

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1189 of 2024 &
Interlocutory Application Nos.4244 of 2024

IN THE MATTER OF:

Gaurav Rath

... Appellant

Versus

State Bank of India & Anr.

... Respondents

Present:

For Applicant : Mr. Sunil Fernandes, Sr. Advocate with Mr. Amit Dhall, Ms. Rajshree Choudhury and Diksha Dadu, Advocates.

For Respondents : Mr. Siddharth Sangal, Mr. Chirag Sharma, Advocates for R-1.
Mr. Abhishek Devgan and Mr. Vishal Hirawat, Advocates for R-2.

J U D G M E N T

ASHOK BHUSHAN, J.

IA No.4244 of 2024

This is an application praying for condonation of delay in filing the Appeal.

2. The Appeal has been filed against order dated 16.04.2024 passed by National Company Law Tribunal, Special Bench, New Delhi in CP (IB)-550(PB)/2021. By the impugned order, the Adjudicating Authority has admitted Section 95 application filed by the State Bank of India against the Appellant – Personal Guarantor of the Financial Creditor.

3. This Appeal has been efiled on 10.06.2024. The grounds taken in the application for condonation of delay is that although the order is dated

16.04.2024, but the order was uploaded on 13.05.2024 and from the date of uploading the order, there is no delay in filing of the Appeal, since it was filed within 30 days from the said date. However, by abundant caution, the application for condonation of delay was filed.

4. When the application for condonation of delay came for consideration before this Tribunal on 28.08.2024, this tribunal passed following order:

“29.08.2024 There is a delay in filing the Appeal. Learned Counsel for the Appellant submits that the order was not entirely dictated and was available only on 13.05.2024 then it was uploaded on the website. He submits that order being not unavailable prior to that the limitation will start only from 13.05.2024. Whereas submissions have been opposed by the Learned Counsel for the Respondent and submits that entire order was dictated in the Court.

Let a report be submitted by Registry of the NCLT with respect to the order dated 16.04.2024 passed in I.A. No. 5446 of 2021, let report be submitted within 10 days. Registry shall also in the report indicate that when the signed copy of order was available.

List this Appeal again on **09.09.2024”**

5. In pursuance of the order dated 29.08.2024, the NCLT has submitted a Report through email dated 09.09.2024. The Report, which was submitted by NCLT is as follows:

“2. That, IA-5546/2021 in CP (IB) – 550(PB)/2021 was heard by this Adjudicating Authority on 16.04.2024 and the order was dictated in the open court by the Member (J). However, considerable time was taken in typing/transcription of the correction of the said order.

3. Further, the order was signed and uploaded on 12.05.2024. The signed copy of the order was also available on 12.05.2024.”

6. The Appellant has also filed an additional affidavit in support of the delay condonation application. An affidavit has also been filed by the State Bank of India opposing the application praying for condonation of delay.

7. We have heard Shri Sunil Fernandes, learned Senior Counsel appearing for the Appellant; Shri Siddharth Sangal, learned Counsel appearing for Respondent No.1 – State Bank of India; and Shri Abhishek Devgan, learned Counsel appearing for Respondent No.2.

8. Learned Senior Counsel for the Appellant submits that on 16.04.2024, the application filed by the State Bank of India was not listed for pronouncement of order, but for arguments. Copy of the Cause List has been filed as Annexure A-1/1 along with additional Affidavit. It is submitted that order was not fully dictated in the open Court, but was uploaded on the website only on 13.05.2024. An email regarding uploading of order was received on 13.05.2024 from NCLT, informing that order in C.P.(IB)/550(PB)2021 listed on 16.04.2024 has been uploaded on the NCLT website. It is submitted that before 13.05.2024, the order was not available, hence there was no occasion to file an Appeal. It is submitted that in view of the Report, which was called by this Tribunal from the NCLT, it is clear that order was signed and corrected only on 12.05.2024. Hence, before 12.05.2024, order was not even ready. Hence, the Appeal cannot be treated to be filed beyond limitation.

9. Learned Counsel for the State Bank of India opposing the application of delay condonation filed by the Appellant submits that order was dictated in the open Court on 16.04.2024 and when the order was dictated in the open Court, limitation for filing of the Appeal shall commence from the said date and the Appeal, which was filed on 10.06.2024, is beyond 45 days and needs to be rejected. The learned Counsel for the Bank relied on the judgment of the Hon'ble Supreme Court in **V. Nagarajan v. SKS Ispat and Power Limited & Ors. – (2022) 2 SCC 244**. Learned Counsel for the SBI referring to page 21 and 22 of the Appeal, submits that Appellant itself has pleaded that impugned order judgment is dated and virtually pronounced on 16.04.2024 and received on 13.05.2024. Hence, the date of order has to be treated as 16.04.2024.

10. Learned Counsel for the Appellant in rejoinder submissions has again referring to the Report of NCLT received in pursuance of order of this Tribunal submits that the Report itself states that order after being ready and signed was uploaded on 12.05.2024, hence, the Appeal filed by the Appellant on 10.06.2024, cannot be said to be beyond limitation. The Report, which has been received from the NCLT contains following statement in paragraphs 2 and 3, is again extracted for ready reference:

“2. That, IA-5546/2021 in CP (IB) – 550(PB)/2021 was heard by this Adjudicating Authority on 16.04.2024 and the order was dictated in the open court by the Member (J). However, considerable time was taken in typing/transcription of the correction of the said order.

3. Further, the order was signed and uploaded on 12.05.2024. The signed copy of the order was also available on 12.05.2024.”

11. The Report of the NCLT, clearly mentions that order was signed and uploaded on 12.05.2024 and signed copy of the order was also available on 12.05.2024. The present is a case where according to the Report of the NCLT, the order was signed and uploaded only on 12.05.2024. When the order itself was signed and available only on 12.05.2024, we are of the view that submission of the Appellant that Appeal filed on 10.06.2024 cannot be thrown out on the ground of delay, has substance.

12. Learned Counsel for the Appellant has relied on judgment of the Hon’ble Supreme Court in ***Sanjay Pandurang Kalate vs. Vistara ITCL (India) Ltd. – Civil Appeal Nos.7467-7468 of 2023***, in which case, the case was listed before the NCLT on 17.05.2023, where an order dismissing the IA was uploaded on the website of the NCLT on 30.05.2023. The order of NCLT bears the date of 17.05.2023, which was the date of hearing. In **Sanjay Pandurang Kalate’s** case the Hon’ble Supreme Court laid down following in paragraphs 16, 17, 18, and 19:

“**16.** From the above discussion of law, It is clear that the date on which the limitation begins to run is intrinsically linked to the date of **pronouncement**. The question that arises in the facts of the present case, therefore, is when is an order deemed to be pronounced. The National Company Law Tribunal Rules, 20167 provide guidance in this regard. Rule 89(1) of the NCLT Rules indicates that when NCLAT registry publishes its cause list, a distinction is drawn

between cases listed for pronouncement of orders and other cases. It states as follows:

“89. Preparation and publication of daily cause list.— (1) The Registry shall prepare and publish on the notice board of the Registry before the closing of working hours on each working day the cause list for the next working day and subject to the directions of the President, listing of cases in the daily cause list shall be in the following order of priority, unless otherwise ordered by the concerned Bench; namely;-

- (a) **cases for pronouncement of orders;**
- (b) cases for clarification;
- (c) cases for admission;
- (d) cases for orders or directions;
- (e) part-heard cases, latest part-heard having precedence; and
- (f) cases posted as per numerical order or as directed by the Bench;”

(emphasis supplied)

17. Further, Part XIX of the NCLAT Rules governs the ‘disposal of cases and pronouncement of orders’. The following rules are relevant:

“146. **Disposal of Cases.-** On receipt of an application, petition, appeal etc, the Tribunal, after giving the parties a reasonable opportunity of being heard, pass such orders thereon as it thinks fit:

Provided that the Tribunal, after considering an appeal, may summarily dismiss the same, for reasons to be recorded, if the Tribunal is of opinion that there are no sufficient grounds for proceedings therewith.

150. **Pronouncement of Order.**- (1) The Tribunal, after hearing the applicant and respondent, **shall make and pronounce** an order either at once or, as **soon as thereafter** as may be practicable but not later than thirty days from the final hearing.

(2) Every order of the Tribunal shall be in writing and **shall be signed and dated** by the President or Member or Members constituting the Bench which heard the case and pronounced the order.

(3) A certified copy of every order passed by the Tribunal shall be given to the parties.

(4) The Tribunal, may transmit order made by it to any court for enforcement, on application made by either of the parties to the order or suo motu.

(5) Every order or judgment or notice shall bear the seal of the Tribunal.

151. **Pronouncement of order by any one member of the Bench.**-(1) Any Member of the Bench may pronounce the order for and on behalf of the Bench.

(2) When an order is pronounced under this rule, the Court Master shall make a note in the order sheet, that the order of the Bench consisting of President and Members was pronounced in open court on behalf of the Bench.”

(emphasis supplied)

18. The above provisions of the NCLT Rules, 2016 make a clear distinction between the ‘hearing’ of an appeal and the ‘pronouncement’ of the order. Rule 150(1) provides that after hearing the parties, the order may be pronounced either at once or soon thereafter, as may be practicable, but not later than thirty days from the final hearing. Further, Rule 151 indicates that a member of the bench may pronounce the order for and on behalf of the Bench. When the order is

pronounced, the court master shall make a note in the order sheet to that effect. The language of the above rules indicates that the pronouncement of the order is necessary and cannot be dispensed with.

19. In the present case, the cause list for 17 May 2023 placed on record by the appellant indicates that the case was listed for admission and not for pronouncement. Further, on a specific query of the Court, it is not in dispute between counsel for the appellant and the respondent, that no substantive order was passed on 17 May 2023 by the NCLT. In these circumstances, limitation would not begin to run on 17 May 2023 which was the date on which hearings concluded. As no order was passed before 30 May 2023, there was no occasion for the appellant to lodge an application for a certified copy on 17 May 2023. Time for filing an appeal would commence only when the order appealed from was uploaded since prior to that date no order was **pronounced.**”

13. In the above case, the Hon’ble Supreme Court accepted the submission of the Appellant Sanjay Pandurang Kalate that there was no order passed before 30.05.2023, there was no occasion for the Appellant to lodge an application for certified copy on 17.05.2023. The time for filing an appeal would commence only when order appealed from was uploaded, since prior to that date, no order was pronounced. The judgment of the Hon’ble Supreme Court in **Sanjay Pandurang Kalate** supports the submissions advanced by the Appellant. In case of **V. Nagarajan v. SKS Ispat and Power Limited & Ors.** (supra) relied by Respondent, the NCLT had pronounced the judgment hence it was held that limitation shall

commence from the date of pronouncement. In the present case the judgment came to be ready, signed and uploaded on 12.05.2024.

14. We, thus, hold that the Appeal filed on 10.06.2024 against an order, which was signed and made available only on 12.05.2024, is not barred by time. The delay condonation application (IA No.4244 of 2024) is disposed of accordingly, holding that Appeal is not barred by time.

List the Appeal for admission on **22nd November, 2024.**

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

NEW DELHI

12th November, 2024

Ashwani