

Ashdan Properties Pvt. Ltd. and Ors. Vs. DSK Global Education and Research Pvt. Ltd. and Anr.

Civil Appeal No. 10603 of 2024 · Supreme Court of India · 2025-08-12 · Sanjay Kumar · Satish Chandra Sharma · F2J-C-1535

Full judgment text

Ashdan Properties Pvt. Ltd. and Ors. Vs. DSK Global Education and Research Pvt. Ltd. and Anr.

[Civil Appeal No. 10603 of 2024]

Sanjay Kumar, J

1. Challenge in this appeal, filed under Section 62 of the Insolvency and Bankruptcy Code, 2016¹, is to the judgment dated 01.07.2024 passed by the National Company Law Appellate Tribunal, Principal Bench, New Delhi², in so far as it pertains to Company Appeal (AT) (Insolvency) No. 1308 of 2023.

2. Though comprehensive and compendious arguments were advanced by both sides on the merits of the case, we are of the opinion that this appeal is amenable to resolution on a purely technical ground which forecloses examination of the matter on merits.

3. Company Appeal (AT) (Insolvency) No. 1308 of 2023 was filed by DSK Global Education and Research Pvt. Ltd., respondent No. 1 herein, assailing the validity of the order dated 23.06.2023 passed by the National Company Law Tribunal, Mumbai Bench³, in I.A. No. 1950 of 2021 in Company Petition (IB) 306/MB/2020. By the said order, the NCLT allowed the interlocutory application filed by the Resolution Professional and approved the resolution plan submitted by the successful resolution applicant, Ashdan Properties Private Limited, the appellant before us.

4. Section 61(2) of the IBC prescribes that every appeal against an order of the Adjudicating Authority, i.e., the National Company Law Tribunal concerned, should be filed before the jurisdictional National Company Law Appellate Tribunal within 30 days. The proviso thereto, however, allows the said National Company Law Appellate Tribunal to permit the appeal to be filed even after expiry of the period of 30 days, if it is satisfied that there was sufficient cause for not filing the appeal within that time but such extended period shall not exceed 15 days.

5. It is an admitted fact that the NCLT pronounced the order in the subject I.A. on 23.06.2023. According to respondent No. 1, the said order was uploaded on the website on 26.06.2023. The appeal before the NCLAT was e-filed by respondent No. 1 on 25.07.2023, vide Diary No. 9910110/05909/2023. It is an admitted fact that a certified copy of the impugned order dated 23.06.2023 was not filed along with the said appeal. Rule 22(2) of the National Company Law Appellate Tribunal Rules, 2016⁴, mandates that every appeal filed before the Appellate Tribunal shall be accompanied by a certified copy of the impugned order. This is clear from the express language of the provision which reads thus:

"22(2): Every appeal shall be accompanied by a certified copy of the impugned order."

(emphasis is ours)

6. At that stage, i.e., when the appeal was e-filed by it on 25.07.2023, respondent No. 1 neither filed an application seeking exemption from filing a certified copy of the order nor did it file an application seeking condonation of the delay, if any, in the filing of its appeal. It was only on 23.08.2023 that respondent No. 1 applied for a certified copy of the order dated 23.06.2023 passed by the NCLT. It received the certified copy on 07.09.2023 and seems to have filed the same only thereafter before the NCLAT. An application for condonation of the delay of 2 days in the filing of the appeal was filed by respondent No. 1 only on 22.09.2023.

Therein, respondent No. 1 stated that after the said order was uploaded on 26.06.2023 on the website, a detailed study was made with regard to the scope of the directions issued and after collating all the documents in respect of the corporate insolvency resolution process, respondent No. 1 got hold of the resolution plan on or around 10.07.2023. According to it, steps were then taken to identify a counsel at Delhi for processing the filing of the appeal and this concluded around 15.07.2023. Thereafter, as per

respondent No. 1, internal discussions were held and it was then decided to file the appeal, leading to its e-filing on 25.07.2023. Claiming that its appeal had been filed within the condonable period of 15 days, respondent No. 1 sought condonation of the delay of 2 days much later.

7. The appellant and others filed their reply before the NCLAT on 27.10.2023 specifically raising the contention that the appeal was barred by limitation as it was filed beyond the statutorily prescribed period. Surprisingly, the NCLAT did not deal with the issue of limitation in so far as the filing of respondent No.1's appeal was concerned. This, perhaps, may have been due to the fact that the NCLAT deemed it appropriate to club as many as 11 appeals for a conjoined disposal through its common judgment dated 01.07.2024.

However, the fact remains that the e-filing of respondent No.1's appeal on 25.07.2023 was defective inasmuch as there was, admittedly, a delay in its filing but no application was filed for condonation of such delay and, secondly, the appeal was filed without a certified copy of the impugned order but no application was filed seeking exemption from filing such certified copy or seeking extension of time to do so. The consequences of such defective filing are what we have to consider presently.

8. Significantly, in *V. Nagarajan v. SKS Ispat & Power Ltd. and others*⁵, a three-Judge Bench of this Court considered these very issues. It was noted that the IBC is a complete code in itself and overwrites any inconsistencies that may arise in the application of other laws. The further observations made in paragraph 25, 28 and 29 therein on limitation and filing of a certified copy are of relevance and are extracted hereunder:

"25. The law on limitation with respect to IBC is settled and emphatic in its denunciation of delays [*Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta*, (2020) 8 SCC 531, paras 119-123, 127 : (2021) 2 SCC (Civ) 443; *Innoventive Industries Ltd. v. ICICI Bank*, (2018) 1 SCC 407, para 13 : (2018) 1 SCC (Civ) 356; *Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta*, (2021) 7 SCC 209, para 69 : (2021) 4 SCC (Civ) 1]. The power to condone delay is tightly circumscribed and conditional upon showing sufficient cause, even within the period of delay which is capable of being condoned. IBC is a watershed legislation which seeks to overhaul the previous bankruptcy regime which was afflicted by delays and indefinite legal proceedings. IBC sought to structure and streamline the entire process of insolvency, right from the initiation of insolvency to liquidation, as a one-stop mechanism. Section 12(3) IBC prescribes a strict timeline for the completion of the corporate insolvency resolution process of one hundred and eighty days which is extendable by ninety days.

The proviso to Section 12(3) imposes an outer limit of three hundred and thirty days, including time taken in legal proceedings. While a three-Judge Bench of this Court in *Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta* [*Essar Steel India Ltd. (CoC) v. Satish Kumar Gupta*, (2020) 8 SCC 531 : (2021) 2 SCC (Civ) 443] held such a time-limit on court proceedings as violative of Article 14, only the word "mandatorily" was struck down and a narrowly defined extension to the outer limit was allowed in exceptional circumstances if the process is at a near conclusion and serves the ends of IBC. Regulation 40-A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides for a detailed model timeline for the corporate insolvency resolution process, including extensions that are granted as discretionary powers under the procedural eventualities of IBC framework."

"28. In this background, when timelines are placed even on legal proceedings, reading in the requirement of an "order being made available" under a general enactment (Companies Act) would do violence to the special provisions enacted under IBC where timing is critical for the workability of the mechanism, health of the economy, recovery rate of lenders and valuation of the corporate debtor. IBC, as a prescriptive mechanism, affecting rights of stakeholders who are not necessarily parties to the proceedings, mandates diligence on the part of applicants who are aggrieved by the outcome of their litigation.

An appeal, if considered necessary and expedient by an aggrieved party, is expected to be filed forthwith without awaiting a free copy which may be received at an indefinite stage. Hence, the omission of the words "from the date on which the order is made available" for the purposes of computation of limitation in Section 61(2) IBC, is a consistent signal of the intention of the legislature to nudge the parties to be proactive and facilitate timely resolution."

"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":

"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."

9. Thereafter, in paragraph 31 of the judgment, the Bench noted that 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. The Bench, however, cautioned that the time taken by the Court to prepare the decree or order before an application for a copy is made cannot be excluded for the purpose of Section 12 of the Limitation Act, 1963.

The argument that Rule 14 of the NCLAT Rules empowers the National Company Law Appellate Tribunal to exempt parties from compliance with the requirement of any of the rules, in the interest of substantial justice, was also considered and the Bench noted that though it may well be true that waiver on filing an appeal without a certified copy is often granted for the purpose of judicial determination, it does not confer an automatic right on an applicant to dispense with compliance so as to render Rule 22(2) of the NCLAT Rules nugatory.

It was held that 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 pursuing the litigation in a timely fashion. It was further held that, 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.

As regards the power of the NCLAT to grant exemption from complying with the requirements of the rules, it was observed that Rule 22(2) of the NCLAT Rules mandates the certified copy being annexed to an appeal, which continues to bind litigants under the IBC and though it may be true that Tribunals and Courts 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, such discretionary waiver does not act as an automatic exception where litigants make no efforts to pursue a timely resolution of their grievance. On facts, the Bench held that, as the appellant had failed to apply for a certified copy, it rendered the appeal filed by him clearly barred by limitation.

10. The recent three-Judge Bench judgment of this Court in *A Rajendra vs. Gonugunta Madhusudhan Rao and others*⁶ affirmed this legal position. Copious reference was made by the Bench to the earlier decision in *V Nagarajan (supra)* and other case laws and it was observed that the incident which triggers limitation to commence is the date of pronouncement of the order and in a case of non-pronouncement of the order when the hearing concludes, the date on which the order is pronounced or uploaded on the website. It was pointed out that when the judgment is pronounced in open Court, the period of limitation would start running from that very day and an appellant would be entitled to seek relief under Section 12(2) of the Limitation Act, 1963, to exclude the period during which a certified copy was under preparation, if an application was made therefor within the period of limitation.

11. Ergo, in the light of the aforesaid settled legal position, respondent No. 1 could not have banked upon the date of uploading of the order on 26.06.2023 as the order was admittedly pronounced in open Court on 23.06.2023. The limitation, therefore, commenced from that very day. Though reference was made by the learned counsel for respondent No. 1 to the recent judgment of the NCLAT in *Innovators Cleantech Pvt. Ltd. vs. Passari Multi Projects Pvt. Ltd.*⁷, in the context of filing of a certified copy of the order impugned, we find that the observations made therein are at variance with

the law laid down by this Court. Though the National Company Law Appellate Tribunal is clothed with the powers to exempt and to extend time under Rules 14 and 15 of the NCLAT Rules respectively, such powers cannot be exercised so as to render Rule 22(2) thereof nugatory, as pointed out in V Nagarajan (supra).

Even if an appeal is entertained within the initial 30 day-period without a certified copy of the order, by granting exemption under Rule 14, it can only be for a limited period to enable due compliance with the mandate of Rule 22(2) by filing a certified copy at least at a later date and within the time stipulated by the National Company Law Appellate Tribunal. Such exemption cannot be to the extent of completely dispensing with the filing of a certified copy, which would annihilate the clear mandate of Rule 22(2) of the NCLAT Rules, which categorically uses the word 'shall' to emphasize that an appeal must be accompanied by a certified copy of the order impugned.

12. Viewed thus, the fact that respondent No. 1 casually e-filed an appeal on 25.07.2023, with neither an application for condonation of delay nor an application seeking exemption from filing a certified copy of the impugned order, rendered its appeal defective. Admittedly, it was only on 25.08.2023 that respondent No. 1 filed an application seeking permission to file the appeal and an application for condonation of delay was filed much later, on 22.09.2023. Presumably, it was at this time that a certified copy of the impugned order was filed without even seeking exemption or extension of time to do so.

These aspects ought to have been considered by the NCLAT as the statute peremptorily requires proper institution of an appeal in conformity with all the prescribed norms and it was incumbent upon the NCLAT to examine and verify as to whether respondent No. 1's appeal was in due compliance with all such norms. More so, when the appellant herein had specifically raised the issue that such appeal was barred by limitation. The NCLAT erred in completely brushing aside this crucial aspect which went to the very root of its appellate jurisdiction.

13. Thus, the impugned judgment delivered on merits is essentially a superstructure erected on an illusory foundation and cannot, therefore, be sustained. On this short ground, this appeal deserves to be and is, accordingly, allowed setting aside the judgment dated 01.07.2024 passed by the National Company Law Appellate Tribunal, Principal Bench, New Delhi, in Company Appeal (AT) (Insolvency) 1308 of 2023. Pending applications, if any, shall stand disposed of.

.....J. [Sanjay Kumar]

.....J. [Satish Chandra Sharma]

New Delhi.

August 12, 2025

1 for short, "IBC"

2 for short, "NCLAT"

3 for short, "NCLT"

4 for short, "NCLAT Rules"

5 (2022) 2 SCC 244

6 2025 INSC 447

7 (2024) ibclaw.in 452 NCLAT

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