

Exide Industries Ltd vs Jitender Kumar Jain Resolution ... on 12 October, 2022

Author: Ashok Bhushan

Bench: Ashok Bhushan

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Company Appeal (AT) (Insolvency) No. 1169 of 2022

&

I.A. No. 3522 of 2022

IN THE MATTER OF:

Exide Industries Ltd.

...Appellant

Versus

Jitender Kumar Jain,
Resolution Professional of Morakhia Copper & Alloys
Pvt. Ltd.

...Respondent

Present:

For Appellant:	Mr. Amar Dave, Mr. Dhaval Deshpande, Advocates
For Respondent:	Mr. Ravinder Kr. Rawat, Advocate

ORDER

12.10.2022: Heard Learned Counsel for the Appellant and Learned Counsel for the Respondent.

2. This Appeal has been filed against the Order dated 06th July, 2022. This Appeal was e-filed on 30th August, 2022 and Physical Copy of Appeal was filed on 05th September, 2022. There is delay in filing the Appeal.

3. Application for condonation of delay (I.A. No. 3522 of 2022) as well as Additional Affidavit has been filed.

4. Learned Counsel for the Appellant submits that Appellant received a free certified copy of the Impugned Order on 27th July, 2022 and thereafter the Appeal was filed within one month.

5. Learned Counsel for the Respondent has rightly placed reliance on the Judgement of Hon'ble Supreme Court in the matter of "V Nagarajan Vs. SKS Ispat and Power Ltd." [(2022) 2 SCC 244]

decided on 22nd October, 2021. In paragraph 21 of the Judgement, Hon'ble Supreme Court laid down following:

"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 Company Appeal (AT) (Insolvency) No. 1169/2022 defeat the substantive objective of a legislation that has an impact on the economic health of a nation."

6. In view of the law laid down by the Hon'ble Supreme Court, the limitation for filing the Appeal begins when order was pronounced. The mere fact that Appellant received free certified copy of the Impugned Order on 27th July, 2022, the period of limitation shall not stop running after passing of the order/judgment. Our jurisdiction to condone the delay is only limited to 15 days under Section 61(2) proviso. There being delay of more than 15 days, the Delay Condonation Application cannot be allowed. Application is dismissed. Consequently, the Memo of Appeal is rejected.

[Justice Ashok Bhushan] Chairperson [Dr. Alok Srivastava] Member (Technical) [Mr. Barun Mitra] Member (Technical) Basant/nn Company Appeal (AT) (Insolvency) No. 1169/2022