Bhawanishankar Harishchandra Sharma vs Feedback Highways Omt Private Limited ... on 2 September, 2022

1

NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL
BENCH, NEW DELHI
Company Appeal (AT) (Ins.) No. 217 & 218 OF 2022

IN THE MATTER OF:

BHAWANISHANKAR HARISHCHANDRA SHARMA
Member of the Suspended Board of Directors of
Supreme Infrastructure BOT Pvt. Ltd.
Through its Power of Attorney Holder
Mr. Satish Kumar Tiwari
R/o Bhela, Samodhpur, Jaunpur,
Uttar Pradesh - 223102 ...Appellant

Versus

FEEDBACK HIGHWAYS OMT PVT. LTD.
Having its Registered Office At:
10th Floor, Tower C, DLF Building No. 10 DLF,
Cyber City, Phase II, Gurgaon, Haryana - 12202 ...Respondent No. 1

MS. POONAM BASAK
Interim Resolution Professional for Supreme
Infrastructure Bot Pvt. Ltd.
91, Springboard Business Hub Pvt. Ltd.
Opp. Gate 2, SEEPZ Andheri East,
Mumbai - 400 093 ... Respondent No. 2

For Appellant: Mr. Abhijeet Sinha, Mr. Abhirup Dasgupta, Mr. Kunal Godhwani, Mr. Ishaan Duggal and Ms. Bhawana Sharma, Mr. Aditya Shukla, Advocates
For Respondents: Mr. Neeraj Malhotra, Sr. Adv. with Ms. Shweta Bharti, Mr. Sukrti Kapoor, Mr. J.K. Chaudhary, Advocates for R1
Mr. Ravi Raghunath, Advocate for R2

JUDGMENT

Per: Justice Rakesh Kumar Jain.

This order shall dispose of the appeals bearing CA (AT) (Ins) No. 217 & 218 of 2022, purported to have been filed against the order dated 10.01.2018 and 25.02.2022 collectively, passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench in TCP No. Company

Appeal (AT) (Ins.) No. 217 & 218 OF 2022 273/I&BC/NCLT/MB/MAH/2017, whereby an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') by 'M/s Feedback Highways OMT Pvt. Ltd.' (Operational Creditor) against the Supreme Infrastructure BOT Pvt. Ltd. (Corporate Debtor) in respect of an amount of Rs. 1,18,24,435/- was admitted and the subsequent proceedings were carried out by the Adjudicating Authority in terms of Section 13 of the Code vide order dated 25.02.2022.

2. Shorn of unnecessary details, the Operational Creditor had issued a demand notice in terms of section 8 of the Code alongwith invoices (statement of outstanding amount) and thereafter filed the application under Section 9 of the Code which was admitted but at the same time it was observed that:

> "18. That Section 9(4) prescribes initiation of Corporate Insolvency Resolution by proposing name of Insolvency Professional. In this case the Petitioner has not proposed the same. Hence, in a situation when the name of IRP is not proposed, a provision is prescribed in Section 16(3) of the Insolvency code that where the application for CIRP is made by an Operational Creditor and no proposal for an IRP is made, the Adjudicating Authority shall take a reference to the Board for the recommendation of an insolvency professional who may act as an IRP. Accordingly, following this provision, the Registry, NCLT, Mumbai is hereby directed to make the prescribed reference to the Insolvency and Bankruptcy Board of India, New Delhi seeking appointment of IRP in this case. Copy of this order be attached with the said reference.
>
> 20. Having considered the totality of the circumstances and the application for initiation of Insolvency Resolution Process under the I&B Code, 2016 and having considered the default of the Corporate Debtor in making the payment as discussed supra, it is hereby pronounced that Moratorium as prescribed under Section 14 of the Code, 2016 shall come into operation on appointment of IRP. As a consequence, prohibiting institution of any suit before a Court of Law, transferring/encumbering any of the assets of the debtor etc. However, the supply of essential goods or services to the Corporate Debtor shall not be terminated during moratorium period. It shall be effective till completion of the Insolvency Company Appeal (AT) (Ins.) No. 217 & 218 OF 2022 Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code"

3. It is also observed in the order dated 10.01.2018 that:

> "23. The petition is hereby admitted. The commencement of the CIRP shall be effective from the date appointment of IRP by further order."

4. The aforesaid order was pronounced by two judicial members, namely, Shri. Bhaskara Pantula Mohan, Member (Judicial) and Shri M.K. Shrawat, Member (Judicial). According to the Appellant, from the date of demand notice issued under Section 8 of the Code in the matter in hand, the

Appellant came to know about the initiation of another proceedings by Respondent No. 1 when it received another demand notice dated 27.02.2019 which was also issued under section 8 of the Code but the amount was increased with the passage of time due to interest factor. It is also submitted that the said notice was received on 12.03.2019 and the Respondent filed a short reply to the notice on 14.03.2019. It is further submitted that on 25.03.2019 another petition under section 9 of the Code was filed by Respondent No. 1 against the Corporate Debtor before the Adjudicating Authority which was assigned CP No. 1350/MB/2019. It is stated that the notice in the second application, filed under Section 9, was issued to the Appellant on 11.06.2019 and on 25.10.2019 the second petition was dismissed with the following orders:

> "C.P. (IB) -1350/MB/2019 Both sides present. It is reported that a CIRP Petition was admitted against the same Corporate Debtor in TCP-2736/2017 by DB-II by NCLT on 10.09.2018. In view of this, this Petition is dismissed as infructuous."

5. Counsel for the Respondent has pointed out that they wrote a letter to the Registrar of the NCLT, Mumbai Bench, on 26.12.2019 seeking permission to submit a miscellaneous application for appointment of IRP in pursuance of order dated 10.01.2018 and accordingly filed the I.A. No. 1550 of 2021 for appointment of the IRP. According to the Appellant, it was at this stage they came to know about the order dated 10.01.2018 but ultimately I.A. No. 1150 of 2021 was disposed of on 25.02.2022 with the appointment of Poonam Basak as IRP who was appointed with the consent of both the parties. It is pertinent to mention here that even till that time the Insolvency and Bankruptcy Board of India (IBBI) did not make any recommendation.

6. Counsel for the Appellant has submitted that the arguments in the application TCP No. 273 of 2017 were heard on 26.07.2017 by a Bench of Shri M.K Shrawat, Member (J) and Shri Ravi Kumar Duraisamy, Member (T) and the order was reserved. In this regard, he has referred to the cause list of 26.07.2017 available at Pg. 135 as Annexure A-12 and at Pg. 139 of the Paper book, at serial no. 33, the case in hand was shown as reserved for orders. According to the Appellant the case was finally heard by the Bench of Shri M.K. Shrawat and Ravi Kumar Duraisamy and was not fixed for further arguments. The fact of the case having been posted on 26.07.2017 and was heard is also mentioned in Para 10 of the impugned order.

7. At the first instance, Counsel for the Appellant has assailed the order dated 10.01.2018 on the ground that the said order has been passed by a bench out of which one of the member was not even a member when the matter was heard and only participated in pronouncement of the order. In this regard, he has referred to an order dated 02.08.2017 of the Adjudicating Company Appeal (AT) (Ins.) No. 217 & 218 OF 2022 Authority as per which Mr. Bhaskara Pantula Mohan, Member (J) had joined the NCLT and was posted at NCLT, Mumbai vide order dated 31.07.2017 and the NCLT Bench II was constituted with Mr. M.K Shrawat, Member (Judicial) and Mr. Bhaskara Pantula Mohan, Member (Judicial). It was provided that the order dated 02.08.2017 shall come into force w.e.f. 03.08.2017. The aforesaid order dated 02.08.2017 is reproduced for a ready reference:

"ORDER Shri Bhaskara Pantula Mohan Member (Judicial) has joined the NCLT and posted at NCLT Mumbai vide order no. 10/36/2016- NCLT dated 31.07.2017. Accordingly, the Benches at NCLT Mumbai are hereby reconstituted as under:

Bench at NCLT Mumbai:

NCLT Division Bench-I

1. Shri BSV Prakash Kumar, Member (Judicial)

2. Shri V. Nallasenapathy, Member (Judicial) NCLT Division Bench-II

1. Shri M.K. Shrawat, Member (Judicial)

2. Shri Bhaskara Pantula Mohan Member (Judicial)"

8. Case set up by the Appellant is that the order dated 10.01.2018 was not pronounced by the Bench on that date as it was not a part of the cause list of 10.01.2018 which was put up for notice by the NCLT, Court-II. The cause list of 10.01.2018 is also attached as Annexure A-21. We could not find the entry regarding the present case in the said cause list much less for the purpose of pronouncement of the order. In the background of the aforesaid facts and circumstances, Counsel for the Appellant has argued that the order dated 10.01.2018, passed by the Bench of Mr. M.K Shrawat, Member (Judicial) and Mr. Bhaskara Pantula Mohan, Member (Judicial) is patently illegal, inter alia, on the ground that the order has been passed by both the Judicial members which is violative of Section 419 (3) of the Company Appeal (AT) (Ins.) No. 217 & 218 OF 2022 Companies Act, 2013 which provides that the Tribunal shall exercise its power by a bench of two members out of which one shall be a technical member. At this stage, Counsel for Respondent No. 1 has drawn our attention to Section 431 of the Companies Act, 2013 to contend that the order of the Adjudicating Authority shall not be invalid merely on the ground that there is a defect in the constitution of Tribunal or Appellate Tribunal as the case may be.

9. Counsel for the Appellant has argued with all vehemence that the order dated 10.01.2018 is unsustainable in law because it violates the principle of natural justice in as much as the principle that one who hears the lis should decide. It is submitted that as per the evidence brought on record it is apparent that the application under Section 9 was heard by a bench different from the bench who had pronounced the order.

10. In reply, Counsel for the Respondent has submitted that though it is a fact that the order was reserved by a bench different from the bench who had passed the order but one of the member was the same i.e. Shri M.K Shrawat. He has further submitted that even otherwise it is a procedural defect for which a well-considered order should not be interfered with.

11. He also pointed out to the cause list dated 21.12.2017 Annexure R-8 at Pg. 114 of the Reply to contend that the same bench who had passed the order on 10.01.2018 had the occasion to hear the

matter for clarification. In this regard, Counsel for the Appellant has pointed out that as per the said cause list the matter was reserved for orders but there is no such order on record. Moreover, there is no reference of any such order in the impugned Company Appeal (AT) (Ins.) No. 217 & 218 OF 2022 order dated 10.01.2018 which could throw some light on the fact as to what has really transpired.

12. Now the question involved in this case is as to whether a member of the bench who has not heard the arguments can pronounce the order of a reserved Judgment?

13. Audi alterm partem is a salutary principle of natural justice which means that nobody should be condemned unheard. It is equally important that the decision should not be taken by a Judge who has not heard the case on facts and the law. In the case of Gullapalli Nageswara Rao & Ors. Vs. Andhra Pradesh State Road Transport Corporation & Anr., 1959 AIR 308, relied upon by the Appellant, the Hon'ble Supreme Court has observed that:

> "31. The second objection is that while the Act and the' Rules framed thereunder impose a duty on the State Government to give a personal hearing, the procedure prescribed by the Rules impose a duty on the Secretary to hear and the Chief Minister to decide. This divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear-up his doubts during the course of the arguments, and the party- appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure."

14. He has also relied upon a decision of this Appellate Tribunal in the case of Ergomax India Pvt. Ltd. Vs. The Registrar, NCLT, CA (AT) (Ins) No. 133 of 2021, in which it is held that:

> "22. It is to be relevantly mentioned that 'Pronouncement of Order' is quite distinct from communicating/informing/intimating a deliverance of an order. At any cost, 'Tribunal' cannot dispense with justice. In reality, it must discharge its duties/function with a sole aim and purpose of 'Dispensing Justice'.
>
> Company Appeal (AT) (Ins.) No. 217 & 218 OF 2022
>
> 23. If an order/judgment is delivered by a 'Tribunal' ignoramus of rules, then, it will result in untold hardship, misery and unerringly leading to a miscarriage of justice. Moreover, 'expediency in pronouncement' of an 'Order'/'Judgment' by a 'Tribunal' is not desirable/palatable, in the earnest opinion of this 'Tribunal'.
>
> 24. No wonder, a Judgment/Order of a Court of Law/'Tribunal'/'Appellate Tribunal' is to be written only after deep travail and positive vein. The term 'communication' means making known or sharing or imparting. In legal parlance, it means to officially

or solemnly, to declare or affirm as affirm the pronouncement of an 'Order'/'Judgment'. It is to be remembered that pronouncement of an 'Order'/'Judgment' of a Court of Law/a Tribunal is not an empty ritualistic formality. Undoubtedly, the 'Tribunal'/'Appellate Tribunal' is performing/discharging a solemn judicial function. The 'Adjudicating Authority' as per Section 5(1) of the I & B Code is the National Company Law Tribunal.

25. It cannot be forgotten that if a particular act is to be performed in a particular manner, then, it has to be performed only in that way and not otherwise. Indeed, a procedural wrangle cannot be allowed to be shaked or shackled with. Also that the judicial function of a 'Tribunal' is to be transparent and per contra, it is not to be conducted/performed in an 'opaque' manner.

26. In the light of the foregoings, on a careful consideration of the contentions advanced on behalf of the 'Appellant' and this 'Tribunal' taking note of the totality of the attendant facts and circumstances of the instant case, comes to a resultant conclusion that when the main CP(IB) No.116/NCLT/BB/2020 was heard on 11.12.2020 by the 'Adjudicating Authority' and considering the prime fact that when the matter was listed on 07.12.2020 an 'interim order' was passed adjourning the main case to 11.12.2020, by no stretch of imagination the 'Impugned Order' of the 'Adjudicating Authority' in main CP(IB)No.116/NCLT/ BB/2020 would have been pronounced on earlier date on 07.12.2020. Further, when the said final 'Impugned Order' dated 07.12.2020 was not to be found nowhere in the NCLT Website, as averred by the 'Appellant', (being a predated one) and only later it came to know on 06.02.2021, then in law, it is held as that the 'Impugned Order' dated 07.12.2020 was never pronounced by the 'Adjudicating Authority' (there being a significant omission in regard to the pronouncement of an order by a 'Tribunal' and the pronouncement being an essential 'judicial act') and hence it is declared nullity in the eye of law, apart from the crystalline fact is that the same was not listed for pronouncement and accordingly, this 'Tribunal' without delving deep into the matter and not expressing any opinion on the merits of the matter, any further, at this stage, simpliciter sets Company Appeal (AT) (Ins.) No. 217 & 218 OF 2022 aside the said 'Impugned Order' of the 'Adjudicating Authority' dated 07.12.2020 in main CP(IB)No. 116/NCLT/BB/2020 to prevent an aberration of justice and to promote substantial cause of justice. Consequently, the 'Appeal' succeeds.

15. Even otherwise, Counsel for the Appellant has referred Rule 150 of the NCLT, Rules 2016 in which it is provided that "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.

16. Thus, from the resume of the aforesaid facts and circumstances, it is clear to us that law does not permit that the case is heard by one entity and the order is pronounced by another who has not heard the case at all. In such circumstances, the question posed hereinabove is hereby answered in

favour of the Appellant and it is held that the order dated 10.01.2018, having been passed by a bench in which one of the member was not a member of the bench who had heard the matter at the time when it was reserved, is patently illegal and void ab-initio.

17. Counsel for Respondent has then vehemently argued that the present appeal is not duly constituted as it has been filed against the order dated 10.01.2018 on 26.02.2022 which is beyond the period of limitation prescribed under Section 61 of the Code. He has vehemently argued that as per the scheme of the Code, the remedy of appeal to challenge the order of the Tribunal before the Appellate Tribunal is provided under Section 61 of the Code which prescribes a period of limitation of 30 days in normal circumstances and in case there is a sufficient cause available with the Appellant then the Appellate Authority has been given the discretion to Company Appeal (AT) (Ins.) No. 217 & 218 OF 2022 extend the period of 30 days to another 15 days by passing a reasoned order. It is submitted that since the Appeal has been filed after more than four years, therefore, it suffers from delay and latches and is hit by Section 61 of the Code. It is also submitted that in the impugned order dated 10.01.2018 a stamp is appended by the Tribunal about the certified copy having been issued free of cost and has further submitted that from the order dated 25.10.2019 (Annexure -A19 at Pg. 207), it is clear that even on that date the Appellant came to know about the order dated 10.01.2018 and could have filed the appeal within the period of 30 days thereafter. It is submitted that the appeal filed by the Appellant against the order dated 10.01.2018 and 25.02.2022 on 26.02.2022 on the premise that order dated 25.02.2022 is an order in continuation to the order dated 10.01.2018 is a falacy. In this regard, he has referred to Section 5 of the Code coupled with Section 9(6) to contend that the order of admission of the application filed either under Section 7, 9 or 10 would initiate CIRP with admission. He has also submitted that Section 61 talks of an order and the order of admission is an order which is amenable to challenge independently and cannot be read with the order of appointment of IRP for the purpose of extending the period of limitation.

18. In reply to this contention, Counsel for the Appellant has submitted that they had no knowledge about the order dated 10.01.2018 because there was no pronouncement which is required to be done in terms of Rule 150 of the NCLT Rules, 2016.

19. We may refer to Rule 150(1) for a quick reference which says that:-

> "The Tribunal, after hearing the applicant and respondent, shall make and Company Appeal (AT) (Ins.) No. 217 & 218 OF 2022 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." He has also submitted that the Adjudicating Authority did not communicate the order dated 10.01.2018 which is so mandated under Section 150(3) which says that "A certified copy of every order passed by the Tribunal shall be given to the parties" and also provided in Section 9(5) of the Code in which it is provided that "the Adjudicating Authority shall within fourteen days of the receipt of the application under sub-section(2) by an order -(i) admit the application and communicate such decision to the operational creditor and the corporate debtor.

20. Counsel for the Appellant has submitted that not only that the order was pronounced by a bench which was not authorised to do so but also there was lack of communication on the part of the Adjudicating Authority regarding the information about the impugned order. It is further submitted that the Respondent was itself making enquiries from the Tribunal about the appointment of IRP on the recommendation of IBBI and asking about the permission to submit an application for seeking appointment of the IRP in terms of the order dated 10.01.2018. It is contended that after the order dated 10.01.2018 was passed, not only the Appellant was in dark but the Respondent was also totally ignorant about the proceedings which were taking place after passing of the order of admission. It is further submitted that IBBI did not recommend any IRP and firstly, there was mis- communication on the part of the Tribunal and secondly, the attitude was indifferent in this regard for having not recommended the IRP to the Adjudicating Authority for the purpose of appointment. It is also submitted Company Appeal (AT) (Ins.) No. 217 & 218 OF 2022 by the Appellant that the Adjudicating Authority was itself requesting the IBBI for complying with the order dated 10.01.2018. In this regard, he has drawn our attention towards the email dated 21.10.2021 issued by the registry to the advocate for the Respondent. It is also submitted that it has been observed by the bench that the commencement of the CIRP shall be effective from the date of the appointment of the IRP. Counsel for the Appellant has also referred to a decision of the Hon'ble Supreme Court in the case of V Nagarajan Vs. SKS Ispat and Power Limited, Civil Appeal No. 3327 of 2020 in which the following conclusion has been drawn by the Apex Court:

> "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 defeat the substantive objective of a legislation that has an impact on the economic health of a nation"

21. He has put emphasis on the issue of pronouncement of the order to contend that the certified copy which is required for the purpose of filing the appeal in order to count the limitation can only be obtained after the pronouncement of the order where as in the present case there was no pronouncement.

22. While controverting the arguments of the Respondent regarding the knowledge of the order dated 10.01.2018 having obtained from the order passed in CP No. 1350 of 2019, it is submitted that they were present but the number of the appeal and the date of the order was wrongly mentioned, therefore, it could not be deciphered as to whether it pertains to the present case or not. Counsel for the Appellant has also relied upon a decision rendered in the case of Iqbal Ismail Sodawala Vs. The State of Maharashtra and Ors., 1974 AIR 1880, and State of UP Vs. Lakshmi Ice Factory &Ors., 163 AIR 399, "10.The above decision was referred to by this Court in the case of Surendra Singh &Ors v. The State of Uttar Pradesh(2) and it was observed that section 537 of the Code of Criminal Procedure does as much the same thing on the criminal side as sections 99 and 108 on the civil. This Court in that decision dealt with a criminal case wherein death sentence had been awarded. The case in the High Court was heard by a Bench of two judges. The judgment was signed by both of them but it was delivered in Court by one of them after the death of the other. It was held that there was no valid judgment and the case should be reheard. Arriving at that conclusion, this Court took the view that a judgment is the final decision of the court intimated to the parties and the world at large by formal "pronouncement" or "delivery" in open court and until a judgment is delivered, the judges have a right to change their mind. In the course of discussion Bose J. who spoke for this Court also made an observation regarding the signing of the judgment and other similar matters in the following words:

> " Small irregularities in the manner of pronouncement or the mode of delivery do not matter but the substance of the thing Company Appeal (AT) (Ins.) No. 217 & 218 OF 2022 must be there that can neither be blurred nor left to inference and conjecture nor can it be vague. All the rest-the manner in which it is to be recorded, the way in which it is to be authenticated, the signing and the sealing, all the rules designed to secure certainty about its content and matter-can be cured; but not the bard core, namely, the formal intimation of the decision and its contents formally declared in a judicial way in open court. The exact way in which this is done does not matter. In some courts the judgment is delivered orally or read out, in some only the operative portion is pronounced, in some the judgment is merely signed after giving notice to the parties and laying the draft on the table for given number of days for- inspection."

State of UP Vs. Lakshmi Ice Factory &Ors., 163 AIR 399, "15.The third thing which to our mind indicates that pronouncement in open court is essential is cl. 31 of the Statutory Order. That clause is in these terms : "Except as provided in this Order and in the Industrial Disputes (Appellate Tribunal) Act, 1950, every order made or direction issued under the provisions of this Order shall be final and conclusive and shall not be questioned by any party thereto in any proceedings." The Industrial Disputes (Appellate Tribunal) Act, 1950 provides for appeals from decisions of certain Industrial Tribunals to the Appellate Tribunal established under it. Clause 31 therefore makes a decision of the Tribunal on a reference to it final subject to an appeal if any allowed under the

Industrial Disputes (Appellate Tribunal) Act, 1950. Under a. 7 of the Act of 1950, an appeal shall lie to the Appellate Tribunal from any award or decision of an Industrial Tribunal concerning certain specified matters. Now an Industrial Tribunal mentioned in s. 7 includes a Tribunal set up under a State law which law does not provide for an appeal : see a. 2(o)(iii) of the Act of 1950. The U. P. Act does not provide for any appeal expressly but cl. 31 of the Statutory Order makes a decision of the Tribunal final subject to the provisions of the Act of 1950. It would therefore appear that an appeal would lie under the Act of 1950 to the Appellate Tribunal constituted under it from a decision of a Tribunal set up under the Statutory Order. Now under a. 10 of the Act of 1950, an appeal is competent if preferred within thirty days from the date of the publication of the award where such publication is provided for by the law under which the award is made, or from the date of the making of the award where there is no provision for such publication. Now the U.P. Act or the Statutory Order does not provide for any publication of an award. Therefore an appeal from the Tribunal set up under the Statutory Order has to be filed within thirty days from the making of the award. Hence again it is essential that the date of the making of the award shall be known to the parties to enable them to avail themselves of the Company Appeal (AT) (Ins.) No. 217 & 218 OF 2022 right of appeal. This cannot be known unless the judgment is pronounced in open court for the date of award is the date of its pronouncement. Hence again pronouncement of the judgment in open court is essential. If it were not so, the provisions for appeal might be rendered ineffective.

16.For all these reasons it seems to us that the clear intention of the legislature is to make it imperative that judgments should be pronounced in open court by the Tribunal and judgments not so pronounced would therefore be a nullity."

23. We have heard Counsel for the parties regarding the issue of limitation. This case has peculiar facts because the admission order dated 10.01.2018 was not passed in accordance with law as we have held in the earlier part of this order and was not pronounced to make it known to the parties concerned and merely the fact that there is an endorsement on the copy of the order dated 10.01.2018 that it has been given free of cost does not indicate that it was given to the Appellant. The Respondent has imputed knowledge of the order dated 10.01.2018 to the Appellant on the basis of an order dated 25.10.2019 passed in another Company Petition No. 1350 of 2019 but from the bare perusal of the said order it reveals that neither the company petition nor the date of order was thereof matched with the present case. Besides this, the order dated 10.01.2018 was only an order of admission in which the Adjudicating Authority had observed that it would pass a separate order for the appointment of the IRP for which the registry was directed to write to the IBBI for making the recommendation of the name from the penal of the IRP. No recommendation was made by the IBBI and the Respondent itself was in dark about the proceedings before the Adjudicating Authority regarding the appointment of the IRP to initiate the process of Section 13 and 14 of the Code. The IRP was ultimately appointed by the Adjudicating Authority vide order dated 25.02.2022 and Company Appeal (AT) (Ins.) No. 217 & 218 OF 2022 the present appeal was filed within no time by the Appellant before this Tribunal not only to challenge the order dated 10.01.2018 but also the order dated 25.02.2022 which is, as a matter of fact an order passed in continuation of the order dated 10.01.2018 because mere admission of the application filed under Section 9 of the Code is of no consequence.

24. Thus, in our considered opinion, the appeal filed by the Appellant is well within the period of limitation even against the order dated 10.01.2018 because the said order was never pronounced to the knowledge of the Appellant and by the bench competent to do so and as such it could not have been challenged by the Appellant earlier within the time prescribed by Section 61 of the Code.

25. Thus, in view of the aforesaid facts and circumstances, the appeal is hereby allowed and the impugned orders dated 10.01.2018 and 25.02.2022 are set aside. Before we part with this order, it would be relevant to refer to an order dated 02.03.2022 passed by this Tribunal, at the time of preliminary hearing. The said order is reproduced as under:-

> "This Appeal has been filed against two orders dated 10.01.2018 as well as 25.02.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Bench-II. Shri Abhijeet Sinha, learned counsel for the Appellant submits that order dated 10.01.2018 was not uploaded in the website of the Tribunal and the Appellant was not aware of it. It is submitted that even the Respondent, who was Operational Creditor was also not aware of passing of the order since the order observed that although application is admitted, the CIRP shall begin when the Interim Resolution Professional is appointed. It is submitted that the IRP has been appointed by order dated 25.02.2022 i.e. after more than four years, which order is also sought to be challenged in this Appeal.
>
> 2. Shri Neeraj Malhotra, learned senior counsel for Respondent No. 1 submits that Appeal is barred by time in so far as order dated 10.01.2018 is concerned. Shri Abhijeet Sinha further prays Company Appeal (AT) (Ins.) No. 217 & 218 OF 2022 that in the facts of the present case, the relevant records of TCP No. 273/I&B/NCLT/MB/MAH/2017 be called for by this Appellate Tribunal to look into various issues which are sought to be raised.
>
> 3. Shri Neeraj Malhotra has pointed out that Appellant in his Application which has been filed for ex-parte stay in Para C (vii) has offered to deposit a demand draft to the tune of Rs.1,37,63,889/- with the Registrar of this Appellate Tribunal, which may be directed to be deposited. Shri Abhijeet Sinha, counsel for the Appellant submits that Appellant is still willing to settle the matter with the Operational Creditor.
>
> 4. In above view of the matter, we direct the Appellant to deposit a Fixed Deposit in the name of Registrar, NCLAT within 10 days.
>
> 5. In the meantime, further steps in pursuance to the impugned order dated 25.02.2022 shall not be taken.
>
> 6. Appellant may file certified copy of the order dated 25.02.2022 before the next date. Reply may be filed within two weeks. Rejoinder may be filed within two weeks thereafter.

7. List this Appeal on 12.04.2022.

8. Settlement, if any, shall be without prejudice to the contentions of the parties.

9. Let the record of TCP No. 273/I&B/NCLT/MB/MAH/2017 be called for."

26. As per the aforesaid order, the Appellant had deposited of Rs. 1,37,63,889/- in fixed deposit in the name of the Registrar of this Tribunal. Since, the appeal has been allowed, therefore, the Registrar is directed to refund the aforesaid amount with the interest accrued upon it to the Appellant within a period of 15 days from the date of passing of this order.

27. As far as, the issue regarding the professional fee including the CIRP cost and paper publication amount is concerned, the RP may make an appropriate application before the Adjudicating Authority to whom this matter is being remanded to decide it a fresh in accordance with law.

The parties are directed to appear before the Adjudicating Authority on 19th September, 2022.

Company Appeal (AT) (Ins.) No. 217 & 218 OF 2022 The registry is direction to send this order to the concerned Adjudicating Authority for information.

[Justice Rakesh Kumar Jain] Member (Judicial) [Dr. Alok Srivastava] Member (Technical) New Delhi 02nd September, 2022 Sheetal Company Appeal (AT) (Ins.) No. 217 & 218 OF 2022