205/2017** decided on 30.08.2022. An Application was filed for recalling the Ex-Parte decree dated 12.06.2019 passed by the High Court, in which case also substituted service was permitted which was also published in the Newspaper. Even after substituted service, the Plaintiff has obtained the fresh summons, which was dispatched through Registered Post and returned unserved. The Court noticed that even when the service of the date of summons as well as Registered Post was pending, Planting Company manage to get the suit transferred to the undefended list. It is useful to notice Paragraphs 14 to 16 of the Judgment where following has been noted:

*“14. Subsequently, the respondent/plaintiff was allowed substituted service by this Court on December 13, 2018 and the same was published on December 23, 2018 advertising the prayers of the amended plaint. In the meanwhile, the respondent/plaintiff also got a fresh writ of summons along with copy of plaint despatched through by registered speed post with A/D on January 18, 2019. The same was returned and received by the office of Sheriff on February 06, 2019 with the endorsement “undelivered packet marked as refused”.*

*15. Whereas, an attempt for service of the writ of summons along with copy of plaint was made by the Sheriff’s office through Learned District Judge, Raipur on February 12, 2019, and the same was returned with remarks as “could not be served upon the petitioner/defendant Company due to non-existence at stated address”. Therefore, as it is evident from the facts above, the petitioner/defendant company could not be served the amended plaint and the writ of summons of such plaint each time.*

*16. It is to be noted here that even when the service of writ of summons through Court as well as Registered Post was pending, the respondent/plaintiff company managed to get the suit transferred to the undefended list on February 04, 2019 itself. A suit may be*

transferred to as 'undefended suit' in terms of Chapter IX Rule 3 of the Rules of the High Court at Calcutta (Original Side), 1914 which is reproduced below as follows –

*“3. Where written statement is not filed, suit may be transferred to the Peremptory Undefended List. – Except as provided by Chapter X, rule 27, (a) where the written statement of a sole defendant is, or the written statements of all the defendants are, not filed within the time fixed by the summons, or within such further time as may be allowed, or (b) where one or more of several defendants has or have failed to enter appearance, and the other or others has or have entered appearance but failed to file a written statement within the time fixed by the summons or further time allowed, or (c) where a defendant, who having obtained an order for transfer of a suit to this Court under section 39 of the Presidency Small Cause Court Act (XV of 1882), and having been directed under the provisions of section 40(2) of that Act to file a written statement, has failed to file the same within the time fixed, the suit shall, unless otherwise ordered by the Judge, Registrar or Master, upon requisition by the plaintiff in writing to the Registrar and production of a certificate showing such default, be transferred to the peremptory list of undefended suits.”*

*From the above Rule, it is patently clear that the instant suit could not have been transferred to the peremptory list of undefended suits by suppressing the material fact that the service of writ of summons and the plaint were pending and consequently incomplete.”*

**17.** The Hon'ble Calcutta High Court in the above case took the view that the Plaintiff has not approached the Court with the clean hand, hence the Ex-Parte decree was set aside. In Paragraph 22, following was held by allowing the Application:

*“22. In view of the above discussions, I am satisfied that the original plaint, the amended plaint as well the writ of summons for the amended plaint could not be duly served upon the petitioner/defendant company,*

*and consequently, the petitioner/defendant was prevented from appearing in the instant suit. In addition to this, an order to transfer this suit to undefended list was secured from this Court by way of suppression of material facts. In my opinion, there has been an abuse of process of Court on part of the respondent/plaintiff to have suppressed the said material facts to secure transfer of the instant suit to the undefended list.”*

**18.** In the above case, even after substituted service, Plaintiff obtained fresh summons of service which was returned unserved and when the summons were pending suit was transferred into the list of undefended case which were the reasons for allowing the Application by the Hon’ble High Court. The said Judgment was also on its own fact. The above Judgment does not help the Appellant for condonation of delay as prayed in the present Appeal.

In result, the Application for condonation of delay of 26 days is rejected.  
Memo of Appeal is also rejected.

**[Justice Ashok Bhushan]  
Chairperson**

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

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

**NEW DELHI**

**21<sup>st</sup> November, 2024**

*himanshu*