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LIMITATION TO FILE APPEAL UNDER INSOLVENCY AND BANKRUPTCY CODE 2016 STARTS RUNNING FROM THE DATE OF PRONOUNCEMENT OF ORDER

16 November 2021 A three-judge Bench of the Supreme Court of India (SC) in *V. Nagarajan v. SKS Ispat and Power Ltd. & Others* (judgment dated 22 October 2021 in Civil Appeal No. 3327 of 2020) dismissed an appeal against an order passed by the National Company Law Appellate Tribunal (NCLAT) which had dismissed an appeal against an order passed by the National Company Law Tribunal Chennai (NCLT) under the Insolvency and Bankruptcy Code, 2016 (IBC) as barred by limitation.

Facts

Cethar Ltd. an entity engaged in engineering and project consultancy was undergoing liquidation and the Appellant was appointed as its liquidator. The Appellant instituted proceedings against Respondents No. 1 to 4 under the IBC. It was the case of the Appellant that the Respondent No. 10 allegedly at the behest of Respondent No. 1 i.e., SKS Ispat and Power Limited, invoked the Bank Guarantees issued by the Corporate Debtor for the failure of the Corporate Debtor to perform engineering services and in view thereof, the Appellant filed a Miscellaneous Application before NCLT to restrain Respondent No. 10 from invoking the Bank Guarantees. NCLT vide its order dated 31 December 2019 held that the 'Performance Bank Guarantees' were not part of 'Security Interest' as defined under Section 3(31) of the IBC and declined to grant injunction.

The said judgment was pronounced in open Court in the presence of the Appellant. As per the Appellant, the order was uploaded on the website only on 20 March 2020, after the earlier order uploaded on 12 March 2020 set out the incorrect name of the Judicial Member who passed the order. The Appellant claimed that it allegedly sought for the free copy on 23 March 2020 under the provisions of Section 420(3) of the Companies Act, 2013 read with Rule 50 of the NCLT Rules, 2015. It is the case of the Appellant that the free copy had still not been issued till date.

Thereafter, the Appellant filed an appeal before the NCLAT on 8 June 2020 with an application for exemption from filing a certified copy of the order. The NCLAT followed its earlier judgment in *Principal Director General of Income Tax (Admn. & TPS) v. Spartek Chemicals India Ltd. and Another* (2018 SCC OnLine NCLAT 617) and dismissed the appeal relying upon Section 61(2) of the IBC which mandates that the limitation period for filing of an appeal is thirty days, extendable by fifteen days. The NCLAT further held that the Appellant did not apply for certified copy of the NCLT order and that there was no explanation for the delay in filing the Appeal. Aggrieved by the said order, the Appellant filed a Civil Appeal before the SC against the order of the NCLAT challenging the order of the NCLAT on the question of limitation.

Analysis by the SC

The issues before the SC were twofold:

- Whether the appeal before the NCLAT was barred by limitation?
- Whether annexing of a certified copy of an order is mandatory for filing an appeal before the NCLAT against an order passed by NCLT?

With respect to the first issue, the SC observed and held that Section 61(2) of the IBC and Section 421(3) of the Companies Act, 2013 are different from each other as the provision under IBC excludes the term “*from the date on which a copy of the order of the Tribunal is made available to the person aggrieved*” and observed that the absence of these words cannot be construed as a mere omission which can be supplemented with a right to free copy as it would defeat the context of IBC’s provisions and the purpose of legislation. The SC further observed that the law of limitation with respect to IBC is settled and emphatic in its denunciation of delays and the power to condone is tightly circumscribed and conditional only upon showing sufficient cause. Keeping the facts of the case in mind, the SC held that, reading the requirement of an “order becoming available” under a general enactment (Companies Act, 2013) would cause violence to the special provisions enacted under the IBC where timing is critical for the workability of the mechanism and mandates diligence on part of the applicants who are aggrieved by the outcome of their litigation. Thus, the SC held that the omission of the words “*from the date on which the order is available*” for the computation of limitation in Section 61(2) of the IBC is a consistent signal and intention of the legislature to nudge the parties to be proactive and facilitate timely resolution. With the aforesaid observations, the SC held that the Appeal was barred by limitation and the Appellant could not seek asylum under the pretext that it had not received the free certified copy.

With regard to the second issue, the SC held that the NCLAT Rules mandate that an appeal must be filed with a certified copy of the ‘impugned order’ and no party can automatically dispense with this obligation. The SC observed that the Appellant had not even filed an application for a certified copy and was well aware that the 30 day time period to file an appeal before the NCLAT had expired. Further, any scope for condonation of delay had also expired and thus, the Appellant could not seek asylum under the lockdown order dated 23 March 2020 passed suo moto by this Court. The action of filing an application for a certified copy is not only a technical requirement but also an indication of the diligence of the aggrieved party in pursuing the litigation in a timely fashion.

Comments

The judgment of the SC emphasised that there was an obligation on the Appellant to apply for a certified copy once the NCLT order was pronounced on 31 December 2019. The SC while dismissing the Civil Appeal upheld the sanctity of the IBC and intent behind the Code which was to structure and streamline the entire process of insolvency. The intent behind the Code was to prescribe a strict timeline so that parties can be proactive and facilitate timely resolution. The said judgment has clarified the position that the IBC is a complete code in itself and that no other Act can be read into it to dilute the intention behind the Code.

- *Atul Shanker Mathur (Partner); Priya Singh (Principal Associate) and Amlaan Kumar, (Associate)*

The Respondent No. 10 i.e., SKS Power Generation (Chhattisgarh) Ltd in the matter was represented by Atul Shanker Mathur, Partner; Priya Singh, Principal Associate and Amlaan Kumar, Associate.

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