

Whether the limitation to file an appeal under IBC will commence on the date of pronouncement of order or from the date when contents are known to the aggrieved party?

INTRODUCTION:

The National Company Law Appellate Tribunal (New Delhi Bench) (“NCLAT”) in two recent judgments passed in Raiyan Hotels and Resorts Pvt. Ltd. vs. Unrivalled Projects Pvt. Ltd. [Company Appeal (AT) (Insolvency) No. 1071 of 2023] and Aryan Mining & Trading Corpn Pvt. Ltd. vs Kail limited and Anr. [Company Appeal (AT) (Insolvency) No. 588 of 2023] discussed an interesting issue, whether the limitation period to file an appeal under section 61 of Insolvency & Bankruptcy Code, 2016 (“IBC”) will commence from the date of the pronouncement of the order or from the date when the contents of the order came to the knowledge of the aggrieved party.

BRIEF FACTS:

The Tribunal was considering two applications filed in two different appeals praying for condonation of delay in filing the appeals under Section 61 of IBC, whereby challenge was made to the orders passed by the respective Adjudicating Authorities.

In the matter of Raiyan Hotels (Supra), an appeal was filed against the order dated 08.05.2023 passed by NCLT, Kolkata Bench. In the Application seeking Condonation of Delay, it was stated that although the order was pronounced on 08.05.2023 by the Adjudicating Authority, the copy of the order was not provided to the Appellant nor uploaded on the website. The order was in fact e-mailed to the Appellant on 02.06.2023 and the appeal was subsequently filed on 04.07.2023 and thus, Appellant contended that the appeal was within the period of limitation prescribed under Section 61 of IBC i.e., within the condonable period of 15 days.

It is pertinent to mention here that the limitation for filing the appeal under Section 61 IBC is 30 days, however, delay upto 15 days can be condoned, provided the Tribunal is satisfied on the grounds pleaded by the Appellant for condoning the delay.

In so far as matter of Aryan Mining (supra) was concerned, appeal was filed against the order dated 12.01.2023 passed by NCLT, Mumbai Bench. In the Application for Condonation of Delay it was pleaded that the impugned order was passed on 12.01.2023, the certified copy of the order was applied on 06.02.2023 and the same was received by the Appellant only on 08.02.2023. The appeal was filed 11.03.2023 and it was contended



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that the same was within the condonable period of 15 days as mentioned in Section 61 of IBC.

In both the cases, the Appellants contended that the period of limitation would commence from the date, when the contents of the orders became known to the Appellants i.e., the date of receiving the certified copies of the orders. The NCLAT primarily framed the following issues for consideration:

ISSUES:

Whether limitation for filing an appeal under Section 61 of IBC shall commence from the date of the order or from the date when contents of the order are known to the aggrieved party i.e., when copy of the order is received by an aggrieved party?

Whether the grounds pleaded while seeking condonation of delay in filing both the appeals were sufficient to condone the delay?

FINAL DECISION

The NCLAT, after recording the submissions made by the respective parties, proceeded to discuss the issue no.1. The Appellant had cited two judgments passed by Supreme Court of India in the cases of Raja Harish Chandra Raj Singh vs. The Deputy Land Acquisition Officer and Ors. and State of Punjab vs. Qaisar Jehan Begum and Anr. , in support of its case. The aforesaid judgments were related to pronouncement of award under the provisions of Section 18 of the Land Acquisition Act. The NCLAT, however, observed that the aforesaid judgments were not applicable in the present case, as in the said judgments it was held that merely passing of award by the Collector was not sufficient and it was obligatory to communicate the same to the concerned parties. However, it was also held in the same judgments that if the award was pronounced in the presence of the party whose right is affected by it, it can be said to be made when pronounced. The knowledge of the award may be actual or constructive.

The NCLAT further observed that in the present case, the orders in both the appeals were pronounced by the respective Adjudicating Authorities in the presence of the advocates for the Appellants and therefore, the parties were completely aware of the contents of the orders and it was constructively communicated to the Appellants. It was further observed that it could not be contended by the Appellants that they were not aware of the contents of the orders. Thus, it was concluded that the limitation for filing an appeal would commence from the date of pronouncement of the respective orders and not on the date when Appellants became aware of the contents of the same.

The NCLAT further cited the judgment of Supreme Court in V. Nagarajan vs. SKS Ispat and Power Limited and Ors. , whereby various aspects of limitation for filing an Appeal under Section 61 of IBC were discussed in detail. The Apex Court has also discussed Section 12 of the Limitation Act which provides for exclusion of the time taken in obtaining the certified copy of an order. While relying upon the above judgment, the NCLAT held that Section 61 ought to be interpreted in the manner which will justify the purpose and objective of IBC. IBC is a statute whose whole purpose or objective is to provide for timely resolution or liquidation of the Corporate Debtor.

It was finally concluded that Appellants could not contend in any manner, that the limitation for filing an appeal would begin from the date when the order was received or uploaded on the website of NCLT, especially when the advocates in both the matters were present during the pronouncement of the respective orders. Rather the limitation would begin as soon as the order was pronounced by the Adjudicating Authority. It is an understood fact that when the orders are pronounced by the Tribunals or the Courts, they are done so generally in the presence of the advocates of the parties concerned and therefore, have constructive knowledge of the contents of the order.

It was also observed that if the Appellants should have been vigilant and diligent and should have applied the certified copies of the orders on time, in which case, the time taken in preparing the certified copies would have been excluded. The appeals were, therefore, rejected by the NCLAT.

CONCLUSION

It can therefore be concluded that the limitation for filing an Appeal under Section 61 of IBC shall commence from the date when the order is pronounced and not from the date when the contents of the order are made available to the aggrieved party. Therefore, it is the duty of the parties to diligently apply for a certified copy in a timely manner to be fully aware of the contents of the order. A party cannot be allowed to take benefit of his own lapses and omissions.