

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.29/2024
(IA Nos.95 & 96/2024)

In the matter of:

M/s. Whitehand Services	... Appellant
V	
M/s. RD Buildtech & Developers (Karnataka) Pvt. Ltd.	...Respondent

Present :

For Appellant : Mr. T. Jayasankar, Advocate

ORDER
(Hybrid Mode)

22.04.2024:

The Appellant herein in this Company Appeal (AT) (CH) (Ins) No.29/2024 is an Operational Creditor, who had filed an Application to proceed under section 9 of the Insolvency and Bankruptcy Code, 2016, whereby he has sought an initiation of CIRP Proceedings, as against the Corporate Debtor / Developer, M/s. RD Buildtech & Developers (Karnataka) Pvt. Ltd.

The Operational Creditor and Corporate Debtor, it is alleged to have entered into a Service Agreement on 01.05.2019, for providing certain services, but there had been certain disputes between them with regards to the nature of services provided and the dispute of delayed payment which according to the Appellant initially it was due to be paid i.e., Rs.22,53,949/- being the liability is due to be paid effect from 01.04.2019.

Prior to the initiation of proceedings under section 9 on 27.01.2020, FORM 3 was issued by the Appellant in compliance of the provisions contained under section 8 of the Insolvency and Bankruptcy Code, 2016 raising a demand. This Demand Notice dated 27.01.2020 was served on the developer.

But, however once again on 30.12.2022, a second notice contending to be under section 8 was issued raising a demand for an amount of Rs.40,19,099/- which was inclusive of the interest payable on it at the rate of 24% p.a. due with effect from 15.04.2021. The initiation of section 9 of proceedings resulted to registration of a Company Petition as CP(IB) No.180/BB/2020. The application thus preferred under section 9 by the Appellant was rejected by the Adjudicating Authority by an Order dated 15.04.2021, thereby directing the parties to settle their claim, within the period of one month, and liberty to the Petitioner was granted to reapproach the Adjudicating Authority by filing appropriate petition in accordance with Law.

The matter could not be crystallised hence, the Appellant had filed the instant CP(IB) No.95/BB/2023, being the second company petition, which was preferred after rejection of recall, as it was preferred by the Appellant seeking recall of the order dated 15.04.2021, it was as rendered in CP(IB) No.180/BB/2020, the said Application for recall was rejected by the Learned Adjudicating Authority on 06.10.2022. Consequently, a fresh Petition was filed on 02.03.2023. But the same too has been rejected by the impugned order dated 31.10.2023, on the ground that the claim raised for seeking initiation of CIRP Proceedings, was barred by section 4 of the Insolvency and Bankruptcy Code, 2016. Section 4, as it stood after it's amendment with the effect from 24.03.2020. The pecuniary jurisdiction for initiating the Proceedings under section 9 had been enhanced to Rs.1 Crore, thus the proceeding for initiation for CIRP for an amount of less than 1 Crore would be barred by the amendment dated 24.03.2020, as made under section 4 of the Insolvency and Bankruptcy Regulations. Be that as it may, we are not at this juncture required to dwell it as the said issue regards the initiation of CIRP Proceedings, for the reason being that the Appellant while presenting the Appeal had filed an application bearing IA No.96/2024 by invoking provisions contained under Rule 31 for NCLT Rules to be read with

Rule 11, seeking Condonation of Delay of 12 days of delay which has occurred in filing the Appeal.

When the matter was initially taken up on 15.03.2024, the Appellant was called upon to file an additional Affidavit, providing the details as to the date on which the Impugned Order was uploaded on the website, in compliance to that an Affidavit has been filed on 01.04.2024 and the Appellant has submitted that the Impugned Order was uploaded on 09.11.2023. In the Affidavit thus filed for seeking Condonation of Delay, the Appellant has come up with the case that the Impugned Order dated 31.10.2023, since it was uploaded at a much belated stage, and the copy of which was received by him on 14.11.2023, he could not file an Appeal within time. Hence, the delay of 12 days in filing the Appeal before the Registry deserves to be condoned.

Under the NCLAT Rules, the provision for preferring an Appeal is contemplated, under section 61, which provides for the time period during which appeal could be filed before the Appellate Tribunal i.e. within the 30 days of passing of the Order, the same could be registered only based on the Certified Copy of the Order upon being produced as per Rule 22, as certified copy has been filed along with the Appeal. The Question that whether the Free Copy which was supplied to the Appellant on 14.11.2023 becomes irrelevant for the reason being that under section 22(2), the Appeal could be preferred before NCLAT based on the Certified Copy of the Impugned Order, the Certified Copy under statute has defined under (sub section 9) of section 2 of the NCLT Rules which means that it would be the Certified Copy, as it has been provided under section 76 of the Evidence Act and not otherwise. The issue would be as to whether the Free Copy which has been issued under Rule 50 of the NCLT Rules, cannot be taken as to be the Certified Copy under the Provisions of section 22(2) to enable to file an appeal under section 61. This issue had already decided by this Tribunal in **Company Appeal (AT) (CH) (Ins) No.23/2024, Munagala Roja Harsha**

Vardhini Vs Vardhansmart Private Limited this tribunal, vide its Judgment dated 15.03.2024 has held as under (relevant para extracted):-

“32. A mere running of the ‘eye over the rule 50 of the National Company Law Tribunal Rules, 2016 clearly points out that the ‘Application’ of the ‘Petitioner/Appellant’ to comply with a certified copy by paying the ‘schedule of fees’ ‘cannot be dispensed with’ and at best, the sending of the ‘certified copy’ of ‘final order’ by the authorities concerned, ‘Free of Cost’, is an obligation caused upon the ‘Office of the Registry’ of the ‘National Company Law Tribunal’, as per National Company Law Tribunal Rules. Moreover, that the receipt of ‘free of cost copy’, the ‘Petitioner/Appellant’, by receiving the same, and after recovering from illness, cannot be substitute for a ‘Certified Copy’ of the ‘Impugned Order’, to accompany the ‘Appeal’ as per Rule 22(2) of the National Company Law Appellate Tribunal Rules, 2016.

33. To put it precisely and succinctly, the “Rule 50 of the National Company Law Tribunal Rules, 2016”, is to be read in conjunction with definition of Rule 2(9) of the National Company Law Tribunal Rules, 2016. To put it differently, Rule 50 of the National Company Law Tribunal Rules, 2016 cannot be interpreted, disjunctively, without failing back upon the ‘words’ employed under Rule 2(9) of the National Company Law Tribunal Rules, 2016, which provides for meaning for the word ‘certified’, in relation to the ‘Copy of the Document’ as mentioned therein.

34. Moreover, obtaining of ‘Free of Cost Copy’, is only the ‘Concern of the particular party to the effect that an ‘order’ was obtained against him and as a ‘litigant’ / ‘stakeholder’ he/she is to pursue the ‘further course of action’, in the manner known to law and in accordance with law”.

It has not been the case of the Appellant, that the Appeal was accompanied with the Certified Copy as contemplated under Rule 22 of the NCLT Rule and that the Certified Copy would be as provided under sub section 9 of section 2 of the NCLT Rules, which could be taken as to be the basis for the purpose of determining the period of limitation. The limitation to file appeal would be determined only from the date of pronouncement of the Judgment i.e, dated 31.10.2023, uploading of the Impugned on 09.11.2023 it becomes

insignificant. It is admitted case of the Appellant that he has applied for the free copy only on 14.11.2023 by presenting an application before the Registry of the court. But for to procure the certified copy he has filed the application on 21.03.2024, copy of which was received on 26.03.2023, as such the period prescribed under section 61(2) of the Insolvency and Bankruptcy Code, 2016. Because, the limitation for filing an Appeal has to be considered from the date of pronouncement of Judgment and not the date on which the Appellant received the Certified Copy, but since he applied Certified Copy on 21.03.2024 the Appeal will not be within the period prescribed under Proviso sub section 2 of Section 61 of the Code. Because, the Appeal itself for its registration was presented before the Registry on 26.12.2023, that too despite of the fact, that the Appellant had already received the Free Copy on 14.11.2023. Even, according to the case of the Appellant, since he received the knowledge and the Free Copy of the Judgment was received by him on 14.11.2023, the appeal since presented on 26.03.2024, would be barred by limitation.

Owing to the aforesaid reason coupled with the following facts as given hereunder, filing of an appeal on 26.12.2023 would be barred by limitation being beyond the period of limitation provided under section 61 of the Insolvency and Bankruptcy Code as:

1.	Impugned Judgment	31.10.2023
2.	Uploaded on	09.11.2023
3.	Received Free Copy	14.11.2023
4.	30 days from Pronouncement	30.11.2023
5.	30 days from uploading	08.12.2023
6.	30 days from Receipt Free Copy	13.12.2023
7.	Applied Certified Copy	21.03.2024
8.	Received Certified Copy	26.03.2024
9.	Appeal filed	26.12.2023

10.	45 days ends from Pronouncement	15.12.2024
11.	45 days ends from uploading	08.12.2023
12.	45 days ends from Free Copy	13.12.2024

Hence, as Condone Delay Application carries no justification as to why the Appeal was filed on 26.12.2023 i.e. beyond the prescribed period of limitation under Law. Even, according to the Appellant himself, the appeal has been filed with 12 days delay. The Appeal is barred by limitation, hence the Condone Delay Application i.e. IA No.95/2024 would stand rejected and consequences there to the Company Appeal (AT) (CH) (Ins) No.29/2024, M/s. Whitehand Services Vs M/s. RD Buildtech and Developers (Karnataka) Pvt. Ltd. would too stand rejected.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

VG/TM