

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

**Company Appeal (AT) (Insolvency) No. 691 of 2023**

**&**

**I.A. No.2302, 2303 of 2023**

**IN THE MATTER OF:**

**Chanderpati**

**...Appellant**

**Versus**

**Soni Realtors Pvt. Ltd.**

**...Respondent**

**Present:**

**For Appellant : Mr. Swastik Singh & Mr. Himanshu Dagar,  
Advocates.**

**For Respondent : Mr. Sumesh Dhawan, Ms. VatsalaKak, Mr. Sagar  
Thakkar, Mr. Shaurya Shyam, for RP.**

**With**

**Company Appeal (AT) (Insolvency) No. 1076 of 2022**

**&**

**I.A. No.3159, 3160, 3161 of 2022**

**IN THE MATTER OF:**

**Sanjay Goyal & Anr.**

**...Appellants**

**Versus**

**Soni Realtors Pvt. Ltd. & Anr.**

**...Respondents**

**Present:**

**For Appellant : Mr. Shivam Singh, Mr. Akash Chatterjee, Mr. Pranav  
Gupta & Mr. Divyansh Mishra, Advocates.**

**For Respondent : Mr. Rakesh Bajaj, for SRA.  
Mr. Sumesh Dhawan, Ms. VatsalaKak, Mr Sagar  
Thakkar, Mr. Shaurya Shyam, for RP.**

**With**

**Company Appeal (AT) (Insolvency) No. 1085 of 2022**

**&**

**I.A. No.3198, 3143, 3199,3200 of 2022**

**IN THE MATTER OF:**

**Rambir**

**...Appellant**

**Versus**

**Soni Realtors Pvt. Ltd. & Anr.**

**...Respondents**

**Present:**

**For Appellant : Mr. Deepak Dhaiya & Mr. Manoj Kumar Gupta,  
Advocates.**

**For Respondent : Mr. Rakesh Bajaj, for SRA.  
Mr. Sumesh Dhawan, Ms. VatsalaKak, Mr Sagar Thakkar, Mr. Shaurya Shyam, for RP.**

**With  
Company Appeal (AT) (Insolvency) No. 1135 of 2022  
&  
I.A. No.3401, 3402, 3362of 2022**

**IN THE MATTER OF:**

**Sanjay Kumar Bansal**

**...Appellant**

**Versus**

**Soni Realtors Pvt. Ltd. &Ors.**

**...Respondents**

**Present:**

**For Appellant : Mr. D.N. Ray, Sr. Advocate along with Ms. Sumita Ray, Mr. Dilip Kumar Nayak and Ms. Disha Ray, Advocates**

**For Respondent : Mr. Rakesh Bajaj, for SRA.  
Mr. Sumesh Dhawan, Ms. VatsalaKak, Mr Sagar Thakkar, Mr. Shaurya Shyam, for RP.**

**With  
Company Appeal (AT) (Insolvency) No. 1136 of 2022  
&  
I.A. No.3407, 3408 of2022**

**IN THE MATTER OF:**

**Sanjay Kumar Bansal**

**...Appellant**

**Versus**

**Shri Manoj Kulshreshta&Ors.**

**...Respondents**

**Present:**

**For Appellant : Mr. Saket Sikri, Mr. Ajay Kumar Khuller, Ms. Sumita Ray, Mr. Dilip Kumar Nayak and Ms. Disha Ray, Advocates**

**For Respondent : Mr. Rakesh Bajaj, for SRA.  
Mr. Sumesh Dhawan, Ms. VatsalaKak, Mr Sagar Thakkar, Mr. Shaurya Shyam, for RP.  
Mr. Saurabh Jain, Mr. Prayag Jain, for R7 and 8  
Mr. Dheeraj Gupta, for Vandina**

**With  
Company Appeal (AT) (Insolvency) No. 757 & 758 of 2022**

&  
**I.A. No. 2080,2081, 2082, 2083,2084, 2085 of2022**

**IN THE MATTER OF:**

**Capital Ventures Pvt. Ltd** **...Appellant**

**Versus**

**Manoj Kulshrestha**  
**Resolution Professional Soni Realtors Pvt. Ltd. & Anr.** **...Respondents**

**Present:**

**For Appellant** : Mr. Abhishek Anand, Mr. Abhay Kaushik & Ms. Himani Babbar, Advocates.

**For Respondent** : Mr. Rakesh Bajaj, for SRA.  
Mr. Sumesh Dhawan, Ms. VatsalaKak, Mr Sagar Thakkar, Mr. Shaurya Shyam, for RP.

With  
**Company Appeal (AT) (Insolvency) No. 964 & 965 of 2022**  
&  
**I.A. No. 2749,2750, 2751, 2752,2753, 2754, 4956of 2022**

**IN THE MATTER OF:**

**Amit Garg** **...Appellant**

**Versus**

**Manoj Kulshrestha& Anr.** **...Respondents**

**Present:**

**For Appellant** : Mr. Dheeraj Gupta, Advocate.

**For Respondent** : Mr. Rakesh Bajaj, for SRA  
Mr. Sumesh Dhawan, Ms. VatsalaKak, Mr Sagar Thakkar, Mr. Shaurya Shyam, for RP.

With  
**Company Appeal (AT) (Insolvency) No. 1015 of 2022**  
&  
**I.A. No.2961, 2962, 2963of 2022**

**IN THE MATTER OF:**

**Sukhjinder Singh & Anr.** **...Appellants**

**Versus**

**Soni Realtors Pvt. Ltd.** **...Respondent**

**Present:****For Appellant : Mr. Manoj Kumar Gupta, Mr. Deepak Dahiya, Adv.****For Respondent : Mr. Rakesh Bajaj, for SRA.  
Mr. Sumesh Dhawan, Ms. VatsalaKak, Mr Sagar Thakkar, Mr. Shaurya Shyam, for RP.****With****Company Appeal (AT) (Insolvency) No. 1122 of 2022****&****I.A. No.3340, 3341, 3342,3343 of 2022****IN THE MATTER OF:****Somesh Arora & Anr.****...Appellants****Versus****Soni Realtors Pvt. Ltd.****Through Resolution Professional****...Respondent****Present:****For Appellant : Mr. Narender Hooda, Sr. Adv. with Mr. Deepak Narayan, Advocates.****For Respondent : Mr. Sumesh Dhawan, Ms. VatsalaKak, Mr Sagar Thakkar, Mr. ShauryaShyam, for RP.  
Mr. Rakesh Bajaj, for SRA.****With****Company Appeal (AT) (Insolvency) No. 1143 of 2022****&****I.A No.3434, 3435, 3436,3437, 3438 of2022****IN THE MATTER OF:****Rakhi Thakreja&Ors****...Appellants****Versus****Soni Realtors Pvt. Ltd. &Ors.****...Respondents****Present:****For Appellant : Mr. Rahul Malhotra, Advocates.****For Respondent : Mr. Sumesh Dhawan, Ms. VatsalaKak, Mr Sagar Thakkar, Mr. Shaurya Shyam, for RP.****With****Company Appeal (AT) (Insolvency) No. 1174 of 2022**

**&**  
**I.A. No.3500, 3536, 3537 of 2022**

**IN THE MATTER OF:**

**S. E. Investments Ltd.**

**...Appellant**

**Versus**

**Soni Realtors Pvt. Ltd. & Anr.**

**...Respondents**

**Present:**

**For Appellant : Mr. Harshal Kumar, Advocate.**

**For Respondent : Mr. Sumesh Dhawan, Ms. VatsalaKak, Mr Sagar Thakkar, Mr. Shaurya Shyam, for RP.**

**With**  
**Company Appeal (AT) (Insolvency) No. 270 of 2023**  
**&**  
**I.A. No.950, 951, 4269 of 2023**

**IN THE MATTER OF:**

**Manan Chopra**

**...Appellant**

**Versus**

**Soni Realtors Pvt. Ltd.**

**...Respondent**

**Present:**

**For Appellant : Mr. Mrinal Harsh Vardhan, Mr. DawneeshShaktivats, Mr. Kailash Ram, Advocates for Applicant in I.A. No. 4269 of 2023.**

**Mr. Abhijeet Sinha, Sr. Adv. with Mr. Rahul Kumar, Mr. Aakash Chatterjee, Advocates.**

**For Respondent : Mr. Sumesh Dhawan, Mr. VatsalaKak, Mr Sagar Thakkar, Mr. Shaurya Shyam, for RP.**

**With**  
**Comp. App. (AT) (Ins) No. 1079 of 2023**  
**&**  
**I.A. No. 3727, 3728, 4508 of 2023**

**IN THE MATTER OF:**

**Anil Chopra**

**...Appellant**

**Versus**

**Soni Realtors Pvt. Ltd.**

**...Respondent**

**Present:**

**For Appellant : Mr. Abhijeet Sinha, Sr. Advocate along with Mr. Rahul Kamal, Adv.**

**For Respondent : Mr. Sumesh Dhawan, Ms. VatsalaKak, Mr Sagar Thakkar, Mr. ShauryaShyam, for RP.**

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

**Per: Justice Rakesh Kumar Jain:**

In brief, Soni Realtors Pvt. Ltd. (Corporate Debtor) was developing a residential township under the name of ‘Palm City’ in Karnal, Haryana involving a total of 377 Plots, a Nursing Home, Nursery School, and a Commercial Land.

2. SE Investment Limited now known as Paisalo Digital Ltd. (Financial Creditor) filed an application bearing (IB)-609(ND)/2017 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short ‘Code’) before the Adjudicating Authority (National Company Law Tribunal, New Delhi, Court No. II) against M/s Soni Realtors Pvt. Ltd. (Corporate Debtor) which was admitted on 27.02.2018, Manoj Kulshreshta was appointed as Interim Resolution Professional and later on confirmed as Resolution Professional (in short ‘RP’).

3. Shorn of unnecessary details, the RP filed an application bearing CA No. 747/ND/2018 under Section 30(6) and 31(1) of the Code for approval of the resolution plan submitted by the Resolution Applicant (Srijan Infra LLP) before the Adjudicating Authority.

4. The Adjudicating Authority vide its order dated 10.06.2022 allowed the application bearing CA No. 747/ND/2018 and approved the resolution plan submitted by the Resolution Applicant.

5. Various Interlocutory Applications were also filed by the Home Buyers and others before the Adjudicating Authority in (IB)-609(ND)/2017 raising various issues.

6. Basically, aggrieved against the order dated 10.06.2022, passed in CA No. 747/ND/2018, by which the Adjudicating Authority had approved the resolution plan of the Resolution Applicant, various appeals have been filed before this Tribunal and at present a batch of thirteen appeals are pending. The detail of the appeals is as under:-

<b>Sr. No.</b>	<b>Appeal No.</b>	<b>Name of parties</b>
1.	Comp. App. (AT) (Ins) No. 691 of 2023	Chanderpati Vs. Soni Realtors Pvt. Ltd.
2.	Comp. App. (AT) (Ins) No. 1076 of 2022	Sanjay Goyal & Anr. Vs. Soni Realtors Pvt. Ltd. & Anr.
3.	Comp. App. (AT) (Ins) No. 1085 of 2022	Rambir Vs. Soni Realtors Pvt. Ltd. & Anr.
4.	Comp. App. (AT) (Ins) No. 1135 of 2022	Sanjay Kumar Bansal Vs. Soni Realtors Pvt. Ltd. & Ors.
5.	Comp. App. (AT) (Ins) No. 1136 of 2022	Sanjay Kumar Bansal Vs. Shri Manoj Kulshreshtha & Ors.
6.	Comp. App. (AT) (Ins) No. 757 & 758 of 2022	Capital Ventures Pvt. Ltd. Vs. Manoj Kulshreshtha Resolution Professional Soni Realtors Pvt. Ltd. & Anr.
7.	Comp. App. (AT) (Ins) No. 964 & 965 of 2022	Amit Garg Vs. Manoj Kulshreshtha & Anr.
8.	Comp. App. (AT) (Ins) No. 1015 of 2022	Sukhjinder Singh & Anr. Vs. Soni Realtors Pvt. Ltd.
9.	Comp. App. (AT) (Ins) No. 1122 of 2022	Somesh Arora & Anr. Vs. Soni Realtors Pvt. Ltd. Through Resolution Professional
10.	Comp. App. (AT) (Ins)	Rakhi Thakreja & Ors. Vs. Soni Realtors

	No. 1143 of 2022	Pvt. Ltd. &Ors.
11.	Comp. App. (AT) (Ins) No. 1174 of 2022	S. E. Investments Ltd. Vs. Soni Realtors Pvt. Ltd. & Anr
12.	Comp. App. (AT) (Ins) No. 270 of 2023	Manan Chopra Vs. Soni Realtors Pvt. Ltd.
13.	Comp. App. (AT) (Ins) No. 1079 of 2023	Anil Chopra Vs. Soni Realtors Pvt. Ltd.

7. Although these appeals are pending for some time but no effective order has been passed in these appeals as yet. Counsel appearing on behalf of the RP has raised an objection regarding the maintainability of these appeals, inter alia, on the ground that since the impugned order was passed on 10.06.2022 and the period of 30 days prescribed for filing the appeal had expired on 10.07.2022 and a further period of 15 days had also expired on 25.07.2022 but these appeals have been filed without annexing the certified copy of the impugned order and the certified copies of the impugned order were applied much after the expiry of period of 45 days, therefore, these appeals are not maintainable and deserves to be dismissed.

8. The RP has prepared a chart in which he has shown the number of appeals alongwith name of the parties, date of filing of the appeal and the delay, if any, occurred in filing, I.A if any, filed for condonation of delay, certified copy whether annexed or not and or the date when it is filed for obtaining the same and I.A. for seeking exemption from filing certified copy of the order. The said chart is reproduced as under:-

<b>Before the National Company Law Appellate Tribunal, Principal Bench, New Delhi</b> <b>Re: Appeals in the matter of Soni Realtors Pvt. Ltd.</b>						
		Date of Impugned Order		10.06.2022		
		Date of Expiry of 30 days		10.07.2022		
		Date of Expiry of 45 days		25.07.2022		
Sr. No.	Name	Date of Filing	IA for condonation of delay	for	Certified Copy	IA for seeking Exemption from filing certified



					copy of the order
1.	Chanderpati Vs. Soni Realtors Pvt. Ltd.  Comp. App. (AT) (Ins) No. 691 of 2023	Appeal filed on 11.07.2022  Delay of 1 day in filing appeal	Application for condonation of delay is not filed.	Only Photocopy of certified copy is filed, which was applied on 28.09.2022	IA No. 2302/2023 @ Pg. No. 210  Application filed for seeking exemption from filing certified copy.
2.	Sanjay Goyal & Anr. Vs. Soni Realtors Pvt. Ltd. & Anr.  Company Appeal (AT) (Ins) No. 1076 of 2022	Appeal filed on 13.07.2022.  Delay of 3 days in filing appeal	IA No. 3161 of 2022  Application for condonation of delay is filed with the appeal  However, Condonation is sought for only two days.	Certified copy of impugned order is not filed	IA No. 3160/2022 @ Pg. No. 342  Application filed for seeking exemption from filing certified copy.
3.	Rambir Vs. Soni Realtors Pvt. Ltd. & Anr.  Company Appeal (AT) (Ins) No. 1085 of 2022	Appeal filed on 14.07.2022  Delay of 4 days in filing appeal	IA No. 3198 of 2022 @ Pg. No. 290  Application for condonation of delay is filed with the appeal  Condonation is sought for 4 days	Certified copy of the impugned order is filed, which was certified copy applying on 05.08.2022	IA No. 3199 of 2022  Application filed for seeking exemption from filing certified copy.
4.	Sanjay Kumar Bansal Vs. Soni Realtors Pvt. Ltd. & Ors. Company Appeal (AT) (Ins) No. 1135 of 2022	Appeal filed on 26.07.2022  Delay of 16 days in filing appeal	IA No. 3402/2022  Application for condonation of delay is filed.	Certified copy of the impugned order is filed  However, certified copy is applied on 12.08.2022	
5.	Sanjay Kumar Bansal Vs. Soni Realtors Pvt. Ltd. & Ors. Company Appeal (AT) (Ins) No. 1136 of 2022	Appeal filed on 11.07.2022  Delay of 1 day in filing appeal	Application for condonation of delay is not filed.	Certified copy of the impugned order is filed.  However, certified copy is applied on 12.08.2022.	
6.	Capital Ventures Pvt. Ltd. Vs.	Appeal filed on 05.07.2022		Certified copy of impugned	IA No. 2082-2083/2022 @ Pg. No. 832

	Manoj Kulshrestha RP of Soni Realtors Pvt. Ltd. &Ors. Company Appeal (AT) (Ins) No. 757 & 758 of 2022	There is no delay in filing appeal.		order is not filed	Application filed for seeking exemption from filing certified copy.
7.	Amit Garg Vs. Manoj Kulshreshtra& Anr. Company Appeal (At) (Ins) No. 964 and 965 of 2022	Appeal filed on 22.07.2022.  Delay of 12 days in filing appeal	IA No. 2753-2754/2022 @ Pg. No. 514  Condonation of delay Application is filed. However, no. of days are not specified in the application for condonation of delay.	Certified copy of the impugned order is not filed.	IA No. 2751-2752 of 2022 @ Pg. No. 509  Application filed for seeking exemption from filing certified copy.
8.	Sukhjinder Singh & Anr. Vs. Soni Realtors Pvt. Ltd. Company Appeal (AT) (Ins) No. 1015 of 2022	Appeal filed on 11.07.2022. Delay of 1 day in filing appeal.	IA No. 2963 of 2022 @ Pg. No. 266 Condonation of Delay application is filed.  Condonation is sought for 1 day.	Certified copy of the impugned order is filed.  However, certified copy is applied on 21.07.2022	IA No. 2961/2023 @ Pg. No. 248 Generic Application is filed seeking exemption from filing typed/certified etc.
9.	Somesh Arora & Anr. Vs. Soni Realtors Pvt. Ltd. Company Appeal (AT) (Ins) No. 1122 of 2022 No specific IA is challenged	Appeal filed on 26.07.2022.  Delay of 16 days in filing appeal.	IA No. 3340 of 2022 @ Pg. No. 512  Condonation of delay application is filed  However, Condonation is sought for only 11 days	Certified copy of impugned order is not attached	IA No. 3342 of 2022 @ Pg. No. 488 Application filed for seeking exemption from filing certified copy.
10.	Rakhi Thareja&Ors. Vs. Soni Realtors Pvt. Ltd. Company Appeal (AT) (Ins) No. 1143 of 2022 No specific prayer	Appeal filed on 21.07.2022.  Delay of 11 days in filing appeal	IA No. 3434 of 2022 @ Pg. No. 585 Condonation of delay application is filed However, Condonation is sought for only 4 days	Certified copy of impugned order is not attached	IA No. 3437 of 2022 @ Pg. No. 569 Application filed for seeking exemption from filing certified copy.
11.	S.E. Investment Ltd. Vs. Soni Realtors Pvt. Ltd. Company Appeal	Appeal filed on 22.07.2022. Delay of 12 days in filing	IA No. 3538 of 2022 Condonation of delay application is filed. However,	Certified copy of impugned order is not attached.	IA No. 3537 of 2022 @ Pg. No. 835 Application filed for seeking exemption from

	(AT) (Ins) No. 1174 of 2022	appeal.	condonation is sought of only 9 days.		filing certified copy.
12.	Manan Chopra Vs. Soni Realtors Pvt. Ltd. Company Appeal (AT) (Ins) No. 270 of 2023	Appeal filed on 11.07.2022 Delay of 1 day in filing appeal	Condonation of delay application is not filed	Certified copy of the impugned order is attached. However, certified copy of the impugned order applied on 28.09.2022.	
13.	Anil Chopra Vs. Soni Realtors Pvt. Ltd. Company Appeal (AT) (Ins) No. 1079 of 2023	Appeal filed on 11.07.2022. Delay of 1 day in filing appeal	Application for condonation of delay is not filed.	Only photocopy of certified copy is attached, which was applied on 28.09.2022.	IA No. 3727 of 2023 @ Pg. No. 223 Application filed for seeking exemption from filing certified copy.

9. The argument raised by Counsel for the RP is that the filing of certified copy is mandatory in an appeal filed under the Code before the Appellate Tribunal as held by the Hon'ble Supreme Court in the case of V. Nagarajan (Supra) and since the certified copy either has not been annexed or it has been applied even after the expiry of the prescribed period of 30 days much less the period of 15 days also, therefore, the limitation to file the appeal within the period prescribed had expired and hence, these appeals are not maintainable.

10. To support his arguments, he has relied upon judgments of the Hon'ble Supreme Court and this Tribunal rendered in the cases of V. Nagarajan Vs. SKS Ispat and Power Limited &Ors. (2022) 2 SCC 244, Sanket Kumar Agarwal & Anr. Vs. APG Logistics, 2023 SCC Online SC 976, Jindal Power Limited. Vs. Dushyan C. Dave, Liquidator of Shirpur Power Pvt. Ltd. &Ors. Company Appeal (AT) (Ins) No. 11 of 2023 and Gaurav

Agarwal Vs. CA Devang P. Sampat, Liquidator of MAA Mahamaya Steels Pvt. Ltd. Company Appeal (AT) (Ins) No. 916 of 2022.

11. On the other hand, D. N. Ray, Counsel Appearing in CA (AT) (Ins) No. 1085 of 2022 has submitted that the impugned order was passed on 10.06.2022 but the appeal having been filed through e-filing on 11.07.2022 is within the prescribed period of 30 days because the period of limitation is to be calculated by excluding the date on which the order was passed in view of Rule 3 of the NCLAT Rules, 2016 (in short 'Rules') and Section 12(1) of the Limitation Act 1963 (in short 'the Act'). In this regard, he has referred to the decision of the Hon'ble Supreme Court in the case of Sanket Kumar Aggarwal & Anr. (Supra). It is further submitted that since the hard copy of the appeal was filed on 14.07.2022, therefore, as an abundant caution, the Appellant has filed an application i.e. I.A. No. 3198 of 2022 for seeking condonation of delay of four days otherwise, the appeal is within the period of 30 days. He has further referred to an order dated 01.07.2022 passed in I.A. No. 2929 of 2022 which was filed by the RP for clarification of the order dated 10.06.2022 regarding some typographical error which had occurred due to mentioning of the status of the IA's in the last page no. 131 qua CA-946/ND/2019 & IA-35/ND/2021 as 'stands allowed' whereas both the applications were dismissed. The said application was disposed of on 01.07.2022 with necessary corrections and thus according to him, the limitation would commence from 01.07.2022 instead of 10.06.2022. In this regard, he has relied upon a decision of this Court in the case of Ashok Tiwari Vs. Tattva & Mittal Lifepaces Pvt. Ltd., 2023 SCC Online NCLAT 2179 in which the following observations have been made:-

“4. We have considered the submissions made by both sides and we find that the Appellant herein had filed for rectification of Order dated 17.01.2023 on 15.02.2023 which is within 30 days of the said Order. The Order dated 17.01.2023 was partly rectified vide Order dated 21.03.2023 and, excluding the period taken for obtaining the certified copy, the Appeal has been filed within 30 days of the said Order. The Order dated 17.01.2023 has merged with the Order dated 21.03.2023 due to partial rectification.”

12. It is further argued that the Appellant has filed the appeal alongwith application i.e. I.A. No. 3199 of 2022 for seeking exemption from filing the certified copy which is still pending in which the order is yet to be passed by this Court though it is not disputed that the certified copy was applied on 05.08.2022, allegedly after the expiry of limitation prescribed under Section 61(2) of the Code. He has argued that I.A. No. 3199 of 2022 has been filed invoking Rule 11 which deals with the inherent powers of this Tribunal, Rule 14 deals with the power of this Tribunal to exempt and Rule 15 deals with the power of this Tribunal to extend time and submitted that the application i.e. I.A. No. 3199 of 2022 may be allowed and the time may be extended for the purpose of placing on record the certified copy of the impugned order. He has also argued that since the appeal was filed within the period of 30 days though without certified copy, therefore, it is only a formal defect in filing the appeal which is curable and contended that the decision of the Hon'ble Supreme Court in the case of V. Nagarajan (Supra), relied upon by the Respondent, is not applicable to the facts of this case because in the said case two questions were answered as to 'when will the clock for calculating the limitation period run for appeals filed under the Code and as to whether annexing of a certified copy is mandatory for an appeal to NCLAT against an order passed under the Code'. According to him,

there was no such question posed before the Hon'ble Supreme Court in the said case that if the appeal is filed within the period of limitation though without a certified copy and an application for seeking exemption from filing certified copy is filed alongwith appeal invoking Rule 14, even if the certified copy is obtained after the expiry of 30 days or even 45 days, is a formal defect which is curable after the filing of the certified copy, with the permission of the Court, as it would relate back to the filing of the appeal. He has further argued that decision in the cases of Sanket Kumar Agarwal (Supra) as well as Jindal Power Limited (Supra) are also not applicable to the facts of this case and are thus wrongly relied upon by Counsel for the Respondent. He has however relied upon a decision of the Hon'ble Supreme Court in the case of Collector Land Acquisition, Anantnag & Anr. Vs. Mst. Katiji&Ors. 1987 2 SCC 107 in which the Hon'ble Supreme Court laid down various principles for adopting liberal approach in condoning the delay in matters instituted in Court.

13. In so far as CA (AT) (Ins) No. 1135 of 2022 is concerned, it has also been argued by D. N. Ray, Counsel appearing on behalf of the Appellant that this Appeal has been filed on 26.07.2022, after a delay of 16 days in filing of the appeal and I.A. No. 3402 of 2022 has also been filed for condonation of delay. In this case, the certified copy was applied on 12.08.2022 but no application has been filed under Rule 11 and 14 for the purpose of seeking exemption from the filing of certified copy.

14. In rebuttal, while arguing CA (AT) (Ins) No. 1085 of 2022, Counsel for the Respondent has submitted that the impugned order was passed on 10.06.2022 and if limitation is to be counted from 11.06.2022, in terms of

the Rule 3 and Section 12 of the Act, the appeal could have been filed till 11.07.2022 but it has been filed on 14.07.2022, beyond the period of 30 days for which the Appellant has filed an application for seeking condonation of delay of four days, therefore, the appeal cannot be stated to have been filed within the period of 30 days which is prescribed under Section 61(2) of the Code. It is further submitted that even if there is an order passed by the Adjudicating Authority for rectification of the order on 01.07.2022 on the application of the Respondent, it would not extend the period of limitation for filing the appeal from 01.07.2022 as it was only a rectification of an error of omission. It is submitted that in any case, the certified copy has been applied after the expiry of 30 days, prescribed under Section 61(2) of the Code, therefore, the decision of the Hon'ble Supreme Court in the case of V. Nagarajan (Supra) would apply. It is also argued that in so far as the application i.e. I.A. No. 3199 of 2022 is concerned, it should have been pressed by the Appellant initially when the notice in the appeal was issued.

15. In rebuttal to the argument raised by the Appellant in CA (AT) (Ins) No. 1135 of 2022, it is submitted that the appeal itself has been filed on 26.07.2022, therefore, it is barred by limitation of at least 15 days if the limitation is to be counted from 11.07.2022 for which an application has also been filed for the condonation of delay which has not been allowed so far. It is further submitted that in this case also the certified copy was applied on 12.08.2022 even after the expiry of 45 days. It is submitted that the Appellant has not filed any application for exemption from filing certified copy in this case and hence, the appeal deserves to be dismissed as no

automatic exemption is permissible in view of the decision of the Hon'ble Supreme Court rendered in the case of V. Nagarajan (Supra).

16. Saket Sikri, Counsel appearing on behalf of the Appellant has argued CA (AT) (Ins) No. 1136 of 2022. It is submitted by him that since the impugned order was passed on 10.06.2022 and the appeal has been filed on 11.07.2022, therefore, this appeal is within limitation because the period would start running from 11.06.2022 as the date on which the impugned order was passed has to be excluded as per Rule 3 and Section 12 of the Act. In this case also, the certified copy was applied on 12.08.2022, even after the expiry of total period of 45 days and without filing an application for seeking exemption from filing certified copy of the impugned order. Counsel for the Appellant has submitted that filing of the certified copy after the order is passed by the Court is a curable defect and in this regard, he has referred to a decision of the Hon'ble Supreme Court rendered in the case of Vidyawati Gupta and Ors. Vs. Bhakti Hari Nayak and Ors. (2006) 2 SCC 777 and has referred to Paras 49 and 50 which is reproduced as under:-

“49. In this regard we are inclined to agree with the consistent view of the three Chartered High Courts in the different decisions cited by Mr. Mitra that the requirements of Order VI and Order VII of the Code, being procedural in nature, any omission in respect thereof will not render the plaint invalid and that such defect or omission will not only be curable but will also date back to the presentation of the plaint. We are also of the view that the reference to the provisions of the Code in Rule 1 of Chapter VII of the Original Side Rules cannot be interpreted to limit the scope of such reference to only the provisions of the Code as were existing on the date of such incorporation. It was clearly the intention of the High Court when it framed the Original Side Rules that the plaint should be in conformity of the provisions of Order VI and Order VII of the Code. By necessary implication reference will also have to be made to Section 26 and Order IV of the Code which,



along with Order VI and Order VII, concerns the institution of suits. We are *ad idem* with Mr. Pradip Ghosh on this score. The provisions of Sub-rule (3) of Rule 1 of Order IV of the Code, upon which the Division Bench of the Calcutta High Court had placed strong reliance, will also have to be read and understood in that context. The expression "duly" used in Sub-rule (3) of Rule 1 of Order IV of the Code implies that the plaint must be filed in accordance with law. In our view, as has been repeatedly expressed by this Court in various decisions, rules of procedure are made to further the cause of justice and not to prove a hindrance thereto. Both in the case of *Khayumsab* (*supra*) and *Kailash* (*supra*), although dealing with the amended provisions of Order VIII Rule 1 of the Code, this Court gave expression to the salubrious principle that procedural enactments ought not to be construed in a manner which would prevent the Court from meeting the ends of justice in different situations.

50. The intention of the legislature in bringing about the various amendments in the Code with effect from 1st July, 2002 were aimed at eliminating the procedural delays in the disposal of civil matters. The amendments effected to Section 26, Order IV and Order VI Rule 15, are also geared to achieve such object, but being procedural in nature, they are directory in nature and non-compliance thereof would not automatically render the plaint non-est, as has been held by the Division Bench of the Calcutta High Court."

17. He has also relied upon a decision of the Division Bench of Hon'ble Delhi High Court passed in the case of *ONGC Ltd. Vs. Joint Venture of Sai Rama Engineering Enterprises & Megha Engineering & Infrastructure Ltd.* 2023 SCC Online Del 63 to contend that the defect in the appeal having not been filed with the certified copy is curable by filing the same even if it is applied and obtained after the expiry of limitation. As according to him, every improper filing is not non-est.

18. In rebuttal, Counsel appearing on behalf of the Respondent has argued that even if it is presumed that the appeal is filed within the period

of limitation but the fact would remain that the certified copy has been applied on 12.08.2022, even after the expiry of period of 30 + 15 days and that too without any application for seeking exemption from filing the certified copy of the impugned order.

19. Abhishek Anand, Counsel appearing on behalf of the Appellant has argued CA (AT) (Ins) No. 757 & 758 of 2022 which is in fact a single appeal. It is alleged that the appeal has been filed within the period of 30 days. The certified copy is not filed but I.A No. 2082-2083 of 2022 has been filed seeking exemption from filing the certified copy of the impugned order. He has adopted the argument of the Appellant in previous appeals mentioned hereinabove but in addition, it is submitted that the decision in the case of Jindal Power Limited (Supra) is not applicable because in that case the appeal was filed after 45 days and the limitation was sought to be extended on the ground that the certified copy was applied on 44<sup>th</sup> day i.e. 15.09.2022 and obtained on 19.09.2022 and the said period was sought to be excluded about which the Court has said that the period for applying the certified copy and its preparation can be excluded only if the certified copy is applied within the prescribed period of limitation i.e. 30 days and not during the period of 15 days, a period which may be extended on showing sufficient cause provided under Section 61(2) proviso.

20. In rebuttal, Counsel for the Respondent has submitted that these appeals have been filed on 05.07.2022 and are within the period of limitation. The certified copy is not filed but I.A. No. 2082-2083 of 2022 has been filed for seeking exemption from filing certified copy of the impugned order and has reiterated the argument raised in aforesaid appeals.

21. Rahul Malhotra, Counsel appearing on behalf of the Appellant has argued CA (AT) (Ins) No. 1143 of 2022. This appeal has been filed on 21.07.2022. I.A No. 3434 of 2022 has been filed for seeking condonation of delay. The certified copy has not been annexed but the application bearing I.A. No. 3437 of 2022 has been filed for seeking exemption from filing certified copy of the impugned order. He has also adopted the argument raised by other counsels appearing on behalf of the Appellants which we have noticed in the earlier part of this order and has also relied upon a decision of the Hon'ble Supreme Court in the case of Deepak Bajaj Vs. State of Maharashtra & Anr., (2008) 16 SCC 14 to contend that the judgment of a court is not to be read mechanically as a Euclid's theorem nor as if it were a statute because every case is decided on its own facts. He has submitted that the judgments in the case of V. Nagarajan (Supra), Sanket Kumar Agarwal (Supra), Jindal Power Limited (Supra) and Gaurav Agarwal (Supra) are all on their own facts and has not dealt with the issue which has been raised by the Respondent in the present appeals. He has also relied upon a decision of the Hon'ble Supreme Court in the case of Sambhaji and Ors. Vs. Gangabai and Ors. (2008) 17 SCC 117 and referred to Para 10 and 14 which are reproduced as under:-

“10. All the rules of procedure are the handmaids of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions [of CPC](#) or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.

14. Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. A Procedural prescription is the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.”

22. On the other hand, Counsel for the Respondent has argued that this appeal is already barred by limitation by at least 10 days having been filed on 21.07.2022 even if the period of limitation is to be counted from 11.06.2022. It is also submitted that the application for condonation of delay has not yet been decided and shall be argued separately as it is not the issue in the present case. The certified copy has not been attached by the Appellant though the application for seeking exemption from filing the certified copy of the impugned order has been filed. Rest of the argument raised in respect of the other cases and also their objection has been reiterated.

23. Shivam Singh, Counsel appearing on behalf of the Appellant has argued CA (AT) (Ins) No. 1076 of 2022. This appeal has also been filed on 13.07.2022. There is an application for condonation of delay bearing I.A. No. 3161 of 2022 and I.A. No. 3160 of 2022 for seeking exemption from filing certified copy of the impugned order but the certified copy has not been attached. He has adopted the argument of other counsels appearing on behalf of the Appellants and in rebuttal, Counsel for the Respondent has reiterated his stand taken in aforesaid appeals.

24. Dheeraj Gupta, Counsel appearing on behalf of the Appellant has argued CA (AT) (Ins) No. 964 & 965 of 2022. This appeal is filed on 22.07.2022 and thus there is a delay in filing the appeal for which the application bearing 2753-2754 of 2022 has been filed. I.A No. 2751-2752 of

2022 has also been filed for seeking exemption from filing certified copy of the impugned order but the certified copy has not filed nor there is any indication that the certified copy has been applied. He has submitted that the appeal has been efiled on 11.07.2022 but the hard copy was filed on 22.07.2022. According to him, the limitation is to be counted from the date of efilng.

25. In rebuttal, Counsel for the Respondent has submitted that the Appellant has himself filed an application for condonation of delay though without specifying the number of days of delay in filing the appeal. It is submitted that the said application is yet to be decided. He has also submitted that the limitation, at the time when the appeal was filed is to be counted from the date of filing of the hard copy though the said circular was later on withdrawn and the limitation was held to be counted from the date of efilng.

26. Abhijeet Sinha, Sr. Adv. appearing on behalf of the Appellant has argued CA (AT) (Ins) No. 270 of 2023 and 1079 of 2023. These appeals were filed on 11.07.2022. It is submitted that these appeals are within the period of 30 days and the certified copy has been applied on 28.09.2022 in these appeals. These appeals have been filed with the photocopy of the impugned order. The application for seeking exemption from filing the certified copy has not filed in CA (AT) (Ins) No. 270 of 2023 but in CA (AT) (Ins) No. 1079 of 2023 the application for seeking exemption from filing the certified copy of the impugned order has been filed. He has also adopted the argument raised by other counsel appearing on behalf of the Appellant and in rebuttal,

Counsel for the Respondent has reiterated its stand taken in the other appeals for the purpose of their dismissal.

27. Narender Hooda, Sr. Counsel appearing on behalf of the Appellant has argued CA (AT) (Ins) No. 1122 of 2022. He has submitted that the certified copy was applied on 07.07.2022. It was prepared on 18.07.2022. The appeal was filed through e-filing on 21.07.2022 with I.A No. 3342 of 2022 for seeking exemption from filling certified copy of the impugned order. The certified copy was delivered on 26.07.2022 and the appeal was filed through hard copy on the same date i.e. 26.07.2022. It is submitted that the appeal has been filed on 21.07.2022 through e-filing. He has also adopted the argument of other counsels in support of his case.

28. On the other hand, Counsel for the Respondent has submitted that since the impugned order was passed on 10.06.2022 and if the date on which the order was passed is to be excluded, the limitation would start running from 11.06.2022 and shall come to end on 11.07.2022 whereas the appeal through e-filing was filed on 21.07.2022 and hard copy is filed on 26.07.2022, therefore, the Appellant has himself filed an application bearing I.A. No. 3340 of 2022 for condonation of delay of 11 days. It is argued that the application for condonation of delay, filed under Section 61(2) of the proviso, is a separate subject matter.

29. Himanshu Dagar, Counsel appearing on behalf of the Appellant has argued CA (AT) (Ins) No. 691 of 2023. This appeal is filed on 11.07.2022, therefore, it is within the period of 30 days but the certified copy was applied on 28.09.2022 and an application bearing I.A. No. 2302 of 2023 is filed for seeking exemption from filing certified copy of the impugned order.

30. No one came forward on behalf of the other Appellants to argue the rest of the appeals.

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

32. Appeals before the Appellate Authority are filed under Section 61 of the Code. The relevant part of Section 61 of the Code is reproduced as under:-

“61. Appeals and Appellate Authority. -

(1) Notwithstanding anything to the contrary contained under the Companies Act 2013 (18 of 2013), any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.

(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.”

33. The above provisions have in fact four parts (i) any person aggrieved by the order of the Adjudicating Authority may file an appeal (ii) the statutory right of an appeal can be exercised within a period of 30 days (iii) if the appeal is not filed within a period of 30 days, it can still be filed up to a period of 15 days but after assigning a sufficient cause (iv) no appeal can be filed after the expiry of 15 days.

34. The procedure for filing an appeal is laid down in Part III ‘Institution of appeals-procedure’ of the NCLAT Rules, 2016 (in short ‘Rules’) in which Rule 22 and 31 are relevant and are reproduced as under:-

**“22. Presentation of appeal.-** (1) Every appeal shall be presented in Form NCLAT-1 in triplicate by the appellant or petitioner or applicant or respondent, as the case may be, in person or by his

duly authorised representative duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same.

(2) Every appeal shall be accompanied by a certified copy of the impugned order.

(3) All documents filed in the Appellate Tribunal shall be accompanied by an index in triplicate containing their details and the amount of fee paid thereon.

(4) Sufficient number of copies of the appeal or petition or application shall also be filed for service on the opposite party as prescribed.

(5) In the pending matters, all other applications shall be presented after serving copies thereof in advance on the opposite side or his advocate or authorised representative.

(6) The processing fee prescribed by the rules, with required number of envelopes of sufficient size and notice forms as prescribed shall be filled along with memorandum of appeal.

**31. Interlocutory applications.-** Every interlocutory application for stay, direction, condonation of delay, exemption from production of copy of order appealed against or extension of time prayed for in pending matters shall be in Form NCLAT-2 and the requirements prescribed in that behalf shall be complied with by the applicant, besides filing a affidavit supporting the application.”

35. As per Rule 22, every appeal has to be presented in Form NCLAT-1 and as per Rule 22(2) every appeal is to be accompanied by a certified copy of the impugned order. Rule 31 pertains to the Interlocutory Applications which may be for stay, direction, dispensing with, condonation of delay or calling of records and all such applications are to be filed in Form NCLAT-2.

36. Chapter- I of the Rules deals with definitions, forms etc. in which Rule 11, 14 and Rule 15 are relevant which are reproduced as under:-

**“11. Inherent powers.-** Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Appellate Tribunal to make such orders or give such directions as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Appellate Tribunal.



**14. Power to exempt.-** The Appellate Tribunal may on sufficient cause being shown, exempt the parties from compliance with any requirement of these rules and may give such directions in matters of practice and procedure, as it may consider just and expedient on the application moved in this behalf to render substantial justice.

**15. Power to extend time.-** The Appellate Tribunal may extend the time appointed by these rules or fixed by any order, for doing any act or taking any proceeding, upon such terms, if any, as the justice of the case may require, and any enlargement may be ordered, although the application therefore is not made until after the expiration of the time appointed or allowed. ”

37. Rule 11 talks of inherent powers of the Appellate Tribunal and Rule 15 about the extension of time appointed either under the Rules or fixed by the order of the Tribunal. Rule 14 gives the power to the Appellate Tribunal to exempt and has the following parts (i) for seeking exemption from compliance with the requirement of the Rules, the Appellant has to assign sufficient cause (ii) the Appellate Tribunal may give directions as it may consider just and expedient to render substantial justice and (iii) the power to exempt has to be exercised on the application moved in that behalf.

38. Rule 22(2) has been interpreted by the Hon'ble Supreme Court in the case of V. Nagarajan (Supra) and it has been held that filing of the certified copy of the impugned order is mandatory, however, Rule 14 gives the power to the Appellate Tribunal to exempt the parties from complying with any of the requirement of the Rules on sufficient cause being shown and on the application moved in that regard.

39. In these cases, appeals have been filed under Section 61 of the Code, some of the appeals have been filed within the prescribed period of 30 days, some of the appeals have been filed within the extended period of 15 days

alongwith an application for seeking exemption from filing certified copy of the impugned order and an application for seeking condonation of delay and some of the appeals have been filed either within 30 days or within the extended period of 15 days but without an application for seeking exemption from filing certified copy of the impugned order, however, out of 13 appeals, in one appeal it is alleged that the certified copy was applied within the period of 30 days but in rest of the appeals it is beyond the period of even 45 days.

40. It is pertinent to mention that Appeals No. 691 of 2023, 757 & 758 of 2022, 1015 of 2022 and 1079 of 2023 (four appeals) have been filed within the period of 30 days without certified copy of the impugned order but with an application for seeking exemption from filing certified copy of the impugned order. Appeals No. 1076 of 2022, 1085 of 2022, 964 & 965 of 2022, 1122 of 2022, 1143 of 2022 and 1174 of 2022 (six appeals) have been filed within the extended period of 15 days alongwith an application for condonation of delay and an application for seeking exemption from filing certified copy of the impugned order. Whereas Appeals No. 1135 of 2022, 1136 of 2022 and 270 of 2023 (three appeals) have either been filed within a period of 30 days or within the extended period of 15 days but all without any application for seeking exemption from filing certified copy of the impugned order in terms of Rule 14 of the Rules.

41. The objection raised by the Respondent in all these appeals is that since the certified copy has not been applied within a period of 30 days, therefore, the limitation to file the appeal has expired which cannot be cured even by allowing an application for seeking exemption from filing certified

copy of the impugned order. Counsel for the Respondent has heavily relied upon the decisions of the Hon'ble Supreme Court and this Appellate Tribunal in the cases of V. Nagarajan (Supra), Sanket Kumar Agarwal (Supra), Jindal Power Limited (Supra) and Gaurav Agarwal (Supra).

42. On the other hand, Counsel for the Appellant has submitted that the decisions in the cases of V. Nagarajan (Supra) and other judgments relied upon by the Respondent are not applicable to the facts of this case and has emphatically relied upon a decision of the Supreme Court in the case of Deepak Bajaj (Supra) to contend that every case has to be decided on its own facts.

43. In order to appreciate their respective arguments, we shall now refer to the facts of all the four cases relied upon by the Respondent and the ratio laid down by the Hon'ble Supreme Court and this Appellate Tribunal.

44. Facts of the case of V. Nagarajan (Supra) are that the Adjudicating Authority pronounced the order on 31.12.2019 in the open court in the presence of the Appellant. The Judgment was uploaded on the website on 12.03.2020. However, the name of judicial member was incorrectly mentioned in the uploaded order, therefore, the corrected order was uploaded on 20.03.2020. The Appellant claims to have awaited the issue of a free copy and sought free copy on 23.03.2020 in terms of Section 420(3) of the Companies Act, 2013 (in short 'the Act, 2013') r/w Rule 50 of the NCLT, Rules, 2016 (in short 'NCLT Rules'). According to the Appellant, the free copy was not issued. The Appeal before this Tribunal was filed on 08.06.2020 with an application for exemption from filing the certified copy of the order as it had not been issued. The appeal was dismissed by this

Tribunal on 13.07.2020 being barred by limitation. It noted that the statutory period had expired and application for condonation of delay had not been filed. It further noted that Rule 22 of the NCLAT Rules, 2016 (in short 'NCLAT Rules') provides that every appeal must be accompanied with a certified copy of the impugned order, which had not been annexed.

45. The argument raised by the Appellant before the Hon'ble Supreme Court in the aforesaid case was that Section 420(3) of the Act and Rule 50 of the NCLT Rules mandates a free copy of the order to be issued to every party. This obviates the need for any party to obtain a certified copy of the order it seeks to impugn by way of an appeal, therefore, the clock of limitation would run from the date of free copy is issued. It was also urged that Rule 22 of the NCLAT Rules mandates a certified copy of the order for filing an appeal but Rule 14 of the NCLAT Rules permits a waiver from compliance with any of the rules, which has been usually granted in case of a downloaded online copy, in lieu of a certified copy of the order.

46. On the other hand, submissions made by the Respondent noticed in the aforesaid judgment that Section 421(3) of the Act is not applicable to the proceedings under the Code and as per Rule 22 of the NCLAT Rules, the appeal has to be accompanied with a certified copy of the impugned order which was not filed by the Appellant.

47. In view of the aforesaid facts, two questions were framed by the Hon'ble Supreme Court, namely, (i) when will the clock for calculating the limitation period run for appeals filed under the Code and (ii) is the annexing of a certified copy mandatory for an appeal to NCLAT against an order passed under the Code.

48. In so far as the first question is concerned, the Hon'ble Supreme Court has observed that "the notable difference between Section 421(3) of the Companies Act and Section 61(2) of the 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".

49. It further held that "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 the 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. The 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) of the IBC, is a consistent signal of the intention of the legislature to nudge the parties to be proactive and facilitate timely resolution."

50. In respect of second question, the Hon'ble Supreme Court, while referring to Rule 22 of the NCLAT Rules held that "therefore, it cannot be said that the parties can automatically dispense with their obligation to apply for and obtain a certified copy for filing an appeal. Any delay in receipt of a certified copy, once an application has been filed, have been envisaged by the legislature and duly excluded to not cause any prejudice to a litigant's right to appeal". The Hon'ble Supreme Court has referred to Section 12 of the Limitation Act, 1963 (in short 'the Act of 1963') and has made the following observations:-

"31. The import of Section 12 of the Limitation Act and its explanation is to assign the responsibility of applying for a certified copy of the order on a party. A person wishing to file an appeal is expected to file an application for a certified copy before the expiry of the limitation period, upon which the "time requisite" for obtaining a copy is to be excluded. However, the time taken by the court to prepare the decree or order before an application for a copy is made cannot be excluded. If no application for a certified copy has been made, no exclusion can ensue. In fact, the explanation to the provision is a clear indicator of the legal position that the time which is taken by the court to prepare the decree or order cannot be excluded before the application to obtain a copy is made. It cannot be said that the right to receive a free copy under Section 420(3) of the Companies Act obviated the obligation on the appellant to seek a certified copy through an application. The appellant has urged that Rule 14 of the NCLAT Rules empowers the NCLAT to exempt parties from compliance with the requirement of any of the rules in the interests of substantial justice, which has been typically exercised in favour of allowing a downloaded copy in lieu of a certified copy. While it may well be true that waivers on filing an appeal with a certified copy are often granted for the purposes of judicial determination, they do not confer an automatic right on an applicant to dispense with compliance and render Rule 22(2) of the NCLAT Rules nugatory. The act of filing an application for a certified copy is not just a technical requirement for computation of limitation but also an indication of the diligence of the aggrieved party in

pursuing the litigation in a timely fashion. In a similar factual scenario, the NCLAT had dismissed an appeal as time-barred under Section 61(2) of the IBC since the appellant therein was present in court, and yet chose to file for a certified copy after five months of the pronouncement of the order.

32. The appellant had argued that the order of the NCLAT notes that the NCLT registry had objected to the appeal in regard to limitation, to which the appellant had filed a reply stating that the limitation period would begin from the date of the uploading of the order, which was 12 March 2020. The appellant submitted that the suo motu order of this Court dated 23 March 2020, taking retrospective effect from 15 March 2020, made under Article 142 of the Constitution, extended the limitation until further orders, which renders the appeal filed on 8 June 2020 within limitation. However it is important to note that this Court had only extended the period of limitation applicable in the proceedings, only in cases where such period had not ended before 15 March 2020. In this case, owing to the specific language of Section 61(1) and 61(2), it is evident that limitation commenced once the order was pronounced and the time taken by the Court to provide the appellant with a certified copy would have been excluded, as clarified in Section 12(2) of the Limitation Act, if the appellant had applied for a certified copy within the prescribed period of limitation under Section 61(2) of the IBC. The construction of the law does not import the absurdity the appellant alleges of an impossible act of filing an appeal against an order which was uploaded on 12 March 2020. However, the mandate of the law is to impose an obligation on the appellant to apply for a certified copy once the order was pronounced by the NCLT on 31 December 2019, by virtue of Section 61(2) of the IBC read with Rule 22(2) of the NCLAT Rules. In the event the appellant was correct in his assertion that a correct copy of the order was not available until 20 March 2020, the appellant would not have received a certified copy in spite of the application till such date and accordingly received the benefit of the suo motu order of this Court which came into effect on 15 March 2020. However, in the absence of an application for a certified copy, the appeal was barred by limitation much prior to the suo motu direction of this court, even after factoring in a permissible fifteen days of condonation under Section 61(2). The Court is not empowered to condone delays beyond statutory prescriptions in special statutes containing a provision for limitation.

33. The answer to the two issues set out in Section C of the judgement- (i) when will the clock for calculating the limitation period run for proceedings under the IBC; and (ii) is the annexation of a certified copy mandatory for an appeal to the NCLAT against an order passed under the IBC – must be based on a harmonious interpretation of the applicable legal regime, given that the IBC is a Code in itself and has overriding effect. Sections 61(1) and (2) of the IBC consciously omit the requirement of limitation being computed from when the “order is made available to the aggrieved party”, in contradistinction to Section 421(3) of the Companies Act. Owing to the special nature of the IBC, the aggrieved party is expected to exercise due diligence and apply for a certified copy upon pronouncement of the order it seeks to assail, in consonance with the requirements of Rule 22(2) of the NCLAT Rules. Section 12(2) of the Limitation Act allows for an exclusion of the time requisite for obtaining a copy of the decree or order appealed against. It is not open to a person aggrieved by an order under the IBC to await the receipt of a free certified copy under Section 420(3) of the Companies Act 2013 read with Rule 50 of the NCLT and prevent limitation from running. Accepting such a construction will upset the timely framework of the IBC. The litigant has to file its appeal within thirty days, which can be extended up to a period of fifteen days, and no more, upon showing sufficient cause. A sleight of interpretation of procedural rules cannot be used to defeat the substantive objective of a legislation that has an impact on the economic health of a nation.

34. On the second question, Rule 22(2) of the NCLAT Rules mandates the certified copy being annexed to an appeal, which continues to bind litigants under the IBC. While it is true that the tribunals, and even this Court, may choose to exempt parties from compliance with this procedural requirement in the interest of substantial justice, as re-iterated in Rule 14 of the NCLAT Rules, the discretionary waiver does not act as an automatic exception where litigants make no efforts to pursue a timely resolution of their grievance. The appellant having failed to apply for a certified copy, rendered the appeal filed before the NCLAT as clearly barred by limitation.

51. Hence, in the case of V. Nagarajan (Supra), it has been held that the limitation would commence from the date of order and the time taken by the



Court to provide the Appellant certified copy has to be excluded, as provided under Section 12(2) of the Limitation Act, 1963, provided a certified copy is applied within the period of limitation prescribed under Section 61(2) of the Code. It has also held that as per Rule 22(2) of the NCLAT Rules, filing of an appeal with the certified copy is mandatory.

52. In so far as the second judgment, relied upon by the Counsel for the RP in the case of Sanket Kumar Agarwal & Anr. (Supra) is concerned, the facts of this case are that the application filed under Section 7 of the Code by the Appellant was dismissed by the Adjudicating Authority on 26.08.2022. The Appellant filed the application on 02.09.2022 for obtaining the certified copy of the order dated 26.08.2022. The application was received by the registry on 05.09.2022. It uploaded the order on the website on 15.09.2022 and provided the certified copy to the Appellant on the same date i.e. 15.09.2022. the Appellant filed the appeal on 10.10.2022 through e-filing with an application for seeking condonation of delay of five days. A physical copy of the appeal was filed on 31.10.2022. In the said case, the Appellant submitted that the appeal had been filed within the period of limitation when the order was made available in the public domain i.e. 15.09.2022 but still he considered 26.08.2022 as the date from which the limitation would commence. It was stated that the prescribed period of 30 days for filing the appeal ended on 05.10.2022 after accounting for the exclusion of 10 days from 05.09.2022 to 15.09.2022 on account of the time taken to provide the certified copy. It was submitted that delay of five days had occurred, however, this Tribunal dismissed the appeal on the ground

that it was lodged through e-filing on 10.10.2022 which was the 46<sup>th</sup> day after the order of the NCLT.

53. In this background, the Appellant challenged the order of this Tribunal on limitation. In this case, it was urged by the Appellant that this Tribunal had committed an error in not excluding the period of 10 days from 05.09.2022 to 15.09.2022 spent for obtaining the certified copy and further erred in not excluding the date on which the order was pronounced though it is provided in Section 12(2) of the Act, 1963 and Rule 3 of the NCLAT Rules. The appeal was contested by the Respondent alleging that it was e-filed on 10.10.2022 and made a reference to the circular issued by the NCLAT on 03.01.2021 notifying the standard operating procedure for e-filing in terms of which physical copies were required to be filed as per the procedure prescribed under the NCLAT Rules alongwith e-filing receipt. On 21.10.2022, a further order was issued by the NCLAT as per which the period of limitation would cease to run only after a physical copy was presented. On 24.12.2022 another order was issued by which the earlier order dated 21.10.2022 was withdrawn and limitation was ordered to be computed from the date of e-filing. It was argued that even e-filing of the appeal on 10.10.2022 would not result in limitation ceasing to operate and it was only when the hard copy was filed then the limitation would stop running. On this premise, after discussing all the circulars issued by this Tribunal from time to time, the Hon'ble Supreme court was pleased to hold that:-

“23. Having regard to the above sequence of Rules and administrative orders, it is evident that on the one hand, Rule 22 of the NCLAT Rules 2016 requires the presentation of an appeal

at the filing counter in the prescribed mode, but on the other, NCLAT also envisages e-filing of appeals. This is made evident in the SOP dated 3 January 2021 which mandates the filing of a physical copy of an appeal as per the procedure prescribed in the NCLAT Rules 2016, while referring to the procedure for the hearing of cases through the virtual mode, using the e-filing portal. The subsequent order dated 21 October 2022 acknowledges that there was an absence of clarity in regard to the period with reference to which limitation would commence. Hence, the order purported to state that the period of limitation shall be computed from the date of the presentation of an appeal under Rule 22. Significantly, the above order was to be effective from 1 November 2022. In the present case, admittedly, the appeal was e-filed on 10 October 2022 and even a physical copy was lodged on 31 October 2022 prior to the date on which the order of the Registrar dated 21 October 2022 was to come into effect. The order dated 21 October 2022 was subsequently withdrawn on 24 December 2022. The order dated 24 December 2022 now clarifies that limitation would be computed with effect from the date of e-filing but a physical copy would have to be filed within seven days of e-filing.

24. In the present case, the order was pronounced by the NCLT on 26 August 2022. Rule 3 of the NCLAT Rules 2016 stipulates that the date from which the period of limitation has to be reckoned (i.e., the date of the pronouncement of the order) would have to be excluded. Hence, the date on which the order was pronounced by the NCLT, namely 26 August 2022 would have to be excluded from the computation of limitation. This is in line with Section 12(1) of the Limitation Act 1963. As noted earlier, the provisions of the Limitation Act 1963 are made applicable, inter alia, to appeals before the NCLAT by virtue of Section 238A of the IBC. Section 12(1) of the Limitation Act 1963 provides 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. [...]”

29. In the present case, the application for a certified copy was sent from Delhi to Chennai on 2 September 2022, which was received on 5 September 2022, within the period of limitation of 30 days specified in Section 61(2). This aspect lies in contrast to the facts as they obtained before this Court in the judgment in *V Nagarajan* (supra) where even the application for obtaining the certified copy was not filed. In the present case, the appellant exercised due diligence and applied for a certified copy upon

pronouncement of the order in terms of Rule 22(2) of the NLCAT Rules 2016. The certified copy was provided to the appellant on 15 September 2022. Hence, the period of 10 days between 5 September 2022 and 15 September 2022 taken by the court to provide a certified copy of the order ought to be excluded when determining the period of limitation under Section 61(2) of the IBC.

30. In view of the above discussion, we have come to the conclusion that the NCLAT was in error in dismissing the appeal on the ground of limitation. The explanation which was advanced by the appellant for condoning the period of 5 days (beyond the period of 30 days stipulated for the filing of an appeal) was, in our view, sufficient and the delay should have been condoned within the four corners of the statute.”

54. Thus, in nutshell, in the aforesaid case, the Hon’ble Supreme Court held that (i) the limitation stops running on the e-filing of the appeal and not from the date of presentation of the physical copy (ii) the date on which the order is pronounced is to be excluded from the calculation of limitation (iii) the time taken by the NCLAT to provide the certified copy would be excluded in the calculating of limitation provided the Appellant apply for certified copy within the period prescribed under Section 61(2) of the Code.

55. The next judgment relied upon by Counsel for the RP is in the case of Jindal Power Limited (Supra).

56. The facts of this case are that the impugned order was pronounced on 02.08.2022 and the appeal was filed on 19.09.2022. From 02.08.2022, 30 days period came to an end on 01.09.2022 and further 15 days period also came to an end on 16.09.2022 and since the appeal was filed on 19.09.2022, therefore, it was on the 48<sup>th</sup> day.

57. In this case, the certified copy was applied on 15.09.2022 which was delivered on 19.09.2022, therefore, argument was raised that the period

consumed during obtaining certified copy need to be excluded. This submission was made because the certified copy was applied on 15.09.2022 i.e. one day before 45<sup>th</sup> day and the copy was delivered on 19.09.2022 and according to the Appellant it would have come within the condonable period and not beyond the period of 45 days, however, it has been held that “the benefit of requisite for filing certified copy can be claimed by an applicant only when certified copy is applied before the expiry of the period of limitation”. Thus, in this case, the Appellant was trying to take advantage of Section 12(2) of the Act, 1963.

58. In the case of Gaurav Agarwal (Supra), the facts of the case are that the impugned order was passed on 06.05.2022. The case of the Appellant was that the NCLT uploaded the order on 30.06.2022. He applied for certified copy on 15.06.2022 received the same on 04.07.2022 and sought exclusion of the period from 15.06.2022 to 04.07.2022 (date on which the certified copy was received) and alleged that there was a delay of only 9 days. However, the Court found that the impugned order was passed on 06.05.2022 and the period of 30 days expired on 06.06.2022. 15 days period upto which delay is condonable expired upto 20.06.2022 but the appeal was filed on 06.07.2022. It was found that free of copy was issued on 04.07.2022 but it was also noticed that Counsel for the Appellant was present when the order was pronounced on 06.05.2022, therefore, limitation started running from the date of knowledge and not from the date of uploading of the order. The certified copy is stated to have been applied on 15.06.2022 i.e after the expiry of 30 days. It was then held that “we thus are of the view that present appeal has been filed beyond 45 days from date of the order dated

06.05.2022 and delay of more than 15 days beyond the period of 30 days cannot be condoned by this Tribunal in exercise of its jurisdiction under Section 61(2) of the Code”.

59. Thus, the ratio of all the four judgments is that (i) the period of limitation is to be reckoned from the date of pronouncement of the order in the cases covered by the Code (ii) It is mandatory to annex the certified copy of the impugned order with the memorandum of appeal (iii) the Tribunal may exempt the parties from compliance with the procedural requirement in the interest of substantial justice as reiterated in Rule 14 (iv) There is no automatic exemption where the litigants makes no efforts to pursue a timely resolution of their grievance. (v) The Appellant having failed to apply for a certified copy, rendered the appeal filed before the NCLAT as clearly barred by limitation. (vi) It is not open to the person aggrieved under the Code to await the receipt of free certified copy under Section 420(3) of the Act r/w Rule 50 and prevent limitation from running (vii) Litigant has to file the appeal within 30 days which can be extended upto a period of 15 days on showing sufficient cause which cannot be condoned thereafter (viii) Limitation cease to run from the date of -e-filing (ix) In order to take advantage of Section 12(2) of the Act 1963, certified copy has to be applied during the currency of the period prescribed for filing an appeal.

60. In our humble opinion, in none of the aforesaid judgments, the issue raised in these appeals that if the certified copy is not applied within 30 days then the limitation would expire, has been questioned and as such there is no decision on it.

61. Counsel for the Appellant has relied upon a decision of the Hon'ble Supreme Court in the case of Sambhaji and Ors. (Supra) in which it has been held that 'processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. A Procedural prescription is the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice'. Similarly, the Hon'ble Supreme Court in the case of Collector Land Acquisition, Anantnag & Anr. (Supra) has laid down the following parameters for the condonation of delay in filing the appeal which are reproduced as under:-

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained"

does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

62. It has also been well settled that where the substantive law provides for rights and liabilities of the parties, procedural law prescribes the practice, procedure and machinery for the enforcement of those rights and

liabilities but a procedural law is always subservient to the substantive law and nothing can be given by a procedural law what is not sought to be given by a substantive law and nothing can be taken away by the procedural law what is given by the substantive law.

63. It has been found from the resume of the facts that four appeals have been filed within a period of 30 days, six appeals have been filed within the extended period of 15 days alongwith the application for condonation of delay which are yet to be decided and all these ten appeals have been filed with applications for seeking exemption from filing certified copy of the impugned order whereas three appeals have been filed without seeking exemption from filing certified copy of the impugned order which can be granted under Rule 14 of the Rules.

64. In all these appeals, the certified copies have been obtained after the expiry of 30 days/45 days but the fact remains that the application for seeking exemption is yet to be disposed of and this Tribunal has the jurisdiction to grant the exemption for the compliance of the Rules though on a sufficient cause shown in an appropriate application filed by the Appellant. Similarly, six appeals have been filed beyond the period of 30 days but within 45 days and the application for condonation of delay has not yet been decided. Supposing, the application for condonation of delay is allowed then the appeals shall be deemed to have been filed within the period of limitation and if the application is dismissed then the matter would be over. In so far as the remaining three appeals are concerned, these appeals have been filed without any application for seeking exemption from filing certified copy of the impugned order whereas Rule 14 clearly lays down



that exemption can be granted if an application is moved in that behalf and by assigning a sufficient cause to render substantial justice.

65. We have gone through the applications filed for seeking exemption i.e. I.A. No. 2302 of 2023 in CA (AT) (Ins) No. 691 of 2023, I.A. No. 3160 of 2022 in CA (AT) (Ins) No. 1076 of 2022, I.A. No. 3199 of 2022 in CA (AT) (Ins) No. 1085 of 2022, I.A. No. 2082-2083 in CA (AT) (Ins) No. 757&758 of 2022, I.A. No. 2751-2752 of 2022 in CA (AT) (Ins) No. 964 & 965 of 2022, I.A. No. 2961 of 2022 in CA (AT) (Ins) No. 1015 of 2022, I.A. No. 3342 of 2022 in CA (AT) (Ins) No. 1122 of 2022, I.A. No. 3437 in CA (AT) (Ins) No. 1143 of 2022, I.A. No. 3537 of 2022 in CA (AT) (Ins) No. 1174 of 2022 and I.A. No. 3727 of 2023 in CA (AT) (Ins) No. 1079 of 2023 and for the reasons mentioned therein, which are found to be sufficient, these aforesaid exemption applications are hereby allowed and the Appellants in these aforesaid appeals are directed to file the certified copy of the impugned order within a period of 30 days from the date of passing of this order (if already not placed on record).

66. In so far as the applications filed by the Appellant for seeking condonation of delay in terms of Section 61(2) proviso are concerned, those applications shall be taken up individually with the main appeal.

67. Three appeals i.e. Appeals No. 1135 of 2022, 1136 of 2022 and 270 of 2023 in which no application for seeking exemption has been filed are held to be not maintainable because the Hon'ble Supreme Court has categorically held in the case of V. Nagarajan (Supra) that the Appellant cannot on his own dispense with the filing of the certified copy and in the absence of any application for exemption, these three appeals are hereby dismissed.

68. With the aforesaid discussion, the objection raised by Counsel for the Respondent (RP) about the maintainability of these appeals is hereby decided.

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

**[Mr. Naresh Salecha]**  
**Member (Technical)**

**New Delhi**

**01<sup>st</sup> March, 2024.**

*Sheetal*