



REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 408 OF 2023

TATA STEEL LTD. ... APPELLANT(S)

VERSUS

RAJ KUMAR BANERJEE & ORS. ... RESPONDENT(S)

J U D G M E N T

R. MAHADEVAN, J.

1. This appeal is filed against the order dated 14.12.2022 passed by the National Company Law Appellate Tribunal¹. By the said order, the NCLAT has allowed interlocutory application bearing No. 1667 of 2022 filed by Respondent No. 1 seeking condonation of delay in filing the appeal bearing no. C.A. (AT) (Insolvency) No. 615 of 2022.

2. The appellant is the successful resolution applicant for Rohit Ferro-Tech Limited (Corporate Debtor) having its resolution plan approved by the Committee of Creditors and subsequently by the National Company Law

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¹ For short, “NCLAT”

Tribunal², Kolkata, by order dated 07.04.2022 in CP(IB)/1214(KB)/2018. Respondent No.1 is an erstwhile minority shareholder of the Corporate Debtor.

3. Respondent No.1 preferred an appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016³ to set aside the order dated 07.04.2022 passed by the Adjudicating Authority and direct the Resolution Professional to scrutinise the resolution plan proposed by the appellant in accordance with Section 30(2) IBC. Along with the appeal, he also filed an interlocutory application bearing No. 1667 of 2022 praying for condonation of delay of 15 days in filing the same. By the order impugned herein, the NCLAT condoned the delay and allowed the said application. Aggrieved by the same, the appellant is before us with the present appeal.

4. According to the learned counsel for the appellant, the NCLT passed the order approving the appellant's resolution plan for the Corporate Debtor under Section 31 IBC on 07.04.2022. In terms of Section 61(2) IBC, the limitation period of 30 days for filing an appeal against the said order expired on 07.05.2022, which fell on a Saturday. Even assuming the benefit of Section 4 of the Limitation Act, 1963 were available, the additional / grace/ condonable period of 15 days as provided under the proviso to Section 61(2), expired on

² For short, "NCLT"

³ For short, "IBC"

22.05.2022. Therefore, the right of Respondent No.1 to file an appeal stood extinguished on 22.05.2022 itself.

4.1. Adding further, it is submitted that after the expiry of the 30-day limitation period and the additional 15-day grace / condonable period, Respondent No. 1 e-filed the appeal along with an application for condonation of delay before the NCLAT, on 23.05.2022, which was the 46th day from the date of the NCLT's order. The physical filing of the appeal was done on 24.05.2022, i.e., on the 47th day. Accordingly, the appeal was clearly barred by limitation and not maintainable in law. However, by the order impugned herein, the NCLAT erroneously allowed the application for condonation of delay by observing that Respondent No. 1 was entitled to the benefit of Section 4 of the Limitation Act, 1963. It incorrectly held that the 30-day limitation period for filing the appeal expired on 09.05.2022 instead of 07.05.2022, on the ground that 07.05.2022 was a Saturday and, therefore, a court holiday. Consequently, the NCLAT wrongly computed the additional / grace/ condonable period of 15 days from 10.05.2022 instead of 08.05.2022, and concluded that this period expired on 24.05.2022 - the date on which Respondent No.1 physically filed the appeal before the NCLAT.

4.2. The learned counsel placed reliance on the decisions of this Court in *V. Nagarajan v. SKS Ispat Powers Limited & Others*⁴, *Kalpraj Dharamshi &*

⁴ (2022) 2 SCC 244

*Another v. Kotak Investment Advisors Limited & Another*⁵, *Safire Technologies Pvt. Ltd. v. Regional Provident Fund Commissioner & Another*⁶, and *National Spot Exchange Limited v. Mr. Anil Kohli*⁷, wherein, it was held that a litigant under Section 61 IBC can file an appeal before the NCLAT within 30 days, which may be extended by a further period of up to 15 days upon showing sufficient cause; and no appeal can be entertained beyond this extended period.

4.3. Referring to the judgment of this Court in *Ajay Gupta v. Raju @ Rajendra Singh Yadav*⁸, the learned counsel submitted that the benefit of Section 4 of the Limitation Act, 1963 is not attracted where the last day for filing falls on a working Saturday, and the court registry is open. It has been judicially recognized that while Saturday may be a non-working day for the judges, it remains a working day for the registry. Therefore, if the last date for filing falls on such a Saturday, the benefit of Section 4 cannot be invoked. In the present case, 07.05.2022 was the first Saturday of May, 2022 and was a working Saturday for the Registry of the NCLAT. Hence, Respondent No.1 could have filed the appeal on that date, but failed to do so.

4.4. Thus, according to the learned counsel, the order of the NCLAT condoning the delay in filing the appeal beyond the statutorily permissible

⁵ (2021) 10 SCC 401

⁶ Civil Appeal No.2212 of 2021

⁷ Civil Appeal No.6187 of 2019

⁸ (2016) 14 SCC 314

period of 30 days, and the additional condonable period of 15 days under the proviso to Section 61(2) IBC, is contrary to established legal principles and the scheme of the IBC, and is therefore liable to be set aside.

5. On the contrary, the learned counsel for Respondent No.1, at the outset, submitted that the appeal filed by Respondent No. 1 before the NCLAT is well within the statutorily condonable period of 15 days as mentioned in the proviso of Section 61(2) IBC and hence, the order impugned herein is sustainable in law.

5.1. Elaborating further, it is submitted that pursuant to the approval of the resolution plan, an intimation letter was issued by the Corporate Debtor to the Listing Departments of Bombay Stock Exchange and National Stock Exchange of India Limited on 08.04.2022. This was the first time, on which Respondent No.1 became aware of the approval of the resolution plan. Accordingly, the initial limitation period of 30 days (22 days in April 2022 + 8 days in May 2022) ended on 08.05.2022, which was a Sunday. In accordance with the provisions of the Limitation Act, 1963, when the last day falls on a holiday, the period extends to the next working day. Hence, the limitation period ended on 09.05.2022 (Monday). Thereafter, the statutory condonable period of 15 days commenced from 10.05.2022 and ended on 24.05.2022. Respondent No. 1 e-filed the appeal along with the condonation application on 23.05.2022 and

the appeal was physically filed on 24.05.2022, which is within the 45-day period prescribed under section 61(2) IBC (30 days limitation + 15 days condonable delay). Thus, the NCLAT rightly registered the appeal and passed the impugned order by allowing the condonation application.

5.2. It is further submitted that the Resolution Professional of the Corporate Debtor has failed to comply with the disclosure obligations mandated under the SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015. This failure directly contributed to the delay in filing the appeal before the NCLAT. Moreover, the failure of the Resolution Professional to adhere to the mandatory disclosure requirement adversely impacted the respondent's right to access timely and material information, thereby delaying the initiation of the appeal process.

5.3. It is further submitted that the prescribed limitation period under section 61(2) IBC did not commence from the date of the approval order i.e., 07.04.2022, but rather from 08.04.2022 - the date on which the Resolution Professional furnished the disclosure regarding the approval of the resolution plan. This is because Respondent No. 1 was not a party to the proceedings before the NCLT and was not privy to the order passed by the Adjudicating Authority or the deliberations of the Committee of Creditors (CoC). Additionally, as per the SEBI Circulars and Listing Regulations, the Corporate

Debtor was under an obligation to intimate the stock exchanges at least two working days prior to the NCLT hearing, in which, the resolution plan was to be considered. This mandatory requirement was not complied with by the Corporate Debtor or the Resolution Professional. In view of these lapses, the limitation period did not commence from 07.04.2022, the date of the NCLT order, but from 08.04.2022, when the disclosure was finally made. This disclosure was the first time Respondent No.1 became aware of the approval of the resolution plan, and hence, the right to appeal accrued only from that date.

5.4. According to the learned counsel, the provisions of the Limitation Act, 1963 are applicable to the present case. It is reiterated that the limitation period commenced only after 08.04.2022 i.e., the date on which the appellant made the mandatory disclosure of the approval order to the stock exchanges and not from 07.04.2022, the date of passing of the approval order by the NCLT. The 30-day limitation period thus commenced on 08.04.2022 and expired on 08.05.2022 which was a Sunday. In view of section 4 of the Limitation Act, 1963, and Rule 3 of the NCLAT Rules, when the prescribed period expires on a day when the tribunal is closed, the filing may be done on the next working day. Accordingly, the limitation period was extended to 09.05.2022 (Monday). Subsequently, the 15-day condonable period under the proviso to Section 61(2)

IBC expired on 24.05.2022. Respondent No. 1 physically filed the appeal along with the application for condonation of delay on the same day i.e., 24.05.2022 well within the total period of 45 days. Therefore, the impugned order of the NCLAT allowing the application for condonation of delay is in consonance with the provisions of the IBC and the Limitation Act, 1963. In view of the same, the contention of the appellant that Saturday is the working day for the court registry, has no nexus with the present case.

5.5. The learned counsel finally submitted that Respondent No. 1 was not a party to the petition filed under Section 7 IBC and therefore, was not in possession of the relevant documents required to file an appeal under Section 61. This lack of access to essential documents contributed to the delay in filing the appeal. The NCLAT in the impugned order, duly acknowledged this fact and observed that the delay was attributable to the respondent's inability to obtain necessary documents in a timely manner. In light of these circumstances, the only requirement under law is to demonstrate the existence of "sufficient cause" for not filing the appeal within the prescribed period, as per the proviso to Section 61(2) IBC. Respondent No. 1 has adequately met this threshold, and the delay was neither wilful nor deliberate, but rather due to practical constraints beyond the respondent's control.

5.6. With these submissions, the learned counsel for Respondent No. 1 sought dismissal of the appeal filed by the appellant.

6. As a riposte, the learned counsel for the appellant submitted that Respondent No. 1 has raised a completely new and unfounded allegation that the Resolution Professional of the Corporate Debtor issued a disclosure to the listing departments of the NSE and BSE on 08.04.2022 - i.e., one day after the resolution plan was approved by the NCLT - instead of within the prescribed time period of 30 minutes from the pronouncement of the order. According to the learned counsel for the appellant, the Company Secretary of the Corporate Debtor *vide* letter dated 07.04.2022, duly informed the listing departments of the NSE and BSE regarding the NCLT order within the prescribed period of 30 minutes - at 11.06.13 A.M. to NSE and 11.11.51 AM to BSE - following the pronouncement of the NCLT order. Therefore, the Resolution Professional fully complied with the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

7. Having considered the arguments advanced and the documents on record, the central issues for adjudication are:

- (i) Whether the appeal filed by Respondent No. 1 was within the prescribed limitation period of 30 days, along with the additional condonable period of 15 days as provided under section 61(2) IBC; and
- (ii) If not, whether the NCLAT has the power to condone the delay beyond the said prescribed and condonable period under the IBC.

ISSUE NO. 1

8. Concededly, the resolution plan submitted by the appellant in respect of the Corporate Debtor was approved by the Committee of Creditors on 05.06.2021 and subsequently, by the NCLT, Kolkata, by order dated 07.04.2022. Any appeal, if aggrieved by the said approval, ought to have been filed before the NCLAT in accordance with the provisions of section 61(2) IBC, which prescribes a strict timeline for the same. For better appreciation, the said provision is reproduced below:

“S.61 – Appeals and Appellate Authority

(1)

(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.

(3) ”

Thus, the total permissible period for filing an appeal under section 61(2) is 45 days – comprising 30 days as the prescribed period and an additional 15 days that may be condoned upon showing sufficient cause.

9. In the present case, Respondent No. 1 e-filed appeal along with an application for condonation of delay before the NCLAT on 23.05.2022 and physically filed the same on 24.05.2022. The NCLAT allowed the application for condonation of delay by the order impugned herein. The appellant challenged the maintainability of the appeal on the ground that it was filed beyond the 45-day period prescribed under section 61(2) IBC – comprising a 30-day limitation period and a further 15-day condonable period – and was, therefore, time-barred. Whereas, according to Respondent No.1, although the resolution plan was approved by the NCLT on 07.04.2022, the intimation of the said approval was given to the listing departments of the BSE and NSE only on 08.04.2022; and he became aware of the approval on that date, as he was not a party to the petition filed under section 7 IBC. Accordingly, the 30-day limitation period for filing the appeal commenced on 08.04.2022 and was set to expire on 08.05.2022. However, since 08.05.2022 was a Sunday, by virtue of Section 4 of the Limitation Act, 1963, the prescribed period was extended to the next working day i.e., 09.05.2022 (Monday). Thereafter, the additional grace period of 15 days for seeking condonation of delay, as permitted under

the proviso to Section 61(2) IBC expired on 24.05.2022. As Respondent No. 1 physically filed the appeal along with the condonation application on 24.05.2022, it was within the statutorily permissible period of 45 days. Hence, the appeal was not barred by limitation. The NCLAT rightly allowed the application seeking condonation of delay in filing the appeal.

10. Pertinently, Section 238A IBC which was inserted by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, makes the Limitation Act, 1963 applicable to IBC proceedings, and the same reads as under:

“238A.Limitation –

The provisions of the Limitation Act, 1963 (36 of 1963) shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be.”

10.1. Now, the relevant provisions of the Limitation Act, 1963 – namely Section 2(j), which defines the term ‘period of limitation’ and Section 4, which deals with the expiry of the prescribed period on a holiday - are extracted below:

“Section 2 – Definitions

In this Act, unless the context otherwise requires, -

(j) “period of limitation” means the period of limitation prescribed for any suit, appeal or application by the Schedule, and “prescribed period” means the period of limitation computed in accordance with the provisions of this Act”.

“Section 4 - Expiry of prescribed period when court is closed.

Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens.

Explanation.—

A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day.”

Moreover, the same is also highlighted under Rule 3 of the NCLAT Rules, 2016, which reads as under:

“3. Computation of time period-

Where a period is prescribed by the Act and these rules or under any other law or is fixed by the Tribunal for doing any act, in computing the time, the day from which the said period is to be reckoned shall be excluded, and if the last day expires on a day when the office of the Tribunal is closed, that day and any succeeding days on which the Tribunal remains closed shall also be excluded.”

Thus, the above provisions clarify that the benefit of Section 4 of the Limitation Act, 1963 and Rule 3 of the NCLAT Rules, 2016, extends the limitation period to the next working day, if the prescribed period expires on a holiday.

10.2. At the same time, this Court has, in the following decisions, categorically explained the meaning of the term ‘prescribed period’ as defined under Section 2(j) of the Limitation Act, 1963, and clarified the scope and applicability of Section 4 of the said Act, particularly, in cases where the last date for filing an appeal or application falls on a court holiday:

(i) *Assam Urban Water Supply & Sewerage Board v. M/s. Subash Projects & Mktg. Ltd.*⁹

“10. The facts in the present case are peculiar. The arbitral awards were received by the appellants on 26-8-2003. No application for setting aside the arbitral awards was made by the appellants before elapse of three months from the receipt thereof. As a matter of fact, three months from the date of the receipt of the arbitral award by the appellants expired on 26-11-2003. The District Court had Christmas vacation for the period from 25-12-2003 to 1-1-2004. On reopening of the court i.e. on 2-1-2004, admittedly, the appellants made applications for setting aside those awards under Section 34 of the 1996 Act. If the period during which the District Court, Kamrup, Guwahati, remained closed during Christmas vacation, 2003 is extended and the appellants get the benefit of that period over and above the cap of thirty days as provided in Section 34(3), then the view of the High Court and the District Judge cannot be sustained. But this would depend on the applicability of Section 4 of the 1963 Act.

11. The question, therefore, that falls for our determination is whether the appellants are entitled to extension of time under Section 4 of the 1963 Act in the above facts.

12. Section 4 of the 1963 Act reads as under:

*“4. **Expiry of prescribed period when court is closed.**—Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens.*

Explanation.— A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day.”

The above section enables a party to institute a suit, prefer an appeal or make an application on the day the court reopens where the prescribed period for any suit, appeal or application expires on the day when the court is closed.

13. The crucial words in Section 4 of the 1963 Act are “prescribed period”. What is the meaning of these words?

14. Section 2(j) of the 1963 Act defines:

⁹ (2012) 2 SCC 624

“2(j) ‘period of limitation’ [which] means the period of limitation prescribed for any suit, appeal or application by the Schedule, and ‘prescribed period’ means the period of limitation computed in accordance with the provisions of this Act;” Section 2(j) of the 1963 Act when read in the context of Section 34(3) of the 1996 Act, it becomes amply clear that the prescribed period for making an application for setting aside an arbitral award is three months. The period of 30 days mentioned in the proviso that follows sub-section (3) of Section 34 of the 1996 Act is not the “period of limitation” and, therefore, not the “prescribed period” for the purposes of making the application for setting aside the arbitral award. The period of 30 days beyond three months which the court may extend on sufficient cause being shown under the proviso appended to sub-section (3) of Section 34 of the 1996 Act being not the “period of limitation” or, in other words, the “prescribed period”, in our opinion, Section 4 of the 1963 Act is not, at all, attracted to the facts of the present case.

15. Seen thus, the applications made by the appellants on 2-1-2004 for setting aside the arbitral award dated 26-8-2003 were liable to be dismissed and have rightly been dismissed by the District Judge, Kamrup, Guwahati, as time-barred.”

(ii) Sagufa Ahmed and Others v. Upper Assam Plywood Products (P) Ltd. & Others¹⁰

20. The words “prescribed period” appear in several sections of the Limitation Act, 1963. Though these words “prescribed period” are not defined in Section 2 of the Limitation Act, 1963, the expression is used throughout, only to denote the period of limitation. We may see a few examples:

20.1. Section 3(1) makes every proceeding filed after the prescribed period, liable to be dismissed, subject however to the provisions in Sections 4 to 24.

20.2. Section 5 enables the admission of any appeal or application after the prescribed period.

20.3. Section 6 uses the expression prescribed period in relation to proceedings to be initiated by persons under legal disability.

21. Therefore, the expression “prescribed period” appearing in Section 4 cannot be construed to mean anything other than the period of limitation. Any period beyond the prescribed period, during which the court or tribunal has the

¹⁰ (2021) 2 SCC 317

discretion to allow a person to institute the proceedings, cannot be taken to be “prescribed period”.

22. In Assam Urban Water Supply & Sewerage Board v. Subash Projects & Mktg. Ltd. [(2012) 2 SCC 624 : (2012) 1 SCC (Civ) 831], this Court dealt with the meaning of the words “prescribed period” in paras 13 and 14 as follows: (SCC pp. 627-28)

“13. The crucial words in Section 4 of the 1963 Act are “prescribed period”. What is the meaning of these words?

14. Section 2(j) of the 1963 Act defines:

“2. (j) “period of limitation” which means the period of limitation prescribed for any suit, appeal or application by the Schedule, and “prescribed period” means the period of limitation computed in accordance with the provisions of this Act.”

Section 2(j) of the 1963 Act when read in the context of Section 34(3) of the 1996 Act, it becomes amply clear that the prescribed period for making an application for setting aside arbitral award is three months. The period of 30 days mentioned in proviso that follows sub-section (3) of Section 34 of the 1996 Act is not the “period of limitation” and, therefore, not “prescribed period” for the purposes of making the application for setting aside the arbitral award. The period of 30 days beyond three months which the court may extend on sufficient cause being shown under the proviso appended to sub-section (3) of Section 34 of the 1996 Act being not the “period of limitation” or, in other words, “prescribed period”, in our opinion, Section 4 of the 1963 Act is not, at all, attracted to the facts of the present case.”

Therefore, the appellants cannot claim the benefit of the order passed by this Court on 23-3-2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : 2020 SCC OnLine SC 343], for enlarging, even the period up to which delay can be condoned. The second contention is thus untenable. Hence the appeals are liable to be dismissed. Accordingly, they are dismissed.”

*(iii) Bhimashankar Sahakari Sakkare Karkhane Niyamita v. Walchandnagar Industries Limited (WIL)*¹¹

¹¹ (2023) 8 SCC 453

“50. Section 34(3) of the Arbitration Act and Sections 2(j) and 4 of the Limitation Act, 1963 fell for consideration before this Court in Assam Urban [Assam Urban Water Supply & Sewerage Board v. Subash Projects & Mktg. Ltd., (2012) 2 SCC 624 : (2012) 1 SCC (Civ) 831]. Even the very issue raised in the present appeal fell for consideration before this Court in Assam Urban (supra). In the aforesaid decision, this Court interpreted the aforesaid provisions and has specifically observed and held that the benefit of exclusion of period during which Court is closed is available only when application for setting aside the award is filed within “prescribed period of limitation” and it is not available in respect of period extendable by the Court in exercise of its discretion.

52. Before this Court there existed, similar facts like in the present case. In the case before this Court, the arbitral awards were received by the appellants on 26-8-2003. No application for setting aside the arbitral award was made before elapse of three months from the receipt thereof. Three months from the date of receipt of the award expired on 26-11-2003. The District Court had Christmas vacation for the period from 25-12-2003 to 1-1-2004. On reopening of the Court i.e. on 2-1-2004, the appellants made application for setting aside the award under Section 34 of the Arbitration Act. Considering the aforesaid facts and thereafter considering Sections 2(j) and 4 of the Limitation Act, 1963, this Court observed and held and concluded in paras 11 to 15 as under: (Assam Urban case)

.....

53. Therefore, as such the question involved in the present appeal is squarely answered against the appellant and the said issue is as such not res integra.

.....

58. Therefore, in light of the application of the Limitation Act, 1963 to the proceedings under the Arbitration Act and when Section 10 of the General Clauses Act, 1897 specifically excludes the applicability of Section 10 to any act or proceeding to which Limitation Act, 1963 applies and in light of the definition of “period of limitation” as defined under Section 2(j) read with Section 4 of the Limitation Act and as observed and held by this Court in Assam Urban, benefit of exclusion of period during which the Court is closed shall be available when the application for setting aside award is filed within “prescribed period of limitation” and shall not be available in respect of period extendable by Court in exercise of its discretion.”

(iv) *My Preferred Transformation & Hospitality Pvt. Ltd. and Another v. Faridabad Implements Pvt. Ltd.*¹²

“25. As per Section 4, if the “prescribed period”, which is defined in Section 2(j) of the Limitation Act as the period of limitation computed in accordance with its provisions, expires on a day when the court is closed, the application may be made on the day when the court reopens.

26. This Court in Assam Urban (supra) considered the applicability of Section 4 of the Limitation Act in a situation when the condonable period of 30 days expired on a court holiday. The brief facts are that the appellants received the arbitral awards on 26.08.2003, the 3-month limitation period expired on 26.11.2003, on which date the court was open. The further condonable period of 30 days expired during court vacation between 25.12.2003 to 01.01.2004. The application under Section 34 was filed on 02.01.2004, on the date of court reopening. This Court upheld the dismissal of the Section 34 application on the ground of delay, as the same could not be condoned.

26.1 First, the Court held that by virtue of Section 43(1), the Limitation Act applies to matters of arbitration, “save and except to the extent its applicability has been excluded by virtue of the express provision contained in Section 34(3) of the 1996 Act”.

26.2 It then considered the meaning of the expression “prescribed period” in Section 4, to determine whether the appellants in this case would be entitled to an extension of time. Reading Section 2(j) of the Limitation Act in the context of Section 34(3) of the ACA, it held that the “prescribed period” for an application to set aside the arbitral award is 3 months. The 30-day period is not the period of limitation, but the condonable period, and is therefore not the “prescribed period”. Hence, it held that Section 4 was not attracted to the facts of the case.

27. Contrary to the interpretation of the judgment put forth by Mr. Kaul during the hearings, a reading of the entire judgment does not indicate that the Court in Assam Urban(supra) held Section 4 of the Limitation Act to be inapplicable. The wording of para 9 of the judgment makes it clear that the Limitation Act does not apply only to the extent that its applicability is excluded by an express provision in Section 34(3). While the Court did not explicitly deal with whether Section 4 of the Limitation Act was excluded, a reading of the entire judgment makes it clear that the Court proceeded on the basis that Section 4 applies.

¹² 2025 SCC OnLine SC 70

Therefore, we find it difficult to accept Mr. Kaul's submission that Section 4 was held to be excluded in Assam Urban (supra). His further submission that once the Limitation Act is inapplicable, there was no occasion for the Court to decide on the applicability of Section 4 only to the prescribed period of 3 months, must also be rejected for the same reason.

28. The position of law after Assam Urban(supra) is that while Section 4 of the Limitation Act applies to Section 34(3) of the ACA, it only applies in relation to the prescribed period of 3 months. It does not apply when the condonable period of 30 days expires on a day when the court is not working.

29. This position of law was subsequently considered and reiterated in Bhimashankar(supra) as well. Here, the arbitral award was made on 24.08.2016, the 3-month period of limitation expired on 24.11.2016, and further 30 days came upto 24.12.2016, which fell during the court's winter/Christmas vacation. The Court here considered the applicability of Section 4 of the Limitation Act and Section 10 of the GCA.

29.1 On the issue of Section 4 of the Limitation, it held that the issue is covered by Assam Urban(supra), where it was held that the benefit of exclusion of the period when the court is closed is only available with respect to the “prescribed period of limitation” and not the period extendable by the court in exercise of its discretion.

29.2 To determine the applicability of Section 10 of the GCA, it considered whether the Limitation Act applies to the ACA. It specifically rejected the submission that the Limitation Act does not apply. It further referred to Assam Urban(supra) on the extent of exclusion and held as follows in para 54:

“54. Now, so far as the submission on behalf of the appellant that the Limitation Act shall not be applicable to the proceedings under the Arbitration Act is concerned, the aforesaid has no substance. Section 43(1) of the Arbitration Act specifically provides that the Limitation Act, 1963 shall apply to arbitrations as it applies to proceeding in Court. However, as observed and held by this Court in Assam Urban, the Limitation Act, 1963 shall be applicable to the matters of arbitration covered by the 1996 Act save and except to the extent its applicability has been excluded by virtue of express provision contained in Section 34(3) of the Arbitration Act.”

(emphasis supplied)

In paras 55 and 56, it discussed Popular Construction(supra) and Hindustan Construction(supra) on the inapplicability of Section 5 of the Limitation Act and the mandatory nature of the 30-day time limit for condonation of delay, respectively.

29.3 Finally, in paras 57 and 58, in light of the proviso to Section 10 of the GCA which specifically excludes its applicability to any act or proceeding to which the Limitation Act applies, the Court rejected the applicability of Section 10 of the GCA to Section 34(3).

30. The logic of the above reasoning in *Bhimashankar(supra)*, like in *Assam Urban(supra)*, proceeds on the basis that Section 4 of the Limitation Act applies to Section 34(3), as the same is not expressly or impliedly excluded. Reading paragraphs 54 to 58 together, it is clear that any apparent contradiction within them, which was raised by Mr. Kaul, does not in fact exist. The judgment is consistent throughout, in that it necessarily affirms the applicability of Section 4 of the Limitation Act while calculating limitation under Section 34(3), and consequently, relies on the proviso of Section 10 of the GCA to hold that Section 10 of the GCA does not apply.

31. The applicability of Section 4 of the Limitation Act is also implicit in the recent decision in *State of West Bengal v. Rajpath Contractors(supra)*. Here, the award was served on the appellant on 30.06.2022. The 3-month limitation was reckoned from 01.07.2022, which came upto 30.09.2022. The court vacation started from 01.10.2022. The further 30-day period ended on 30.10.2022, which was during the court vacation. The application was filed on 31.10.2022. The Court held that the prescribed limitation period ended on 30.09.2022, when the court was working. Hence, by referring to *Assam Urban(supra)*, it held that the appellant could not benefit from Section 4 of the Limitation Act as only the 30-day period expired on a court holiday. Hence, it held that the application was filed beyond the time under Section 34(3) and the delay could not be condoned.”

Thus, it is clear that the benefit of exclusion of period during which the court is closed shall be available when the application is filed within “prescribed period of limitation” and shall not be available in respect of period extendable by court in exercise of its discretion.

10.3. In *V. Nagarajan v. SKS Ispat & Power Ltd.*¹³, this Court provided crucial clarifications regarding the computation of limitation periods under the IBC.

¹³ (2022) 2 SCC 244

It was held that under section 61(2) IBC, the limitation period for filing an appeal to the NCLAT commences from the date of pronouncement of the order by the NCLT, not from the date when the order is received or made available to the aggrieved party. This Court further clarified that while Rule 22(2) of the NCLAT Rules mandates the filing of a certified copy of the impugned order along with the appeal, the limitation period is not contingent upon the receipt of such a copy. However, if an appellant applies for a certified copy, the time taken to obtain it can be excluded from the limitation period under section 12(2) of the Limitation Act. Thus, this decision underscores the IBC's objective of ensuring timely resolution of insolvency proceedings and the parties are expected to act diligently and within the prescribed timelines, with limited scope for condonation of delay. The relevant paragraphs of the said decision read as under:

“24. IBC is a complete code in itself and overrides any inconsistencies that may arise in the application of other laws. Section 61 IBC, begins with a non obstante provision— “notwithstanding anything to the contrary contained under the Companies Act, 2013” when prescribing the right of an aggrieved party to file an appeal before NCLAT along within the stipulated period of limitation. The notable difference between Section 421(3) of the Companies Act and Section 61(2) IBC is in the absence of the words “from the date on which a copy of the order of the Tribunal is made available to the person aggrieved” in the latter. The absence of these words cannot be construed as a mere omission which can be supplemented with a right to a free copy under Section 420(3) of the Companies Act read with Rule 50 of the NCLT Rules for the purposes of reckoning limitation. This would ignore the context of IBC's provisions and the purpose of the legislation.

31. ...A Person wishing to file an appeal is expected to file an application for a certified copy before the expiry of the limitation period, upon which the “time requisite” for obtaining a copy is to be excluded. However, the time taken by the court to prepare the decree or order before an application for a copy is made cannot be excluded. **If no application for a certified copy has been made, no exclusion can ensue.** In fact, the Explanation to the provision is a clear indicator of the legal position that the time which is taken by the court to prepare the decree or order cannot be excluded before the application to obtain a copy is made. It cannot be said that the right to receive a free copy under Section 420(3) of the Companies Act obviated the obligation on the appellant to seek a certified copy through an application. The appellant has urged that Rule 14 of the NCLAT Rules empowers NCLAT to exempt parties from compliance with the requirement of any of the rules in the interests of substantial justice, which has been typically exercised in favour of allowing a downloaded copy in lieu of a certified copy. While it may well be true that waivers on filing an appeal with a certified copy are often granted for the purposes of judicial determination, they do not confer an automatic right on an applicant to dispense with compliance and render Rule 22(2) of the NCLAT Rules nugatory. The act of filing an application for a certified copy is not just a technical requirement for computation of limitation but also an indication of the diligence of the aggrieved party in pursuing the litigation in a timely fashion. In a similar factual scenario, NCLAT had dismissed an appeal as time-barred under Section 61(2) IBC since the appellant therein was present in court, and yet chose to file for a certified copy after five months of the pronouncement of the order.

33. The answer to the two issues set out in Section C of the judgment—(i) when will the clock for calculating the limitation period run for proceedings under IBC; and (ii) is the annexation of a certified copy mandatory for an appeal to NCLAT against an order passed under IBC — must be based on a harmonious interpretation of the applicable legal regime, given that IBC is a Code in itself and has overriding effect. Sections 61(1) and (2) 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 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 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 Rules and

*prevent limitation from running. Accepting such a construction will upset the timely framework of 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.***

*34. On the second question, Rule 22(2) of the NCLAT Rules mandates the certified copy being annexed to an appeal, which continues to bind litigants under IBC. While it is true that the tribunals, and even this Court, may choose to exempt parties from compliance with this procedural requirement in the interest of substantial justice, as reiterated in Rule 14 of the NCLAT Rules, the **discretionary waiver does not act as an automatic exception where litigants make no efforts to pursue a timely resolution of their grievance. The appellant having failed to apply for a certified copy, rendered the appeal filed before NCLAT as clearly barred by limitation.***”

10.3.1. This Court in *Sanjay Pandurang Kalate v. Vistra ITCL India Ltd. & Others*¹⁴, has pointed out that the date on which the limitation begins to run is intrinsically linked to the date of pronouncement. After referring to this decision, this Court in *A. Rajendra v. Gonugunta Madhusudhan Rao & Others*¹⁵, has clearly stated that where the judgment was pronounced in open Court, the period of limitation starts running from that very day. The following paragraphs are relevant in this regard:

“23. In Sanjay Pandurang Kalate v. Vistra ITCL India Pvt. Ltd. & Others, this Court had an occasion to deal with the case where an application was heard by NCLT on 17.05.2023 but no order was pronounced. The Order came to be uploaded by the Registry on 30th April 2023 directly carrying the date of the Order as 17.05.2023. The appellant applied for the certified copy on 30th May 2023 which was received on 01.06.2023 and the appeal was filed in NCLAT on 10.07.2023 along with the application for condonation of delay. The issue which

¹⁴ (2024) 3 SCC 27

¹⁵ 2025 SCC OnLine SC 721

was dealt by this Court in this case was as to which date triggers limitation to commence when the matter is conclusively heard on one day and the Order is directly uploaded on the website on another. It was held that the period to compute limitation to file an appeal under Section 61 IBC from the Order of NCLT commences from the date of uploading of the Order by the Registry as the commencement of the period of Limitation is intrinsically linked to the date of pronouncement.

24. Therefore, the incident which triggers limitation to commence is the date of pronouncement of the Order and in case of non-pronouncement of the Order when the hearing concludes, the date on which the Order is pronounced or uploaded on the website.

25. However, where the judgment was pronounced in open Court, the period of limitation starts running from that very day. The appellant is however entitled to seek relief under Section 12(2) of the Limitation Act for excluding the period during which the certified copy was under preparation on an application preferred by that party.”

10.4. In the present case, Respondent No. 1 was neither a party to the proceedings before the NCLT nor privy to the CoC deliberations, and became aware of the order only upon its subsequent disclosure. However, it is evident that the Company Secretary of the Corporate Debtor duly informed the listing departments of both NSE and BSE about the NCLT order dated 07.04.2022 within 30 minutes of its pronouncement. Hence, the limitation period for filing the appeal commenced on 07.04.2022 and expired on 07.05.2022. Notably, 07.05.2022 fell on the first Saturday of the month, which is a working day for the Registry of the NCLAT. Even otherwise, the benefit of section 4 of the Limitation Act, 1963 cannot be granted, as Respondent No. 1 filed the appeal beyond not only the prescribed period of 30 days but also the condonable

period of 15 days, i.e., on 24.05.2022. In view of the same reason, Rule 3 of the NCLAT Rules, 2016 has also no application to the facts of the present case. Thus, applying the principles laid down in the decisions referred to above, we arrive at the irresistible conclusion that Respondent No. 1 filed the appeal beyond the statutory maximum period of 45 days prescribed under section 61(2) IBC. Accordingly, the first issue is answered by us.

ISSUE NO. 2

11. As indicated above, the IBC prescribes strict timelines for filing appeals and taking legal action so as to ensure that insolvency proceedings are not misused to recover time-barred debts. The proviso to Section 61(2) clearly limits the NCLAT's jurisdiction to condone delay only up to 15 days beyond the initial 30-day period. Where a statute expressly limits the period within which delay may be condoned, an Appellate Tribunal cannot exceed that limit. In other words, the NCLAT being a creature of statute, operates strictly within the powers conferred upon it. Unlike a civil suit, it lacks inherent jurisdiction to extend time on equitable grounds.

11.1. Once the prescribed and condonable periods (i.e., 30 + 15 days) expire, the NCLAT has no jurisdiction to entertain appeals, regardless of the reason for the delay. In *Mobilox Innovations Private Limited v. Kirusa Software Private*

*Limited*¹⁶, while interpreting Section 9 IBC, this Court underscores the IBC's strict procedural discipline i.e., only applications strictly conforming to statutory requirements can be entertained. This principle is also applicable to limitation issues under section 61(2), as it supports the idea that tribunals must operate within the bounds of the Code, without adding equitable or discretionary powers not conferred by statute. This Court in *Kalpraj Dharamshi v. Kotak Investment Advisors Limited & Another*¹⁷ has categorically held that the NCLAT cannot condone any delay beyond 15 days even on equitable grounds; and that the appellate mechanism under IBC is strictly time-bound by design to preserve the speed and certainty of the insolvency resolution process.

11.2. Thus, the NCLAT has no power to condone delay beyond the period stipulated under the statute. Accordingly, the second issue is answered by us.

12. In view of the foregoing, the order passed by the NCLAT condoning the delay in filing the appeal, is *ultra vires* and liable to be set aside.

13. Before parting, we may observe that time is of the essence in statutory appeals, and the prescribed limitation period must be strictly adhered to. Even a delay of a single day is fatal if the statute does not provide for its

¹⁶ (2018) 1 SCC 353

¹⁷ (2021) 10 SCC 401

condonation. As held by us, the NCLAT has no power to condone delay beyond the period stipulated under the statute. Allowing condonation in such cases would defeat the legislative intent and open the floodgates to belated and potentially frivolous petitions, thereby undermining the efficacy and finality of the appellate mechanism.

14. In fine, the order dated 14.12.2022 passed by the NCLAT in I.A.No.1667 of 2022 in CA (AT) (Insolvency) No.615 of 2022 is set aside and this appeal is allowed. However, there is no order as to costs.

15. Consequently, connected Miscellaneous Application(s), if any, shall stand closed.

.....J.
[J.B. Pardiwala]

.....J.
[R. Mahadevan]

**NEW DELHI;
MAY 7, 2025.**