2024 INSC 774

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO 10424 OF 2024

State Bank of India **… Appellant**

Versus

India Power Corporation Limited **… Respondent**

O R D E R

1 On a difference between two members of the National Company Law Appellate Tribunal[1], reflected in a split verdict on 1 May 2024, the third Member, by a judgment dated 9 July 2024, agreed with the Judicial Member in dismissing the application for condonation of delay.

2 The facts, insofar as they are relevant for the disposal of the Appeal, fall in a narrow compass.

3 The appellant, State Bank of India, instituted an application under Section 7 of the Insolvency and Bankruptcy Code 2016[2] against the respondent. The National Company Law Tribunal[3] at Hyderabad rejected the petition on the ground of maintainability by an order dated 30 October 2023.

4 The appeal before the NCLAT, Chennai was filed on 2 December 2023. The appellant filed an application for condonation of delay on the ground that the appeal had been lodged with a delay of 3 days beyond the 30 day period prescribed in Section 61(2).

1"NCLAT"
2"IBC"
3"NCLT"

5 A divergence arose between the two members of the NCLAT on 1 May 2024. The Judicial Member held that the certified copy which was filed by the appellant was a "free of cost" copy and hence in the absence of an application for the grant of a certified copy, the delay of three days could not be condoned. The Technical Member, on the other hand, held that no distinction could be made between certified copies obtained through the payment of fee and a free copy and sufficient cause was shown for condoning the delay of three days.

6 The divergence was, thereafter, referred to a third Member of the NCLAT who has ruled that the free copy provided under Rule 50 of the National Company Law Tribunal Rules 2016[4] cannot be treated as a certified copy which is referred to in Rule 22(2) of the National Company Law Appellate Tribunal Rules 2016[5].

7 The appeal has been consequently dismissed on delay on 9 July 2024.

8 The issue which arises for consideration turns on the interpretation of Rule 50 of the NCLT Rules and Rule 22 of the NCLAT Rules.

9 An appeal to the appellate authority is governed by the provisions of Section 61(2) of the IBC which provides as follows :

> "61.(2) Every appeal under sub-section (1) shall be filed within thirty days before the National Company Law Appellate Tribunal:
>
> Provided that the National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed fifteen days."

10 Rule 50 of the NCLT Rules provides as follows :

> "**50. Registry to send certified copy**.—The Registry shall

4"The NCLT Rules"
5"The NCLAT Rules"

> send a certified copy of final order passed to the parties concerned free of cost and the certified copies may be made available with cost as per Schedule of fees, in all other cases."

11 Rule 22 of the NCLAT Rules is in the following terms :

> "22. Presentation of appeal.—(1) Every appeal shall be presented in Form NCLAT-1 in triplicate by the appellant or petitioner or applicant or respondent, as the case may be, in person or by his duly authorised representative duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same.
>
> (2) Every appeal shall be accompanied by a certified copy of the impugned order.
>
> (3) All documents filed in the Appellate Tribunal shall be accompanied by an index in triplicate containing their details and the amount of fee paid thereon.
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> (4) Sufficient number of copies of the appeal or petition or application shall also be filed for service on the opposite party as prescribed.
>
> (5) In the pending matters, all other applications shall be presented after serving copies thereof in advance on the opposite side or his advocate or authorised representative.
>
> (6) The processing fee prescribed by the rules, with required number of envelopes of sufficient size and notice forms as prescribed shall be filled along with memorandum of appeal."

12 Rule 22(1) provides for

(i) the presentation of an appeal in Form NCLAT-1;

(ii) the person by whom the appeal may be filed; and

(iii) the submission of the stipulated fee. Rule 22(2) stipulates that "every appeal shall be accompanied by a certified copy of the impugned order".

13 Rule 50 of the NCLT Rules governs the furnishing of certified copies. Rule 50 indicates that the Registry shall send a certified copy of the final order which has been passed to the parties concerned free of cost. It also indicates that certified copies may be made available against the payment of costs in terms of the Schedule of Fees, in other cases. Rule 50 provides for a certified copy being

provided free of cost and that a certified copy may be made available against the payment of costs, as indicated in the Schedule of Fees. The important point to note is that both the certified copy which is provided free of cost as well as the certified copy which is made on an application in that behalf are treated as certified copies for the purposes of Rule 50

14 Ms Surbhi Khattar, counsel has appeared on behalf of the appellant. The Solicitor General, Mr. Tushar Mehta, has also addressed the Court.

15 Ms Khattar has submitted that Rule 50 of the NCLT Rules places both the certified copy which is provided free of cost as well as the certified copy which is made available against the payment of costs as indicated in the Schedule of Fees on the same footing. It has been urged that as a matter of fact, the free certified copy was made available on 14 November 2023 and the appeal which was filed on 2 December 2023 was well within the condonable period of 15 days beyond the period of 30 days which is stipulated in Section 61(2).

16 On the other hand, Dr Abhishek Manu Singhvi, senior counsel appearing on behalf of the respondents placed reliance on the decision of the three Judge Bench in ***V Nagarajan Vs SKS Ispat and Power Limited & Ors***[6] (paragraphs 23 and 29).

17 In order to consider the submissions which has been urged on behalf of the respondent, it would be necessary to extract paragraphs 23 and 29 of the above decision which read as follows :

> "23. Therefore in a field which is not covered by a special law which invests NCLT with jurisdiction, the general principle for the computation of limitation for filing an appeal against an order of NCLT is governed by the statutory mandate of Section 420(3) of the Companies Act read with Rule 50 of the NCLT Rules, which enables a party to compute limitation from

6 (2022) 2 SCC 244

> the date of receipt of the statutorily mandated free certified copy, without having to file its own application. However, the decision of this Court in Sagufa Ahmed [Sagufa Ahmed v. Upper Assam Plywood Products (P) Ltd., (2021) 2 SCC 317 : (2021) 2 SCC (Civ) 178] clarifies that the statutory mandate of a free copy is not to enable litigants to take two bites at the apple where they could compute limitation from either when the certified copy is received on the litigant's application or received as a free copy from the Registry—whichever is later.
>
> XXX XXX XXX
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> 29. On the question of a certified copy for filing an appeal against an order passed by NCLT under IBC, Rule 22(2) of the NCLAT Rules mandates that an appeal has to be filed with a certified copy of the "impugned order":
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> > "22. Presentation of appeal.—(1) Every appeal shall be presented in Form Nclat-1 in triplicate by the appellant or petitioner or applicant or respondent, as the case may be, in person or by his duly authorised representative duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same.
> >
> > (2) Every appeal shall be accompanied by a certified copy of the impugned order."
> >
> > (emphasis supplied)
>
> Therefore, it cannot be said that the parties can automatically dispense with their obligation to apply for and obtain a certified copy for filing an appeal. Any delay in receipt of a certified copy, once an application has been filed, has been envisaged by the legislature and duly excluded to not cause any prejudice to a litigant's right to appeal."

18 In ***V Nagarajan,*** the order of the NCLT was dated 31 December 2019 and was uploaded on the website on 12 March 2020. There was a correction in the name of the Judicial Member who had passed the order on 20 March 2020. The appellant before this Court claimed to have awaited the issue of a free copy and allegedly sought a free copy on 23 March 2020 under the provisions Section 420(3) of the Companies Act 2013 read with Rule 50 of the NCLT Rules. He claimed that the free copy had not been made available to him until that date and that in the meantime, the COVID-19 pandemic had intervened. The NCLAT, by its order dated 13 July, 2020, relied on Section 61(2) and came to the

conclusion that the appeal was barred by limitation. It is in this context that this Court in paragraph 23 of its decision (extracted above) observed that the mandate of a free copy was not to enable litigants to take "two bites at the apple where they could compute limitation from either when the certified copy is received on the litigant's application or received as a free copy from the Registry —whichever is later". This Court, therefore, held that parties could not automatically dispense with their obligation to apply for and obtain a certified copy for filing an appeal.

19 Rule 22(2) of the NCLAT Rules requires that every appeal shall be accompanied by a certified copy of the impugned order. Rule 50 of the NCLT Rules prescribes that the Registry shall send a certified copy of the final order free of cost and certified copies may be made available on payment of costs in terms of the Schedule of Fees in all other cases. Both the certified copy which is made available free of cost as well as the certified copy which is made available on the payment of costs, are treated as certified copies for the purpose of Rule 50. A litigant who does not apply for a certified copy cannot then fall back and claim that he was awaiting the grant of a free copy to obviate the bar of limitation. This was the position in the decision of this Court in ***V Nagarajan***.

20 The facts of the present case are completely distinguishable. The free copy was made available on 14 November 2023 after the decision of the NCLT was pronounced on 30 October 2023. The appeal was lodged on 2 December 2023. The appeal was lodged with a delay of only three days beyond the statutory period of 30 days and, therefore, fell within the condonable period of 15 days. Sufficient cause was shown for condoning the delay of three days.

21 A Schedule of Fees is prescribed by the NCLT Rules. Entry 31 of the Schedule stipulates that the fee for obtaining true certified copies of final orders passed to

parties other than the concerned parties under Rule 50 shall be Rupees five per page. The stipulation of Rupees five per page in Entry 31 excludes "the concerned parties under Rule 50".

22 The provisions of Rule 50 of the NCLT Rules place both the free certified copy as well as the certified copy which is applied for on payment of fees on the same footing. The appeal in the present case was filed within the condonable period of 15 days, which should have been condoned.

23 We accordingly allow the appeal and set aside the impugned judgment and order of the NCLAT dated 7 May 2024. The delay of three days in filing the appeal shall stand condoned. The appeal shall stand restored to the file of the NCLAT.

24 The Court would wish to record its appreciation of the meticulous manner in which Ms Surbhi Khattar, appearing for the appellant had prepared the case and made submissions.

25 Pending applications, if any, stand disposed of.

.....CJI.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Manoj Misra]

New Delhi;
September 27, 2024
GKA

ITEM NO.14 COURT NO.1 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 10424/2024

STATE BANK OF INDIA Appellant(s)

VERSUS

INDIA POWER CORPORATION LIMITED Respondent(s)

(FOR ADMISSION)

Date : 27-09-2024 This appeal was called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANOJ MISRA

For Appellant(s) **Mr. Tushar Mehta, SG**
Mr. Madhav Kanoria, Adv.
Ms. Surabhi Khattar, Adv.
Ms. Neha Shivhare, Adv.
Mr. Sriharsh Raj, Adv.
M/S. Cyril Amarchand Mangaldas, AOR

For Respondent(s) **Dr. Abhishek Manu Singhvi, Sr. Adv.**
Mr. Anirban Bhattacharya, AOR
Mr. Rajeev Chowdhary, Adv.
Ms. Priyanka Bhatt, Adv.
Mr. Pranjit Bhattacharya, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1 The Appeal is allowed in terms of the signed reportable order.

2 Pending applications, if any, stand disposed of.

(GULSHAN KUMAR ARORA) **(SAROJ KUMARI GAUR)**
AR-CUM-PS **ASSISTANT REGISTRAR**

(Signed reportable order is placed on the file)