

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

IA No.2274 of 2024

IN

Company Appeal (AT) (Insolvency) No. 633 of 2024

In the matter of:

Bharat Heavy Electricals Ltd

...Appellant

Vs.

**Sanjeev Maheshwari,
Liquidator of U.B. Engineering Ltd.**

...Respondent

For Appellant: Mr. Krishnendu Datta, Sr. Advocate with Ms. Mayuri Raghuvanshi, Mr. Vyom Raghuvanshi, Ms. Akanksha Rathore and Ms. Niharika, Advocates.

For Respondent: Mr. Ravi Raghunath, Advocate.

**J U D G M E N T
(28th May, 2024)**

Ashok Bhushan, J.

This is an Application praying for Condonation of Delay. We have issued notice on the Delay Condonation Application. Affidavit in Reply as well as Rejoinder to the Reply has been filed by the parties.

2. We have heard Learned Counsel for the parties.

3. This Appeal has been filed against the order dated 22.11.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court No.1 allowing IA No.4434 of 2023. The Appellant's case in Delay Condonation Application is that the arguments were heard on IA No. 4434 of

2023 on 22.11.2023 but no order was pronounced in the open Court. The Appellant was regularly following the Counsel representing the Appellant before the Adjudicating Authority to check if the order is pronounced. On 25.01.2024, the Liquidator shared a copy of the order dated 22.11.2023 with the Applicant/ Appellant whereby the Adjudicating Authority has allowed the application. Appellant/ Applicant enquired from the counsel representing the Appellant who insisted that the order has not been pronounced and shared a screenshots of the website indicating that the order was not uploaded as late as on 20.02.2024. On 22.02.2024, Counsel for the Applicant received the certified copy of the order and thereafter the appeal has been filed on 02.03.2024. Counsel for the Appellant relied on the judgment of the Hon'ble Supreme Court in ***“Sanjay Pandurang Kalate vs. Vistra ITCL (India) Limited and Ors.- 2023 SCC OnLine SC 1663”*** to submit that the order is not pronounced in the court, limitation shall not commence from the date which was fixed for hearing of the application.

4. Counsel for the Respondent in the reply refuting the submissions of the Appellant contends that the case was listed for hearing on 22.11.2023 and Counsel for the Appellant/ Applicant was also present on 22.11.2023. There was no attempt on behalf of the Appellant to apply certified copy of the order. In the Reply, the Respondent does not dispute that the impugned order was not pronounced on 22.11.2023 and only arguments were concluded. It is useful to notice paragraph 3.5.5 of the rejoinder to the reply, which is as follows:-

“3.5.5. The contents of paragraph 5.5 and 5.6 are wrong and denied. The impugned judgment dated 22.11.2023 was not pronounced in open court and on 22.11.2023 only the arguments were concluded. Even the cause list of Ld. NCLT for 22.11.2023 clearly reflects that the I.A. no. 4434 of 2023 was listed on 22.11.2023 for hearing.”

5. It is submitted that the Appellant was obliged to apply certified copy of the order and cannot take the plea that since order was not known, limitation shall not commence for filing the appeal. According to own case of the Appellant, he received the order on 25.01.2024 and thereafter 30 days also came to an end on 23.02.2024 and the Appeal was filed only on 02.03.2024 and no explanation has been given for Condonation of Delay of 6 days. There being no explanation given for condonation of 6 days' delay, application for condonation of delay is liable to be rejected. Counsel for both the parties relied on the judgments of the Hon'ble Supreme Court in support of their submissions which we shall notice hereinafter.

6. From the fact which has been brought on the record and the pleadings of the parties, it is clear that 22.11.2023 was date fixed for hearing of the IA No.4434 of 2023 and the arguments were heard on IA No.4434 of 2023. It is not disputed by the Respondent that no order was pronounced on 22.11.2023 by the Court. Judgment of the Hon'ble Supreme Court in **“Sanjay Pandurang Kalate”** (supra) supports the submission of the Appellant that when order is not pronounced in the open court, limitation for filing the appeal

shall not commence. In **“Sanjay Pandurang Kalate”** (supra) case, the Hon’ble Supreme Court has granted the benefit to the Appellant and held that limitation is to be counted from the date when order was uploaded on the website. In paragraphs 19, 20 and 21 of the judgment, Hon’ble Supreme Court noticed following:-

“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.

20. In V Nagarajan (supra), there was an unequivocal pronouncement of the order before the upload of the order and thus, the decision is not applicable to the facts of the case, in the facts of the present case, the date of upload of the order is the same as the date of pronouncement. To avoid situations such as these, in cases where the matter has been heard on a particular day but the order is pronounced on a later date, the NCLT must refrain from affixing the date of

hearing on the order. Such an approach would be a violation of the NCLT Rules, which create a distinction between hearing and pronouncement and do not allow the NCLT to dispense with the requirement of pronouncement.

21. In view of the above, the period of limitation began to run on 30 May 2023. The 30- day limitation period provided in Section 61(2) of the IBC concluded on 29 June 2023. Though the appeal was filed beyond the period of thirty days, it was within the condonable period of fifteen days. We are of the considered view that the appeal should be restored to the NCLAT for reconsidering whether the appellant has shown sufficient cause for condoning the delay beyond thirty days. To facilitate this, the impugned order of the NCLAT declining to condone the delay is set aside and the proceedings are restored to the file of the NCLAT. We are not inclined to stay the CIRP at this stage. However, the NCLAT is directed to dispose of the appeal at the earliest.”

7. Although the Appellant’s case is that till 20.02.2024 the order was not uploaded. Appellant has also along with the appeal brought on record the screenshot but in the present case, there is no dispute to the fact that by e-mail dated 25.01.2024, liquidator has informed the Appellant about the order dated 22.11.2023. Thus, the Appellant cannot claim that limitation will not begin at least from 25.01.2024 when the order was communicated by the liquidator to him.

8. Counsel for the Respondent has relied on the judgment of the Hon'ble Supreme Court in ***"Lingeswaran etc. vs. Thirunagalingam- 2022 SCC OnLine SC 2233"*** where the Hon'ble Supreme Court has observed that even if the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. Counsel for the Respondent relied on paragraph 5 of the judgment, which is as follows;-

"5. We are in complete agreement with the view taken by the High Court. Once it was found even by the learned trial Court that delay has not been properly explained and even there are no merits in the application for condonation of delay, thereafter, the matter should rest there and the condonation of delay application was required to be dismissed. The approach adopted by the learned trial Court that, even after finding that, in absence of any material evidence it cannot be said that the delay has been explained and that there are no merits in the application, still to condone the delay would be giving a premium to a person who fails to explain the delay and who is guilty of delay and laches. At this stage, the decision of this Court in the case of Popat Bahiru Goverdhane v. Land Acquisition Officer, (2013) 10 SCC 765 is required to be referred to. In the said decision, it is observed and held that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or

inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same.”

9. There cannot be any dispute to the proposition laid down in the above case that law of limitation has to be applied and the period of limitation cannot be extended on equitable grounds. In the facts of the above case, delay of 467 days came to be condoned by the Trial Court which order was set aside by the High Court. The Hon’ble Supreme Court agreed with the view of the High court that even the trial court found that delay has not been properly explained but still trial court has condoned the delay which was set aside by the High Court.

10. The next judgment relied by the Counsel for the Respondent is **“*Sheo Raj Singh vs. Union of India and Anr.- (2023) 10 SCC 531*”**. The Hon’ble Supreme Court in the above case has occasion to consider the precedents for condonation of delay as has been settled by the Hon’ble Supreme Court. In paragraph 17, Hon’ble Supreme Court referring to an earlier judgment in **“*Collector (LA) vs. Katiji- (1987) 2 SCC 107*”** laid down following in paragraph 17:-

“17. In Collector (LA) v. Katiji the relevant High Court did not condone the delay of 4 (four) days in presentation of an appeal by the Collector in a land acquisition matter for which the order rejecting the application under Section 5 of the Limitation Act was carried in appeal. This Court opined that legislature had conferred power under Section 5 in order to enable the courts to do substantial justice to the

parties by disposing of matters on "merits". It was further held that the expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of courts. Despite the liberal approach being adopted in such matters, which was termed justifiable, this Court lamented that the message had not percolated down to all the other courts in the hierarchy and, accordingly, emphasis was laid on the courts adopting a liberal and justice- oriented approach. The following passage from the decision is reflective of this Court's realisation that: (Katiji case, SCC p. 108. para 3)

“3And such a liberal approach is adopted on principle as it is realised that:

** * **

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.

** * **

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

(emphasis supplied).”

11. The law as noticed above indicate that the expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice. Counsel for the Respondent has relied on paragraphs 30, 31 and 32 of the judgment which are as follows:-

“30. Considering the aforementioned decisions, there cannot be any quarrel that this Court has stepped in to ensure that substantive rights of private parties and the State are not defeated at the threshold simply due to technical considerations of delay. However, these decisions notwithstanding, we reiterate that condonation of delay being a discretionary power available to courts, exercise of discretion must necessarily depend upon the sufficiency of the cause shown and the degree of acceptability of the explanation, the length of delay being immaterial.

31. Sometimes, due to want of sufficient cause being shown or an acceptable explanation being proffered, delay of the shortest range may not be condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable. Of course, the courts must distinguish between an "explanation" and an "excuse". An "explanation" is designed to give someone all of the facts and lay out the cause for something. It helps clarify the circumstances of a

particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault. Care must, however, be taken to distinguish an "explanation" from an "excuse". Although people tend to see "explanation" and "excuse" as the same thing and struggle to find out the difference between the two, there is a distinction which, though fine, is real.

32. An "excuse" is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something as just an "excuse" would imply that the explanation proffered is believed not to be true. Thus said, there is no formula that caters to all situations and, therefore, each case for condonation of delay based on existence or absence of sufficient cause has to be decided on its own facts. At this stage, b we cannot but lament that it is only excuses, and not explanations, that are more often accepted for condonation of long delays to safeguard public interest from those hidden forces whose sole agenda is to ensure that a meritorious claim does not reach the higher courts for adjudication."

12. From the observations made by the Hon'ble Supreme Court, it is clear that the explanation is not akin to excuse. The Hon'ble Supreme Court has held that condonation of delay being a discretionary power available to courts, exercise of discretion must necessarily depend upon the sufficiency of the

cause shown and the degree of acceptability of the explanation, the length of delay being immaterial. In the above case, Single Judge of the High Court has allowed Section 5 application filed by the Union of India and condoned the delay of 479 days. Ultimately, the Hon'ble Supreme Court dismissed the appeal upholding the condonation of delay of 479 days.

13. The law laid down by the Hon'ble Supreme Court in the above judgment is well settled. Coming to the facts of the present case, the consistent case of the Appellant is that no order was pronounced on 22.11.2023 when the application was heard and the applicant was pursuing the counsel who informed him that order has not been uploaded even after 25.01.2024 when order was received by the liquidator. Counsel informed that the order is not uploaded and screenshot as late as on 20.02.2024 was shared with the Appellant. Following the law laid down by the Hon'ble Supreme Court in **"Sanjay Pandurang Kalate"** (supra), as noted above, the limitation for filing the appeal shall not commence from 22.11.2023 on the date when the application was heard.

14. In the present case, no date of uploading has been brought on the record, hence, the date for commencement of the limitation cannot be pegged on date of uploading. However, the liquidator having shared the order on 25.01.2024, Appellant had to file the appeal within 45 days. 30 days' time expired from 24.02.2024 and filing of the appeal on 02.03.2024 is within condonable period and in the facts of the present case, we are of the view that

sufficient cause has been made out to condone the delay. Delay Condonation Application is allowed.

15. List the Appeal 'For Admission' on 31.05.2024.

**[Justice Ashok Bhushan]
Chairperson**

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

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

**New Delhi
Anjali**