

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1107 of 2023 & I.A. No. 3820,
3831, 3832, 3833 of 2023

IN THE MATTER OF:

New Okhla Industrial Development Authority ...Appellant

Versus

Anand Sonbhadra & Ors.

...Respondents

Present:

**For Appellants: Mr. Sanjiv Sen, Sr. Adv. with Mr. Abdhers
K Chaudhary, Vinayak, Anjali Singh,
Geetanjali Setia, Meena Yadav, Pragyan
Mishra, Mamsha Suri, Nishikant Singh,
Swatej Jetta, Adv.**

**For Respondent: Mr. Abhishek Anand, Nipun Gautam,
Adv. for RP**

O R D E R
(Hybrid Mode)

Per: Justice Rakesh Kumar Jain (Oral)

26.09.2024: This appeal is directed against the order dated 12.09.2022, passed by the Adjudicating Authority (National Company Law Tribunal, Delhi Bench) by which an application, filed under Section 30(6) and 31 of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, by the Resolution Professional for the approval of the resolution plan submitted by

Mr. Surender Kumar Singhal & Mr. Sunil Kumar Agarwal (SRA), approved by the CoC in the 6th meeting held on 09.10.2019, has been allowed.

2. While assailing the order dated 12.09.2022, the Appellant has also filed an application bearing 3831 of 2023 seeking condonation of delay in filing the present appeal which has been calculated by the Appellant as 57 days but during the course of hearing it is submitted that the delay is 13 days.

3. No reply to the application has been filed by the contesting Respondent No. 1 (RP).

4. However, Counsel for the Respondent has vehemently argued that the Appeal filed on 26.10.2022 through e-filing and the hard copy of the appeal filed on 08.12.2022, renders the appeal having been filed beyond the period of limitation in view of the SOP dated 21.10.2022 as per which the limitation is to be counted from the date of presentation of appeal as per Rule 22 of the NCLAT Rules, 2016.

5. Counsel for the Appellant has submitted that the impugned order was passed on 12.09.2022. The limitation of 30 days counted from 13.09.2022 came to end on 13.10.2022. The period of 15 days provided in Section 61(2) proviso would come to end on

28.10.2022 whereas the appeal has been filed by way of e-filing on 26.10.2022 i.e 13th day of the period of 15 days provided in Section 61(2) proviso. He has further submitted that the limitation is not to be counted from the date when the hard copy was filed in view of various SOPs issued by this Court from time to time. He has further submitted that the first SOP was issued by this Tribunal on 03.01.2021 by which Rule 103 of the Rules was invoked by the Chairperson exercising his powers provided under Rule 104 and provided therein that the appeal can be filed through e-filing alongwith hard copy as well. The SOP dated 03.01.2021 is reproduced as under:-

“Dated: 03.01.2021

National Company Law Appellate Tribunal
Revised Standard Operating Procedure for Ld. Advocate/
Authorised Representative/Party-in-Person for
hearing/Mentioning the matter through virtual mode.

As directed, the following is the revised Standard Operating Procedure for hearing of cases through virtual mode (Cisco Webex Meeting Platform) using the e-filing portal (<https://efiling.nclat.gov.in>) from 04.01.2021.

NCLAT e-filing facility is now available for filing of Appeal/ Interlocutory Application/ Reply/ Rejoinder etc. Therefore, all concerned are requested to avail the same through NCLAT e-filing portal (<https://efiling.nclat.gov.in>) w.e.f. 04.01.2021. The URL for the same is available on NCLAT website (www.nclat.nic.in).

It may be noted that it is mandatory that Ld. Advocates/ Authorised Representatives/ Parties-in-Person shall file the Appeal/Interlocutory Application/Reply/ Rejoinder

etc. in hard copy also as per the procedure prescribed in NCLAT Rules, 2016 along with the e-filing receipt. The online filing & hard copies must match with proper pagination. The Court Fee shall be paid through Bharat Kosh (<https://bharatkosh.gov.in>) and the payment receipt should be attached.

MENTIONING

1. The mentioning application shall be submitted only by e-mail at the email address registrar-nclat@nic.in.
2. After curing the defects, the cases would be listed in the cause list to be published on the NCLAT website (www.nclat.nic.in).
3. The mentioning application must inter-alia clearly contain the case-details (e-filing no., diary No., date of filing, cause title, appeal details etc.) and contact details of the Learned Advocate/Authorised Representative/ Party-in-Person such as e-mail ID, mobile number with alternate number(s), full company/office address with pin code.
4. The mentioning application must contain a separate paragraph giving consent for taking up the matter through virtual mode.
5. In the mentioning application, the Learned Advocate/Authorised Representative/ Party-in-Person must specify as to how he/she would link to the Hon'ble Bench in video-conferencing mode, i.e. whether through desktop/laptop/mobile phone. In this regard, parties may kindly use desktop/laptop/tablet computers that will provide stable and smooth connectivity for video-conference. It may be noted that the speed of link should be more than 2 Mbps. It has been observed that signal drop/incoming call on mobile phones can delink such devices from an ongoing video-conference disrupting such VC and such devices may be avoided as far as possible.

GENERAL INSTRUCTIONS

6. The parties shall not be permitted to rely upon any document other than the documents duly filed along with the Appeal/Interlocutory application etc. in conformity with the NCLAT Rules, 2016.

7. Link to enable the Ld. Advocate/Representative/Party-in-Person to join the Video Conference shall be sent to the e-mail ID mentioned in their Appeal/Interlocutory application. Please note that a maximum of three appearance links will be provided per party (AOR, Junior Lawyer, Sr. Advocate / Arguing Counsel) and that it should not be shared with anyone.

8. The standard protocol about one person speaking at a time in VC shall be followed. All the parties shall be given chance, in turns, to present their case by the Hon'ble Bench. Any attempt to jump in during the presentation by another party may disrupt the proceedings. It may also invite 'muting' of the microphone of the disrupting party. In case a person wants to make a point she/he may raise her/his hand to invite the attention of the Hon'ble Bench. She/he can start speaking only after she/he has been allowed to do so. Cross talking or discussion could be done only after the mic has been put in 'mute' mode.

9. The directions of the Hon'ble Bench should be strictly followed at all times in VC to enable smooth hearing.

10. The decorum regarding dress of presenters and in verbal presentations should be maintained.

11. Any recording and use in any manner of the proceedings of the hearing through VC is strictly prohibited. Infringement may invite stringent action against the erring party.

INSTRUCTIONS FOR JOINING VIDEO CONFERENCING

The parties may note that, for the present, the matters shall be heard by the Hon'ble Bench through web-based video-conferencing system on the 'CISCO Webex Meeting' platform.

It may be further noted that the smooth functioning of the video-conference is squarely dependent upon and subject to the connectivity [signal strength/bandwidth] available at the end of the remote user(s), and hence it is expected that any party joining a hearing through video-conference shall ensure that robust connectivity and bandwidth are available at their end. In this regard, parties may use broadband connection of minimum 2 Mbps/dedicated 4G data connection.

The parties may also ensure that no other device or application is connected to or using the bandwidth when the hearing by video-conferencing is progressing on their CISCO Webex-enabled computer (preferable) or mobile.

For ease-of-use, parties may kindly note the following Standard Operating Procedure in respect of hearing of cases through video conferencing mode:

1. The Invitation Link for appearance and viewing, as the case may be, will be sent by the Registry to the given mobile no(s)/e-mail IDs by email/WhatsApp around half-an-hour before the scheduled hearing. Parties may also note that each of the links sent to any device is required to be unique and hence, parties may not share or forward such link(s) to any other person or device nor shall they enable others to join the hearing through video conference.

2. To join the Virtual Court Room through Cisco Webex Meeting using Desktop/Laptop/Tablet PC, please read the instructions provided in Annexure 'A'.

3. Upon clicking the "Join" button, the party would be prompted to enter the display name wherein the party is required to write his/her name with designation by prefixing item no. (of the cause list) in the space given i.e.: ITEM NO. 1 – Gajendra Singh - Appellant OR ITEM NO. 1 – Gaurav Rawat - Respondent OR ITEM NO. 1 – Chetan Rawat PARTY-IN-PERSON, as the case may be, and thereafter the party is required to click on the "JOIN" button.

4. Upon having joined the Courtroom in virtual mode, the arguing counsel shall introduce himself/herself to the Hon'ble Bench and thereafter, shall wait for the instructions from the Hon'ble Bench. On being asked, the party may make submissions and on completion of the submissions, shall at once 'mute' the MIC of the respective device. If the Hon'ble Bench requires the party to make further submission(s), the party may then 'unmute' the MIC of the device and again, on completion of the submission, put the MIC on 'mute' mode.

5. It is important for the parties to remember to keep their MIC on 'mute' at all times, except when the Hon'ble Bench

requires them to make submission(s). Thus, when one party is making submissions, it is imperative that all other participants shall keep their respective MIC muted failing which the possibility of MIC catching audio feed from the speakers and creating 'echo/noise disturbance' would become very high and may disturb the video conference.

6. It may be noted that simultaneous submissions by more than one party at any given time should be avoided and each party may indicate their requirement to speak/submit by seeking permission from the Hon'ble Bench, by raising hand. Once permitted by the Hon'ble Bench, the party shall first 'unmute' the MIC and thereafter make submissions, as per clauses 4 and 5 above.

7. During the course of hearing through video-conferencing, the parties may kindly keep in mind that they are participating in COURT PROCEEDINGS, and hence it is expected that they would not resort to any indecorous conduct or dress or comment. Further, the parties are required to ensure that the proceedings by video conference are neither recorded/stored nor broadcasted, in any manner whatsoever, as recording/copying/storing and/or broadcasting, by any means of the hearings and proceedings before the Tribunal is expressly prohibited. A breach of this rule shall apart from entailing penal consequences, render such recording inadmissible in any court proceedings.

8. Parties are required to stay online (but in MUTE mode) till the Hon'ble Bench concludes the hearing of their matter, whereafter the parties may disconnect from video-conference.

9. After publication of cause list, a link for video conferencing will be provided to Learned Advocate/Authorised Representative/ Party-in-Person by the Registry through e-mail/SMS half an hour before the hearing of the matter.

10. The Competent Authority has been pleased to direct that the Ld. advocates could wear "plain white-

shirt/white-salwar-kameez/ white saree, with a plain white neck band" during the hearings before the NCLAT through virtual mode.

Note: Link for video conferencing will be provided to Learned Advocate/Authorised Representative/Party-in-Person to the e-mail ID as mentioned in their Appeal/Interlocutory application.

For any technical support parties may contact the following officials during the office hours on working days:

VC Support -Mr. Sohrab Naqvi (9811226764), Mr. Gourav Mishra (8674951323), Mr. Ritu Raj Verma (9852642688) Mr. Mohan Sharma (9650969521), Mr. Anubhav Kumar (8920544917) VC Technical Issues-Mr. Gajendra Singh (9560014361), Mr. Satyanarayan (9871547911). e-mail ID: itsupport@nclat.nic.in (Technical Support)"

6. Thereafter, another SOP dated 21.10.2022 was issued by which it was clarified that the period of limitation is to be computed from the date of presentation of appeal as per Rule 22 of the Rules but the said SOP was made effective from 01.11.2022. The SOP dated 21.10.2022 is also reproduced as under:-

“NATIONAL COMPANY LAW APPELLATE TRIBUNAL

F.No.10/37/2018-NCLAT

Dated : 21st October, 2022

ORDER

National Company Law Appellate Tribunal Rules, 2016 (NCLAT Rules, 2016), Rule 22 provides for “Presentation of appeal”, which is to be made at the filing counter of the Appellate Tribunal.

As per Rule 103 of the NCLAT Rules, 2016, Appellate Tribunal has also permitted filing of the Appeal or proceedings through electronic mode (e-filing). SOPs have also been issued with regard to e-filing. SOP dated 3rd January, 2021 further provides: -

“It may be noted that it is mandatory that Ld. Advocates/ Authorised Representatives/ Parties-in-Person shall file the Appeal/Interlocutory Application/Reply/ Rejoinder etc. in hard copy also as per the procedure prescribed in NCLAT Rules, 2016 along with the e-filing receipt. The online filing & hard copies must match with proper pagination. The Court Fee shall be paid through Bharat Kosh (<https://bharatkosh.gov.in>) and the payment receipt should be attached.”

The SOPs and directions issued by the Appellate Tribunal do not contain any direction with regard to computation of limitation as to whether limitation is to be computed from the date of e-filing of the Appeals or from the date when Appeals are presented before the Appellate Tribunal as per Rule 22 of the NCLAT Rules, 2016. The Competent Authority has, therefore, decided to issue directions in exercise of power conferred by Rule 104 of the NCLAT Rules, 2016 with regard to computation of limitation for the purposes of filing an Appeal in the Appellate Tribunal.

Hence, with regard to computation of limitation in Appeals, following directions are hereby issued by the Competent Authority: -

(1) The period of limitation shall be computed from the date of presentation of Appeal as per Rule 22 of the NCLAT Rules, 2016.

(2) The requirement of filing Appeals by electronic mode shall continue along with mandatory filing of the Appeals as per Rule 22 of the NCLAT Rules, 2016.

(3) This order will be effective with effect from 1st November, 2022.

All concerned shall ensure that Appeals are presented as per Rule 22 of the NCLAT Rules, 2016 within the period of limitation at the filing counter.

By Order of the Hon'ble Chairperson

Sd/-

(Peeush Pandey)

Registrar”

7. He has further referred to another SOP issued on 24.12.2022 by which SOP dated 21.10.2022 was superseded much less withdrawn and it was ordered that the limitation shall be computed from the date of e-filing. The SOP is reproduced as under:-

“NATIONAL COMPANY LAW APPELLATE TRIBUNAL

F.No. 23/4/2022-Estt./NCLAT

Dated: 24th December, 2022

ORDER

National Company Law Appellate Tribunal Rules, 2016 (NCLAT Rules, 2016), Rule 22 provides for "Presentation of appeal", which is to be made at the filing counter of the Appellate Tribunal.

As per Rule 103 of the NCLAT Rules, 2016, Appellate Tribunal has also permitted filing of the Appeal or proceedings through electronic mode (e-filing). SOPs have also been issued with regard to e-filing. SOP dated 3rd January, 2021 further provides: - ‘

"It may be noted that it is mandatory that Ld. Advocates/ Authorised Representatives / Parties-in-Person shall file the Appeal/ Interlocutory Application/ Reply/ Rejoinder etc. in hard copy also as per the procedure prescribed in NCLAT Rules, 2016 along with the e-filing receipt. The online filing & hard copies must match with proper pagination. The Court Fee shall be paid through Bharat Kosh (<https://bharatkosh.gov.in>) and the payment receipt should be attached."

The SOPs and directions issued by the Appellate Tribunal do not contain any direction with regard to computation of limitation as to whether limitation is to be computed from the date of e-filing of the Appeals or from the date when Appeals are presented before the Appellate Tribunal as per Rule 22 of the NCLAT Rules, 2016. The Competent Authority decided to issue directions in exercise of power conferred by Rule 104 of the NCLAT Rules, 2016 with regard to computation of limitation for the purposes of filing an Appeal in the Appellate Tribunal on 21.10.2022.

It is seen that appeals are e-filed from different parts of the country where the appellant in some cases is located in far away places and time is taken to file physical copy. It is further seen that physical copy is filed within seven days of e-filing.

Hence, with regard to computation of limitation in Appeals, following directions are hereby issued by the Competent Authority: -

(1) The order F.No.10/37/2018-NCLAT dated 21.10.2022 is hereby withdrawn and superseded by this order.

(2) Limitation shall be computed from the date of e-filing. The hard copy has to be filed within 7 days of e-filing. However, the competent authority is at liberty to notify to extend the period of filing hard copy in case of

any unforeseen exigency. In a case where hard copy is filed after 7 days, the appeal will be placed before the Tribunal for appropriate order.

(3) The requirement of filing Appeals by electronic mode shall continue along with mandatory filing of the Appeals as per Rule 22 of the NCLAT Rules, 2016.

(4) This order will be effective with immediate effect.

All concerned shall ensure that Appeals are presented as per Rule 22 of the NCLAT Rules, 2016 within the period of limitation at the filing counter.

By Order of the Hon'ble Chairperson
(Peeush Pandey)
Registrar"

8. He has further referred to SOP dated 21.02.2023 which is also reproduced as under:-

"NATIONAL COMPANY LAW APPELLATE TRIBUNAL

F.No. 23/4/2022-Estt./NCLAT

Dated: 21st February, 2023

ORDER

In continuation of the order F. No. 23/4/2022-Estt./NCLAT dated 24.12.2022, with the approval of the Competent Authority, it is hereby directed that the appeals filed before the NCLAT in the duration between 01.11.2022 to 23.12.2022 shall also get the benefit of the order dated 24.12.2022 with regard to computation of limitation in Appeals. The other conditions of the order dated 24.12.2022 shall remain unchanged.

By Order of the Hon'ble Chairperson

Sd/-

(Peeush Pandey)

Registrar"

9. He has also referred to SOP dated 15.05.2023 which is also reproduced as under:-

NATIONAL COMPANY LAW APPELLATE TRIBUNAL F.No.
10/37/2018-NCLAT

Dated: 15th May, 2023

ORDER

(No. 064 / 2023)

The Appeals / Interlocutory Applications / Reply / Rejoinder etc. are being e-filed in the National Company Law Appellate Tribunal (NCLAT) through e-filing portal (<https://efiling.nclat.gov.in>) w.e.f. 04.01.2021. The Competent Authority has further directed that the filing of hard copies of Appeals/ Interlocutory Applications/ Reply / Rejoinder etc. shall not be mandatory with immediate effect. The Standard Operating Procedures (SOPs)/ Orders/ Circulars/ Notices issued by the NCLAT from time to time regarding filing of Appeals/ Interlocutory Applications / Reply / Rejoinder etc. shall stand modified to that extent accordingly.

By Order of the Hon'ble Chairperson

Sd/-

(Peeush Pandey) Registrar

10. Counsel for the Appellant has argued that all these SOPs dated 03.01.2021, 21.10.2022 and 24.12.2022 have already been considered by the Hon'ble Supreme Court in the case of Sanket Kumar Agarwal & Anr. Vs. APG Logistics Pvt. Ltd., 2023 Live Law (SC) 406. He has further submitted that in that case also the appeal was e-filed on 10.10.2022 whereas in the present the appeal was e-filed on 26.10.2022 much before the SOP dated

21.10.2022 was made applicable from 01.11.2022. He has referred to the observations made by the Hon'ble Supreme Court in the said case in paras 17,18, 19, 20, 21 & 22 which are reproduced as under:-

“17. On 3 January 2021, NCLAT notified a Revised SOP for the hearing of cases through the virtual mode, using its e-filing portal. The SOP notices that an e-filing facility was available for filing of appeals and related documents, and exhorts “all concerned” to “avail the same through NCLAT e-filing portal”. The circular provides as follows:

“It may be noted that it is mandatory that Ld. Advocates/ Authorised Representatives/ Parties-in-Person shall file the Appeal/Interlocutory Application/Reply/ Rejoinder etc. in hard copy also as per the procedure prescribed in NCLAT Rules, 2016 along with the e-filing receipt. The online filing & hard copies must match with proper pagination. The Court Fee shall be paid through Bharat Kosh (<https://bharatkosh.gov.in>) and the payment receipt should be attached.”

18. Subsequently, on 21 October 2022, the Registrar of NCLAT issued another order⁹ with regard to computing limitation for the purpose of filing an appeal before the NCLAT, F.No. 10/37/2018-NCLAT, dt. 21 October 2022 Appellate Tribunal. The order notices that while Rule 22 of the NCLAT Rules 2016 provides for the presentation of an appeal at the filing counter of the NCLAT, Rule 103 permits the filing of appeals or proceedings through the electronic mode. After advertng to the SOP dated 3 January 2021, the order indicates as follows:

“The SOPs and directions issued by the Appellate Tribunal do not contain any direction with regard to computation of limitation as to whether limitation is to be computed from the date of e- filing of the Appeals or from the date when Appeals are presented before the Appellate Tribunal as per Rule 22 of the NCLAT Rules, 2016. The

Competent Authority has, therefore, decided to issue directions in exercise of power conferred by Rule 104 of the NCLAT Rules, 2016 with regard to computation of limitation for the purposes of filing an Appeal in the Appellate Tribunal.

Hence, with regard to computation of limitation in Appeals, following directions are hereby issued by the Competent Authority: -

(1) The period of limitation shall be computed from the date of presentation of Appeal as per Rule 22 of the NCLAT Rules, 2016.

(2) The requirement of filing Appeals by electronic mode shall continue along with mandatory filing of the Appeals as per Rule 22 of the NCLAT Rules, 2016.

(3) This order will be effective with effect from 1st November, 2022.”

All concerned shall ensure that Appeals are presented as per Rule 22 of the NCLAT Rules, 2016 within the period of limitation at the filing counter.”

19. The above order dated 21 October 2022 indicates that the SOPs and directions which were issued by the NCLAT did not contain any provision for the computation of limitation, more specifically on whether limitation has to be computed with reference to the date of e-filing or from the date on which the appeal is presented before the NCLAT, in terms of Rule 22. Hence, in exercise of the power conferred by Rule 104, it was notified that the period of limitation would be computed with reference to the date of the presentation of the appeal in terms of Rule 22. Moreover, the requirement of filing appeals by the electronic mode was directed to continue together with the mandatory filing of appeals under Rule 22. The order dated 21 October 2022 was to be effective from 1 November 2022.

20. Eventually, on 24 December 2022, another order was issued by the Registrar of NCLAT in the following terms: “It is seen that appeals are e-filed from different parts of the country where the appellant in some cases is located in far away places and time is taken to file physical copy.

It is further seen that physical copy is filed within seven days of e-filing.

Hence, with regard to computation of limitation in Appeals, following directions are hereby issued by the Competent Authority: -

(1) The order F.No.10/37/2018-NCLAT dated 21.10.2022 is hereby withdrawn and superseded by this order.

(2) Limitation shall be computed from the date of e-filing. The hard copy has to be filed within 7 days of e-filing. However, the competent authority is at liberty to notify to extend the period of filing hard copy in case of any unforeseen exigency. In a case where hard copy is filed after 7 days, the appeal will be placed before the Tribunal for appropriate order.

(3) The requirement of filing Appeals by electronic mode shall continue along with mandatory filing of the Appeals as per Rule 22 of the NCLAT Rules, 2016.

(4) This order will be effective with immediate effect.

All concerned shall ensure that Appeals are presented as per Rule 22 of the NCLAT Rules, 2016 within the period of limitation at the filing counter.”

21. Hence, by the order dated 24 December 2022, it was clarified that limitation shall be computed with reference to the date of e-filing while the physical copy would have to be filed within seven days of e-filing. The order clarifies that the requirement of filing appeals by the electronic mode shall continue together with the mandatory filing of appeals in terms of Rule 22 of the NCLAT Rules 2016.

22. 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.”

11. Counsel for the Appellant has also referred to Para 31 of the judgment of Sanket Kumar (Supra) in which the Hon’ble Supreme Court has observed as under:-

“31. Before concluding, we cannot but fail to notice the flip-flops on the part of the NCLAT in providing administrative guidance on whether limitation would commence from the date of e-filing or from the presentation of the appeal at the filing counter. With technological advances, the country’s judiciary and tribunals must move towards e- filing. This process has already commenced and is irreversible. The Union Government must have a fresh look at the rules to encourage e-filing across tribunals. Perhaps one way forward would be to constitute a Working Group to make a comprehensive assessment of the position across tribunals and suggest regulatory changes. Moreover, it is utterly incomprehensible why NCLAT should insist on physical filing in addition to e- filing. This unnecessarily

burdens litigants and the Bar and is a disincentive for e-filing. A lawyer or litigant who is compelled to file physical copies in addition to e-filed documents will have no cogent reason to resort to e-filing. This duplication of effort is time consuming. It adds to expense. It leaves behind a carbon footprint which is difficult to efface. The judicial process has traditionally been guzzling paper. This model is not environmentally sustainable. If some judges are uncomfortable with e-files, the answer is to provide training to them and not to continue with old and outmoded ways of working. The judiciary has to modernize and adapt to technology. The tribunals can be no exception. This can no longer be a matter of choice. The IBC is a significant prong in economic reforms. It has radically reshaped the law relating to insolvency and bankruptcy. The manner in which the law is administered will have to keep pace with technology. Both the Union government in its rule making capacity and the administrative heads of tribunals must ensure a seamless transition to working in the electronic mode.”

12. He has also referred to subsequent decision of the Hon’ble Supreme Court in the case of Sanjay Pandurang Kalate Vs. Vistra ITCL (India) Limited & Ors. and has referred to Paras 22 & 23 of the said judgment which are reproduced as under:-

“22. Before concluding, we must note that it was settled in [Sanket Agarwal](#) (supra) that the date of e-filing of the appeal and not filing of the physical copy of the appeal stops the limitation from running. One of us (D.Y. Chandrachud, J.) had occasion to observe that the requirement of e-filing followed by physical filing results in duplication of effort and is a disincentive for e-filing. The Court held that:

“30. [...] Moreover, it is utterly incomprehensible why NCLAT should insist on physical filing in addition to e-filing. This unnecessarily burdens litigants and the Bar and is a disincentive for e-filing. A lawyer or litigant who is compelled to file physical copies in addition to e-filed documents will have no cogent reason to resort to e-filing. This duplication of effort is time consuming. It adds to expense. It leaves behind a carbon footprint which is difficult to efface. The judicial process has traditionally been guzzling paper. This model is not environmentally sustainable. If some judges are uncomfortable with e-files, the answer is to provide training to them and not to continue with old and outmoded ways of working. The judiciary has to modernize and adapt to technology. The tribunals can be no exception. This can no longer be a matter of choice. The IBC is a significant prong in economic reforms. It has radically reshaped the law relating to insolvency and bankruptcy. The manner in which the law is administered will have to keep pace with technology. Both the Union government in its rule making capacity and the administrative heads of tribunals must ensure a seamless transition to working in the electronic mode.”

23. We must appreciate the swift action taken by the NCLAT in view of the above observations. On 15 May 2023, soon after the decision in [Sanket Agarwal](#) (supra), an order was issued by the Registrar, NCLAT noting that “filing of hard copies of Appeals/ Interlocutory Applications/ Reply / Rejoinder etc. shall not be mandatory with immediate effect.” Such proactive action by tribunals is essential to ensure that the move towards a modernized and technology-friendly judiciary trickles down to every judicial forum across the country. We record our appreciation of the proactive steps taken by the Chairperson, Members and the Registry of the NCLAT.”

13. Counsel for the Appellant has also relied upon a decision of the Hon'ble Supreme Court in the case of Somdev Kappor (Supra) to contend that the Rules which are prevalent on the date when the application is considered are to be applied and not the date when the application is made as it has been held in the case of State of Kerala Vs. Kandath Distilleries. Para 13 of the said judgment is reproduced as under:-

“13. It would also be significant to state that as per the law laid down by this Court, Rules which are prevalent on the date when the application is considered are to be applied and not the date when the application is made. This is so held in State of Kerala & Ors. Vs. Kandath Distilleries 2013 (2) SCALE 789 in the following words:

“We have gone through the Government Order dated 11.10.2006 in extenso and we are not prepared to say that the application of the respondent was rejected solely on the ground that the application dated 12.1.1987 could not be treated as an application put forward by a firm based on a partnership deed, which came into existence on 10.4.1991, as per Clause 3 of the Partnership Deed but on various other grounds as well. The State Government, in our view, has considered the respondent's application dated 12.1.1987 with regard to the conditions that existed in the year 1998. The Government letter dated 28.6.1994 would indicate that, apart from the respondent, few other applications were also pending prior to the year 1994. Over and above, the State Government during the year 1998, from 3.2.1998 to 21.11.1998, had received 52 applications for establishing compounding, blending and bottling units in IMFLs in various parts of the State. The Excise

Commissioner vide his letter dated 25.11.1998 had reported that there was an unprecedented flow of applications, that was the situation prevailing in the year 1998, a factor which was taken note of in not entertaining the respondent's application, whether it was submitted on 12.1.1987 or on 22.11.1998. We cannot, in any way, activate an out-modeled, outdated, forgotten liquor policy of 1998, in the year 2013, by a Writ of Mandamus."

14. In reply, Counsel for the Respondent has submitted that the decision in the case of Sanket Kumar Agarwal (Supra) is distinguishable on facts because the hard copy has not been filed immediately by the Appellant rather it has been filed on 08.12.2022 whereas the e-filing has been done on 26.10.2022. He has also submitted that as per Rule 22 of the Rules, the limitation is to be counted from the date when the appeal is presented at the counter and in the present case even if the SOP dated 21.10.2022 is not be taken into consideration yet the appeal has filed on 26.10.2022, which has to be in the form of presentation of appeal at the counter.

15. On merit also Counsel for the Respondent has submitted that the appellant has failed to explain even the delay of 13 days in filing the appeal. In this regard, Counsel for the Appellant has submitted that the appeal has been filed by New Okhla Industrial Development Authority which is a statutory body and reason has been given in the application that for the purpose of filing

the appeal the Appellant had to seek approvals in which time has been spent but the appeal has been filed within a period of 15 days i.e. on 13th day, therefore, keeping in view of the merit of the case, the delay of 13 days may be condoned.

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

17. Section 61 of the Code provides a statutory right of appeal to any aggrieved person against the order of the Tribunal. In view thereof, the Appellant being an aggrieved person against the order of the Tribunal by which the application filed by the RP has been allowed and plan has been approved and has preferred this appeal before this Court. Section 61 (1) provides a period of 30 days for the purpose of filing the appeal. Admittedly, the period of 30 days had expired before the Appeal could have been filed. Section 61(2) proviso says that if the period of 30 days have expired for the purpose of filing the appeal, it still can file the appeal within a period of 15 days but assigning a sufficient cause, for seeking condonation of delay, to the satisfaction of the Appellate Court. It is submitted that the Appellant has filed the appeal within that period of 15 days i.e. on 13th day because

after the expiry of 15 days there is no provision in the Code for extension of the period any further.

18. Rule 22 lays down the procedure for presentation of appeal.

Rule 22 is 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.”

19. As per Rule 22, the appeal has to be filed at the counter which means the hard copy is to be filed. However, there is a provision in the Rules by which the Tribunal can allow the filing of the appeal through e-filing also. In this regard, reference may be had to Rule 103 which is reproduced as under;-

“103. Filing through electronic media.- The Appellate Tribunal may allow filing of appeal or proceedings through electronic mode such as online filing and provide for rectification of defects by e-mail or internet and in such filing, these rules shall be adopted as nearly as possible on and from a date to be notified separately and the Central Government may issue instructions in this behalf from time to time”

20. Rule 104 provides that wherever the Rules are silent or no provisions is made, the Chairperson may issue appropriate directions to remove difficulties and issue such orders or circulars to govern the situation or contingency that may arise in the working of the Tribunal.

21. We have found that by invoking Rule 11 and Rule 103 referred to above, the SOP dated 03.01.2021 was issued and filing of the appeal through e-filing coupled with hard copy was permitted. The SOP dated 03.01.2021 was in operation when the appeal was filed on 26.10.2022 because the SOP dated 21.10.2022 by which it has been ordered that the limitation shall be computed from the date of presentation of appeal in terms of Rule 22 was made applicable with effect from 01.11.2022. The appeal has already been filed by the Appellant on 26.10.2022 through e-filing within the period of 15 days provided in Section 61(2) proviso. The only issue that has been raised by the Respondent is that the period of limitation is to be counted in terms of SOP dated 21.10.2022 because it has been directed therein that the limitation is to be counted from the date of presentation of appeal, however, SOP dated 21.10.2022 was superseded muchless withdrawn by another SOP dated

24.12.2022 in which it has been clarified that “the order F.No. 10/37/2018-NCLAT dated 21.10.2022 is hereby withdrawn and superseded by this Order. Limitation shall be computed from the date of e-filing. The hard copy has to be filed within 7 days of e-filing. However, the competent authority is at liberty to notify to extend the period of filing hard copy in case of any unforeseen exigency. In a case where hard copy is filed after 7 days, the appeal will be placed before the Tribunal for appropriate order”. In so far as the applicability of the SOP is concerned, in this case the SOP dated 03.01.2021 is applicable in the case of the Appellant because the appeal has been filed through e-filing on 26.10.2022 when SOP dated 03.01.2021 was in operation because the SOP dated 21.10.2022 became effective from 01.11.2022 was not made retrospective. Since, permission has already been granted by the SOP dated 03.01.2021 that the appeal should also be filed through e-filing, therefore, the Appellant filed the appeal through e-filing also and since the SOP dated 21.10.2022 has been withdrawn and superseded by SOP dated 24.12.2022, therefore, at the time when the application is taken up for hearing, the said SOP dated 24.12.2022 is taken to be considered. In this regard, decision of the Hon’ble Supreme Court in the case of Somdev Kappor (Supra) shall support the case of

the Appellant in which it has been held that the rules which are prevalent on the date when the application is considered are to be applied and not the date when the application is made.

22. In view of the aforesaid facts and circumstances, it is hereby held that the period of limitation is to be computed for the purpose of filing of this appeal from the date of e-filing and not from date of the hard copy. Now the question would arise as to whether the Appellant has assigned sufficient cause for the purpose of condonation of delay of 13 days. After going through the application and keeping in view of the fact that the Appellant is a statutory body and had to collect material and various approvals etc. for filing the appeal, therefore, the period spent beyond the period of 30 is a sufficient reason for the purpose of condonation of delay.

23. In view thereof, the application is thus allowed and the delay of 13 days is hereby condoned.

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The aforesaid appeal was listed for arguments on 13.09.2024 but due to some inadvertence or oversight on the part of the Registry, the appeal could not be listed on 13.09.2024 and is listed today. Be that as it may, issue notice in the appeal. Counsel for

Respondent No. 1 accepts notice in court, therefore, issuance of formal notice to the Respondent No. 1 is hereby dispensed with. Counsel for the Respondent No. 1 prays for time to file reply. Let the reply be filed on or before the next date of hearing with an advance copy to the Appellant. Let notice be issued to other respondents. The Appellant is directed to file process fee alongwith requisites within three days. Adjourned to **20th November, 2024.**

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indevar Pandey]
Member (Technical)

Sheetal/Ravi