

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) No. 301 of 2024
& I.A. No. 6474 of 2024

IN THE MATTER OF:

Kapil Katyal

...Appellant(s)

Versus

HDFC Securities Ltd. & Ors.

...Respondent(s)

Present:

For Appellant : Mr. Rahul Sharma, Mr. Shubham Shekhar, Advocates.

For Respondents : Mr. Aman Raj Gandhi, Mr. Vardan Bajaj, Mr. Ojasvi Sharma, Advocates for R-3.

O R D E R
(Hybrid Mode)

19.09.2024: This appeal is filed against the impugned order dated 05.01.2024. There is delay of 191 days in filing this appeal. The Learned Counsel for the Appellant submits he has applied for free certified copy on 13.06.2024 and that the free certified copy was given to him on 14.06.2024, and as the free certified copy was not supplied, the limitation will start from the date it was supplied to him.

2. On the other hand, the Learned Counsel for the Respondent submits in any case the certified copy has to be applied within the period of limitation as prescribed under Section 12 of the Limitation Act.

3. The Appellant relied on 'Sagufa Ahmed & Ors. V. Upper Assam, Plywood Products Pvt. Ltd. & Ors., Civil Appeal Nos. 3007-3008 of 2020' dated 18.09.2020, more specifically to paragraphs 14 and 15 as under:

“14. Therefore if the appellants had chosen not to file a copy application, but to await the receipt of a free copy of the order in terms of Section 420(3) read with Rule 50, they would be perfectly justified in falling back on Section 421(3), for fixing the date from which limitation would start running. But the appellants in this case, chose to apply for a certified copy after 27 days of the pronouncement of the order in their presence and they now fall back upon Section 421(3).

15. Despite the above factual position, we do not want to hold against the appellants, the fact that they waited from 25.10.2019 (the date of the order of NCLT) upto 21.11.2019, to make a copy application. But atleast from 19.12.2019, the date on which a certified copy was admittedly received by the counsel for the appellants, the period of limitation cannot be stopped from running.”

4. A bare perusal of the aforesaid judgment shows that even in the said case, an application for obtaining certified copy/free copy was filed during the period of limitation.

5. Nevertheless, in ‘V. Nagarajan V. SKS Ispat and Power Limited and Others, (2022) 2 SCC 244’ decided on 22.10.2021, the Hon’ble Supreme Court held as follows:

“31. The import of Section 12 of the Limitation Act and its explanation is to assign the responsibility of applying for a certified copy of the order on a party. 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 1424 of the NCLAT Rules empowers the 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, the NCLAT had dismissed an appeal²⁵ as time-barred under Section 61(2) of the 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.”

6. Considering the fact that prior to applying for the free copy, the limitation for filing this appeal had already expired. The argument of Learned Counsel for the Appellant that the limitation would start only after the free copy is given, even if given after a year or two, is wholly illogical.

7. Considering the facts, the application for condoning the delay in filing this appeal beyond the condonable period prescribed in Section 421 of the Companies Act is hereby dismissed. Consequently, this appeal is also dismissed. Pending application(s), if any, are disposed of.

[Justice Yogesh Khanna]
Member (Judicial)

[Mr. Ajai Das Mehrotra]
Member (Technical)

R.N./Manu